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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–046–1]

Mediterranean Fruit Fly; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a portion of Dade County, FL, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the continental United States.

DATES: Interim rule effective April 17, 1998. Consideration will be given only to comments received on or before June 22, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–046–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–046–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The regulations in 7 CFR part 301.78 through 301.78–10 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

Recent trapping surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in a portion of Dade County, FL.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half miles from the detection sites. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the patterns of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by adding a portion of Dade County, FL, to the list of quarantined areas. The new quarantined area is described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective less than 30 days after publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by adding a portion of Dade County, FL, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Medfly into noninfested areas of the United States.

This interim rule affects the interstate movement of regulated articles from the quarantined area of Dade County, FL. We estimate that there are seven entities in the quarantined area of Dade County, FL, that sell, process, handle, or move regulated articles; this estimate includes

one mobile vendor and six stores/markets. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the seven entities are small in size, since the overwhelming majority of businesses in Florida, as well as the rest of the United States, are small entities by SBA standards.

We believe that few, if any, of the seven entities will be significantly affected by the quarantine action taken in this interim rule because few of these types of entities move regulated articles outside the State of Florida during the normal course of their business. Nor do consumers of products purchased from these type of entities generally move those products interstate. The effect on the small entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow those small entities to move regulated articles interstate with very little additional costs. Also, many of these types of small entities sell other items in addition to regulated articles, so the effect, if any, of the interim rule should be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c) is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

Florida

Dade County. That portion of Dade County in Hialeah bounded by a line beginning at the intersection of LeJeune Road (East 8th Avenue) and East 33rd Street; then south along LeJeune Road (East 8th Avenue) (including both sides of LeJeune Road) to Northwest 36th Street (State Highway 948); then west along Northwest 36th Street (State Highway 948) to the east side of Palmetto Expressway (State Highway 826); then north along the east side of Palmetto Expressway (State Highway 826) to the section line between sections 2 and 11, T. 53 S., R. 40 E. (on a line with West 37th Street); then east along the section line between sections 2 and 11, T. 53 S., R. 40 E., to its continuation as West 37th Street; then east along West 37th Street to West 4th Avenue; then south along West 4th Avenue to West 33rd Street; then east along West 33rd Street (including both sides of West 33rd Street) to its continuation as East 33rd Street; then east along East 33rd Street (including both sides of East 33rd Street) to the point of beginning.

Done in Washington, DC, this 17th day of April 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–10794 Filed 4–22–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 810

United States Standards for Rye

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the United States Standards for Rye to certificate dockage to the nearest tenth of a percent. The current method of dockage certification rounds the actual dockage percentage down to the nearest whole percent. This method may result in understating the level of dockage up to 0.99 percent on the certificate. Certification of dockage to the nearest tenth of a percent is more precise than the current method and should enhance the marketability of U.S. rye traded in the domestic and export markets. This change requires the establishment of new inspection tolerances or breakpoints, as appropriate.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: George Wollam, GIPSA, USDA, Room 0623–S, Stop 3649, Washington, D.C., 20250–3649; FAX (202) 720–4628; or E-mail gwollam@fgisdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act, (ACT) as amended, provides in section 87g that no state or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

GIPSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further, the regulations are applied equally to all entities.

The rye industry, including producers, handlers, exporters and processors, are the primary users of the U.S. Standards for Rye and utilize the official standards as a common trading language to market rye.

The rye industry in the United States is regional in nature, concentrated primarily in the upper midwest area. There are an estimated 10 processors of rye, utilizing a crop produced on approximately 355,000 acres in the United States. The average annual production of rye for the period 1988 through 1997 was 10,045,000 bushels. No rye has been officially inspected for export from the United States for several years.

The current method of dockage certification rounds the actual dockage percentage down to the nearest whole percent. This method may result in understating the level of dockage up to 0.99 percent on the certificate. Certification of dockage to the nearest tenth of a percent is more precise than the current method and should enhance the marketability of U.S. rye traded in the domestic and, potentially, export markets. The potential benefits of revising the dockage certification procedure to report rye dockage to the nearest tenth of a percent include a more accurate description of the raw grain and the potential to improve pricing efficiency within the market. Certification to the nearest tenth of a percent is also more precise. A corresponding change will be made to the inspection tolerances or break points, as appropriate.

Further, the rye industry already trades on dockage reported in tenths of a percent. Therefore, small entities should experience no significant economic impact from the change.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3504), the information collection requirements contained in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013.

Background

On December 17, 1997, GIPSA published in the **Federal Register** (62 FR 66036) a proposal to revise the United States Standards for Rye to certificate dockage to the nearest tenth of a percent. Dockage consists primarily of dust, chaff, small weed seeds, very small pieces of broken rye, and coarse grains larger than rye. Domestic handlers and millers usually remove dockage during grain cleaning and may use it as animal feed. Foreign buyers use dockage in a variety of ways. Some use the dockage in animal feed, others mill the dockage with the rye, and some remove and discard the dockage.

In the current Official United States Standards for Grain (7 CFR Part 810), the percentage of rye dockage is certified by rounding down to the nearest 1.0 percent (7 CFR 810.104 (b)). For example, for 0.0 to 0.99 percent, no dockage is reported on the certificate, 1.00 to 1.99 percent is reported as 1.0 percent dockage, 2.00 to 2.99 is reported as 2.0 percent dockage, and so forth. A domestic handler/processor had questioned the adequacy of the current dockage certification method, asserting that the actual dockage is almost always understated. Further, the handler/processor suggested that the current U.S. Standards for Rye are not relevant, as the domestic rye industry trades on a dockage basis expressed in tenths of a percent and not whole percents.

Changing the current reporting and certification procedure to the nearest tenth percent on official inspection certificates will more accurately and precisely state dockage content in rye. Further, this action should also promote pricing efficiency.

GIPSA also proposed to amend the inspection plan tolerances, or breakpoints, based on this change. Shiplots, unit trains, and lash barge lots are inspected with a statistically based inspection plan. Inspection tolerances, commonly referred to as ''breakpoints,'' are used to determine acceptable quality. This change requires the establishment of a new breakpoint that reflects the greater accuracy to which rye dockage will be calculated and reported.

Therefore, GIPSA is revising the current breakpoint for rye dockage which is listed in Table 14 of section 800.86(c)(2). Specifically, GIPSA will change the breakpoint from 0.32 to 0.2.

Comment Review

During the 60-day comment period, GIPSA received four comments: One from a rye miller in the upper midwest; two from grain handling associations; and one from a State Department of Agriculture.

The comment from the rye miller stated that the change would strengthen the integrity of the rye standards as it made sense given that rye is a cereal grain, it was appropriate that the U.S. rye dockage standard be the same as the wheat standard. One grain handling association stated that the change was consistent with current marketing practices and long overdue. They encouraged GIPSA to implement the change at the earliest feasible time. The other grain handling association did not object to the proposed change and stated that the change would make dockage procedures for rye consistent with wheat. The State Department of Agriculture commented that certifying rye dockage to the nearest tenth of a percent will provide a truer picture of what is actually in the lot of rye and should, therefore, be helpful for marketing purposes.

On the basis of these comments and other available information, GIPSA decided to revise the rye standards as proposed.

Final Action

GIPSA is revising § 800.86, Inspection of shiplot, unit train, and lash barge grain in single lots, paragraph (c)(2) Table 14, by changing the breakpoint for dockage in rye from 0.32 to 0.2.

GIPSA also is amending the Official United States Standards for Grain, Subpart A—General Provisions, § 810.104, Percentages, by revising paragraph (b), Recording. This change requires rye dockage to be determined and reported in whole and tenths of a percent to the nearest tenth of a percent.

Pursuant to Section 4(b)(1) of the United States Grain Standards Act, as amended (7 U.S.C. 76(b)(1)), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless, in the judgement of the Secretary, the public health, interest, or safety require that they become effective sooner. Pursuant to that section of the Act, the revisions will become effective June 1, 1999. This effective date will coincide with the beginning of the 1999 crop year and facilitate the marketing of rye.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Exports, Grain.

7 CFR Part 810

Exports, Grain.

For reasons set out in the preamble, 7 CFR Part 800 and 7 CFR Part 810 are amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.86(c)(2) is amended by revising the entry for ''Dockage'' in Table 14 to read as follows:

§ 800.86 Inspection of shiplot, unit trains, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 14—BREAKPOINTS (BP) FOR RYE SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
* * * * * * *		
Dockage	As specified by contract or load order grade.	0.2

* * * * *

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. The authority citation for Part 810 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

4. Section 810.104 is amended by revising the first three sentences of paragraph (b) to read as follows:

§ 810.104 Percentages.

* * * * *

(b) *Recording.* The percentage of dockage in flaxseed and sorghum is reported in whole percent with fractions of a percent being disregarded. Dockage in barley and triticale is reported in whole and half percent with a fraction less than one-half percent being disregarded. Dockage in wheat and rye is reported in whole and tenth percents to the nearest tenth percent. * * *

Dated: April 14, 1998.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–10768 Filed 4–22–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV98–932–1 FR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Olive Committee (Committee) under Marketing Order No. 932 for the 1998 and subsequent fiscal years from $14.99 to $17.10 per ton of assessable olives. The Committee is responsible for local administration of the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began on January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 24, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or J. Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be

applicable to all assessable olives beginning January 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 1998 and subsequent fiscal years from $14.99 per ton to $17.10 per ton.

The California olive marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on December 11, 1997, and unanimously recommended 1998 expenditures of $1,750,400 and an assessment rate of $17.10 per ton of olives received during the 1997–98 crop year, which began August 1, 1997, and ends July 31, 1998. In comparison, last year's budgeted expenditures were $2,159,265. The assessment rate of $17.10 is $2.11 higher than the rate currently in effect.

Olive trees have an alternate-bearing characteristic causing a large crop one year and a small crop the next. Handler receipts of olives for the 1997–98 crop year were 85,585 tons, which is 41 percent less than the 144,075 tons received in 1996–97. Although the 1998 fiscal year budgeted expenditures are less than those in the prior year, the decrease in olive receipts necessitates an increase in the assessment rate to cover all anticipated expenditures. If the assessment rate is not increased from the 1997 fiscal year assessment rate of $14.99, funds will fall approximately $467,481 short of 1998 fiscal year budgeted expenses.

The major expenditures recommended by the Committee for the 1998 year include $357,900 for administration, $50,000 for research, and $1,308,500 for market development. Budgeted expenses for these items in 1997 were $390,890, $173,375, and $1,595,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, actual receipts of olives, and additional pertinent factors. The revised assessment rate should provide $1,463,504 in assessment income. Income derived from handler assessments, interest, and carryover of reserve funds will be adequate to cover budgeted expenses. Funds in the reserve (currently $287,996) will be kept within the maximum permitted by the order (approximately one fiscal year's expenses; § 932.40).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998 budget was approved on February 17, 1998, and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 1,200 producers of olives in the production area and 4 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California olive producers may be classified as small entities. None of the handlers may be so classified.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1998 and subsequent fiscal years from $14.99 per ton of olives to $17.10 per ton of olives. The Committee unanimously recommended 1998 expenditures of $1,750,400 and an assessment rate of $17.10 per ton of olives. The assessment rate of $17.10 is $2.11 higher than the 1997 rate. The $17.10 rate should provide $1,463,504 in assessment income. The Committee will use reserve funds and interest income to make up the shortfall in assessment income. Therefore, income derived from handler assessments, interest, and carried over reserve funds will be adequate to cover budgeted expenses for the 1998 fiscal period. Funds in the reserve (currently $287,996) will be kept within the maximum permitted by the order (approximately one fiscal year's expenses; § 932.40).

Although the 1998 fiscal year budgeted expenditures are less than those in the prior year, the decrease in olive receipts necessitates an increase in the assessment rate to cover all anticipated expenditures. If the

assessment rate is not increased from the 1997 fiscal year assessment rate of $14.99, funds will fall approximately $467,481 short of 1998 fiscal year budgeted expenses.

A review of historical and preliminary information pertaining to the current crop year indicates that the grower prices for the 1997–98 crop year could range from $150 to $825 per ton of olives for canning sizes. Therefore, the estimated assessment revenue for the 1998 fiscal year as a percentage of total grower revenue could range between 11.4 and 2 percent, respectively. If the prices for canning sizes average about $500 per ton during the 1997–98 crop year, the estimated assessment revenue for the 1998 fiscal year as a percentage of total grower revenue will be about 3 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 11, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, all four regulated handlers are equally represented on the Committee and voted unanimously in favor of the assessment increase. Finally, interested persons were invited to submit information on the regulatory and information impacts of this rule on small entities.

This rule imposes no additional reporting or recordkeeping requirements on California olive handlers, none of which are small entities. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on February 17, 1998 (63 FR 7732). Copies of the proposed rule were also mailed or sent via facsimile to all olive handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register.

A 30-day comment period ending March 19, 1998, was provided for interested persons to respond to the proposal. No comments were received in response to the proposal.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the marketing order requires that the rate of assessment for each fiscal period apply to all assessable olives handled during such period. The fiscal year under the order covers the period January 1 through December 31. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 1998, an assessment rate of $17.10 per ton is established for assessable olives grown in California.

Dated: April 9, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–10772 Filed 4–22–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV98–993–1 FR]

Dried Prunes Produced in California; Undersized Regulation for the 1998–99 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 1998–99 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets, and allows handlers to dispose of undersized prunes in such outlets as livestock feed. The Committee estimated that this rule will reduce the calculated excess of about 78,000 tons of dried prunes expected at the end of the 1997–98 crop year by approximately 7,300 tons, leaving sufficient prunes to fulfill foreign and domestic trade demand.

EFFECTIVE DATES: August 1, 1998, through July 31, 1999.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are

effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule adds § 993.405 to Subpart—Undersized Prune Regulation (7 CFR part 993.400) to implement changes to the undersized regulation currently in effect for French prunes which pass freely through a screen opening from 23/32 to 24/32 of an inch in diameter and for non-French prunes from 28/32 to 30/32 of an inch in diameter for the 1998–99 crop year for volume control purposes. This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule will be in effect from August 1, 1998, through July 31, 1999, and was unanimously recommended by the Committee at a November 18, 1997, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Since August 1, 1982, the undersized dried prune regulation specified in § 993.49(c) of the prune marketing order has been 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect continuously for quality control purposes. Section 993.49(c) also provides that the Secretary, upon a recommendation of the Committee, may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation.

Section 993.50(g) states in part: ''No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes * * *'' Pursuant to § 993.52, minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary, on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized openings prescribed in § 993.49(c) to permit undersized regulations using openings of 23/32 or 24/32 of an inch for French prunes, and 28/32 or 30/32 of an inch for non-French prunes.

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by the Department at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15, 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes, particularly small-sized prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77 and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years. For the 1974–75 crop year, the Committee recommended and the Department established volume regulation percentages and an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes.

The objective of the undersized regulations during each of those crop years was to preclude the use of these small prunes in manufactured prune products, such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes, particularly in the smaller sizes. At its meeting on November 18, 1997, the Committee unanimously recommended establishing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for volume control purposes for the 1998–99 crop year. That crop year begins August 1, 1998, and ends July 31, 1999.

The Committee estimated that this rule will reduce the calculated excess of about 78,000 natural condition tons of dried prunes as of July 31, 1998, by approximately 7,300 natural condition tons, still leaving sufficient prunes to fill domestic and foreign trade demand during the 1998–99 crop year, and provide an adequate carry-out on July 31, 1999, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop is almost 41,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing into the next century (estimated at 387,170 natural condition tons by the year 2001); (3) a continuing oversupply situation in California caused by increased production from additional plantings and higher yields per acre (between the 1993–94 and 1996–97 crop years, the yield ranged from 2.3 to 2.8 versus a 10 year average of 2.2 tons per acre); and (4) a worsening of California's excess supply situation, even though dried prune shipments in 1996–97 reached a near-record high of 183,252 packed tons. The Committee also considered the quantity of ''D'' screen (24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes) prunes produced during the 1990–91 through 1996–97 crop years. The production of these small sizes ranged from 2,575 to 8,778 natural

condition tons during that period. The Committee concluded that it had to utilize supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of California dried prune producers and handlers. The changes to the undersized regulation for the 1998–99 crop year are the result of these deliberations, and the Committee's desire to bring supplies more in line with market needs.

The current oversupply situation facing the California prune industry has been caused by four consecutive large crops of over 180,000 natural condition tons. Another large crop of 215,000 natural condition tons is forecast for the 1997–98 crop year, which will add to the existing oversupply. The yield per acre is forecast at 2.6 tons per acre. With an anticipated increase in bearing acreage, the 1998–99 season crop could be larger.

Because of the oversupply situation, producer prices for undersized prunes during the 1997–98 crop year have declined to $40–50 per ton. This represents a loss to the producer of about $260–270 per ton. The lower pricing of the smaller prunes is expected to provide producers an incentive to produce larger sizes which the industry needs to meet the increasing market demand for pitted prunes. However, the Committee felt that the undersized rule change was needed to expedite the reduction of the inventories of small prunes, and more quickly bring supplies in line with needs. Attainment of this goal will benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings would be continuous for the purposes of quality control even in above parity situations. It further states that any change (i.e., increase) in the size of those openings would not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. As discussed later, the average grower price for prunes during the 1998–99 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation will be appropriate as far as parity is concerned.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control, purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters will not be applied to imported prunes.

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

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

There are approximately 1,400 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, as a percentage, about 34 percent of the handlers shipped over $5,000,000 worth of dried prunes and 66 percent of the handlers shipped under $5,000,000 worth of prunes. In addition, based on production, producer prices, and the total number of dried prune producers provided by the Committee, the average annual producer revenue is approximately $136,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule will establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 1998–99 crop year for volume control purposes. This change in regulation will result in more of the smaller sized prunes being classified as undersized prunes, and is expected to benefit producers, handlers, and consumers. The prune industry currently uses a ''D'' screen (24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes) for separating small prunes from the larger sizes. Thus producers and handlers, both small and large, will not incur extra costs from having to purchase new screen sizes. Moreover, because the quality related undersized regulation has been in place continuously since the early 1980's, the only additional cost resulting from the increased openings will be the disposal of additional undersized prune tonnage (about 7,300 natural condition tons, based on a 3-year average) to nonhuman consumption outlets as required by the order. This will be in addition to the 5,019 natural condition tons (or 2.86 percent of the marketable production) that has been removed on average over the past seven crop years since 1990–91. Since the benefits and costs of this action will be directly proportional to the quantity of ''D'' screen prunes produced or handled, small businesses should not be disproportionately affected by the action. Sugar content, prune density, and dry-away ratio vary from county to county, from orchard to orchard, and from season to season in the major producing areas of the Sacramento and San Joaquin Valleys. These areas account for over 99 percent of the State's production, and the prunes produced are homogeneous enough so that this rule will not be inequitable to producers, both large and small, in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large, but is primarily dependant on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for larger entities. While this rule may initially impose some additional costs on producers and handlers, the costs are expected to be minimal, and will be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 18, 1997, meeting, the Committee discussed the impact of this change on handlers and producers in terms of cost. Handlers and producers receive higher returns for the larger size prunes. According to industry members, the small-sized prunes being eliminated through this rule have very little value. As mentioned earlier, the current situation for these small sizes is quite bleak, as producers lose money on every ton delivered to handlers. The 1997 grower field price for ''D'' screen prunes ranges between $40 and $50 per ton. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, the cost to haul these prunes is at least $20 per ton, and the producer assessment that must be paid to the California Prune Board (a body which administers the State marketing order for promotion and research) is $30 per ton. The total cost is about $310 per ton which equates to a loss of about $260 per ton for every ton of ''D'' screen prunes produced and delivered to handlers.

The rule is expected to benefit all producers and handlers by eliminating the smallest, least valuable prunes from the crop. This is expected to help reduce the oversupply situation and lessen the downward pressure on small prune prices to producers. Further, producers may alter their cultural practices to grow the larger sizes needed by the industry to meet the market demand for pitted prunes.

Utilizing data provided by the Committee, the Department has evaluated the impact of the undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and carryin inventory will result in higher season-average prices which will benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets will eliminate an estimated 7,300 tons of small-sized dried prunes during the 1998–99 crop year from the marketplace. This will help lessen the negative marketing and pricing effects resulting from the excess supply situation facing the industry. California prune handlers reported that they held 102,386 tons of natural condition prunes on July 31, 1997, the end of the 1996–97 crop year. This was the largest year-end inventory reported since the Committee began collecting such statistics in 1949. The desired inventory level, which is based on an average 12-week supply deemed desirable to keep trade distribution channels full while awaiting new crop, is 40,991 natural condition tons. This leaves an inventory surplus of over 61,000 tons which will likely take the industry several years to market.

Further burdening this oversupply situation will be larger California prune crops over the next few years caused by the new prune plantings of recent years and higher yields per acre. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1996–97, the non-bearing acreage had quadrupled to more than 23,000 acres. Yields have ranged from 2.3 to 2.8 tons per acre over the most recent 3-year period, compared to a 10-year average of 2.2 tons to the acre. The 1997–98 crop is expected to be 215,000 natural condition tons which will add to the existing oversupply. Barring unforeseen circumstances, the 1998–99 crop may be larger which will further worsen the industry's oversupply problems.

As the marketable dried prune production and surplus prune inventories are reduced through this action, the trade may begin taking a position early in the season for its dried prune needs, which will help firm up market prices and eventually reflect a higher overall price to the producers. In addition, as producers implement improved cultural and thinning practices, the overall size of the prunes will get larger. As a result, producer returns will increase because producers will no longer be receiving $40–50 per ton for the small-sized fruit at a $260–270 per ton loss, but will receive the higher prices paid for the larger sizes.

For the 1992–93 through the 1996–97 crop years, the season-average price received by the producers ranged from a high of $1,121 per ton to a low of $838 per ton during the 1996–97 crop year. The season-average price received by producers averaged about 60 percent of parity during the 1992–93 through 1996–97 crop years. Based on available data and estimates of prices, production, and other economic factors, the season-average producer price for the 1997–98 and 1998–99 seasons is expected to be below $800 per ton, or about 40 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change was needed to expedite that reduction. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation. These initiatives were not supported because they would not specifically eliminate the smallest, least valuable prunes which are in oversupply. Instead the reserve pool and diversion program would eliminate larger size prunes from human consumption outlets. Reserve pools for prunes have historically been implemented on dried prunes regardless of the size of the prunes. While the marketing order also allows handlers to remove the larger prunes from the pool by replacing them with small prunes and cash to reflect the difference in value, this exchange would be cumbersome and expensive to administer compared to this rule.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control, purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters will not be applied to imported prunes.

This action will not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 18, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of 22

members, of which 7 are handlers, 14 are producers, and 1 is a public member. The majority of the producer and handler members are small entities. Moreover, the Committee and its Supply Management Subcommittee have been reviewing this supply management problem for almost a year, and this rule reflects their deliberations completely. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on February 24, 1998 (63 FR 9160). Copies of this rule were mailed or sent via facsimile to all Committee members and dried prune handlers. Finally, the rule was made available through the Internet by the U.S. Government Printing Office. That rule provided for a 30-day comment period which ended March 26, 1998. No comments were received. Accordingly, no changes are made to the proposed rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 993.405 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 993.405 Undersized prune regulation for the 1998–99 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 1998–99 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: April 9, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–10771 Filed 4–22–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–125–AD; Amendment 39–10492; AD 98–08–09]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–08–09 that was sent previously to all known U.S. owners and operators of certain Lockheed Model L–1011–385 series airplanes by individual notices. This AD requires revision of the Airplane Flight Manual (AFM) to prohibit operation of the fuel boost pumps when fuel quantities are below certain levels, and to add new maintenance procedures for operating the airplane with an inoperative fuel boost pump assembly or with an inoperative flight station fuel quantity indicating system. This AD also requires the installation of a placard on the engineer's fuel panel to advise the maintenance crew that operation of the fuel boost pumps when less than 1,200 pounds of fuel are in the corresponding wing fuel tank is prohibited. This action is prompted by reports of internal electrical failures in the fuel boost pump of the wing fuel tanks that could result in either electrical arcing or localized overheating. The actions specified by this AD are intended to prevent such electrical arcing or overheating, which could breech the protective housing of the fuel boost pump and expose it to fuel vapors and fumes, and consequent potential fire or explosion in the wing fuel tank.

DATES: Effective April 28, 1998, to all persons except those persons to whom it was made immediately effective by emergency AD 98–08–09, issued April 3, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before June 22, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

This information may be examined at the FAA, Transport Airplane Directorate, 601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On April 3, 1998, the FAA issued emergency AD 98–08–09, which is applicable to certain Lockheed Model L–1011–385 series airplanes.

The FAA has received reports of internal electrical failures in the fuel boost pump of the wing fuel tanks that could result in either electrical arcing or localized overheating. Such electrical arcing or overheating could burn a hole in the pump housing and the protective housing of the fuel boost pump. If electrical arcing or overheating breeches the protective housing and the fuel in the wing fuel tank is at a sufficient level, the liquid fuel would prevent combustion. However, if electrical arcing or overheating breeches the protective housing of the fuel boost pump and the fuel level of the wing tank is low enough to expose the protective housing to fuel vapors and fumes, a potential fire or explosion could occur. The on-going investigation of the internal electrical failures has not revealed the cause of the failures as yet.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 98–08–09 to prevent a potential fire or explosion in the wing fuel tank due to exposure of the fuel boost pump to fuel vapors and fumes. The AD requires revision of the Limitations and Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to prohibit operation of the fuel boost pumps when fuel quantities are below certain levels, and to add new maintenance procedures for operating the airplane with an inoperative fuel boost pump assembly or with an inoperative flight station fuel quantity indicating system (FQIS). The

AD also requires the installation of a placard on the engineer's fuel panel to advise the maintenance crew that operation of the fuel boost pumps when less than 1,200 pounds of fuel are in the corresponding wing fuel tank is prohibited.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued to all known U.S. owners and operators of certain Lockheed Model L–1011–385 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–125–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–08–09 Lockheed Aeronautical Systems Company: Amendment 39–10492. Docket 98–NM–125–AD.

Applicability: Model L–1011–385–1, –385–1–14, –385–1–15, and –385–3 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a potential fire or explosion in the wing fuel tank, accomplish the following:

(a) Within 50 flight hours or 10 days after the effective date of this AD, whichever occurs first, revise the Limitations and Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

Add to Limitations Section:

''FUEL SYSTEM

Fuel Pumps

Do not operate the fuel boost pumps of the affected wing tank in the air or on the ground when fuel quantities are less than the following:

Wing tanks 1 and 3: Less than 1,200 lbs (545 kg) in each tank.

Wing tanks 2L and 2R: Less than 1,200 lbs (545 kg) total in the two compartments (inboard and outboard) of each tank.

These quantities should be considered unusable fuel for the purposes of fuel management.

When operating with a fuel boost pump assembly inoperative per Master Minimum Equipment List (MMEL) item number 28–24–01, add the following maintenance procedure:

Pull and collar the affected circuit breaker.

When operating with an inoperative flight station fuel quantity indicating system per MMEL item 28–41–00, do not operate the fuel boost pumps of the affected wing tank in the air or on the ground when fuel quantities are less than the following:

Wing tanks 1 and 3: Less than 7,000 lbs (3,175 kg) in the affected tank.

Wing tanks 2L and 2R: Less than 1,200 lbs (545 kg) total in the two compartments (inboard and outboard) of the affected tank.''

Add to Procedures Section:

''FUEL SYSTEM

Fuel Pumps

If the circuit breaker for any wing tank fuel boost pump (circuit breakers U3, U4, U7, U8, U9, U10, U13, U14) trips, do not reset. If the pump trips while in flight, continue flight in accordance with the procedures in the ''Tank Pumps LOW Lights On'' portion of the Procedures section of the AFM. If the breaker

trips while on the ground, do not reset without first identifying the source of the electrical fault.

ELECTRICAL SYSTEM

Fuel Pumps

If the circuit breaker for any wing tank fuel boost pump (circuit breakers U3, U4, U7, U8, U9, U10, U13, U14) trips, do not reset. If the pump trips while in flight, continue flight in accordance with the procedures in the ''Tank Pumps LOW Lights On'' portion of the Procedures section of the AFM. If the breaker trips while on the ground, do not reset without first identifying the source of the electrical fault.

"

(b) Within 50 flight hours or 10 days after the effective date of this AD, whichever occurs first, install a placard on the engineer's fuel panel that states:

''If FQIS is operative, do not operate the fuel boost pumps when less than 1,200 pounds of fuel are in the corresponding wing tanks.''

(c) 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, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

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

(e) This amendment becomes effective on April 28, 1998, to all persons except those persons to whom it was made immediately effective by emergency AD 98–08–09, issued on April 3, 1998, which contained the requirements of this amendment.

Issued in Renton, Washington, on April 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10756 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–124–AD; Amendment 39–10497; AD 98–09–16]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR–42 and ATR–72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR–42 and ATR–72 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to add specific flightcrew instructions to be followed in the event of failure of one or both of the direct current (DC) generators. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent failure of the second of two DC generators after the failure of the first generator, which could lead to the loss of main battery power and result in the loss of all electrical power, except the emergency battery supply, during flight.

DATES: Effective May 8, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–124–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Aerospatiale Model ATR–42 and ATR–72 series airplanes. The DGAC advises that an ATR airplane experienced the loss of the number one direct current (DC) generator, followed by the loss of the number two DC generator, during flight. The loss of the second generator occurred following an attempt by the flightcrew to reset the number one generator, in accordance with approved procedures. After a few minutes, the airplane experienced the loss of main battery power. The cause of the failure of the second generator is currently under investigation. Such failures, if not corrected, could result in the loss of all electrical power, except the emergency battery supply, during flight.

French Airworthiness Directives

The DGAC issued French telegraphic airworthiness directives T98–148–076(B) and T98–149–038(B), both dated March 20, 1998, in order to assure the continued airworthiness of these airplanes in France. These French airworthiness directives require adherence to instructions specified in ATR AFM Chapter 5–04 in the event of one DC generator failure, and specify that no attempt should be made to reset the affected DC generator. Additionally, the French airworthiness directives note that, in the event of failure of both DC generators, resetting the generators should be attempted.

Explanation of FAA's Findings

The current version of the FAA-approved ATR Airplane Flight Manual (AFM) specifies that a single failed generator is to be left in the ''OFF'' position; however, the AFM does not explicitly prohibit an attempted reset of a failed generator. Moreover, for some operators, Flight Crew Operating Manuals may contain instructions for one attempt to reset a failed generator. Therefore, the FAA has determined that explicit instructions must be provided in the Limitations section of the AFM to specify that flight crews should not attempt to reset a single failed generator. However, in the event of dual DC generator failure, reset of the generators should be attempted.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has

examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the second of two DC generators after the failure of the first generator, which could lead to the loss of main battery power and result in the loss of all electrical power, except the emergency battery supply, during flight. This AD requires revising the Limitations Section of the AFM to add specific flightcrew instructions to be followed in the event of failure of one or both of DC generators.

Interim Action

This is considered to be interim action. The manufacturer has advised the FAA that it is currently investigating the cause of the dual generator failure and may develop a modification that will positively address the unsafe condition in this AD. Once the investigation is concluded, the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–124–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–09–16 Aerospatiale: Amendment 39–10497. Docket 98–NM–124–AD.

Applicability: All Model ATR–42 and ATR–72 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the second of two direct current (DC) generators after the failure of the first generator, which could lead to the loss of main battery power and result in the loss of all electrical power, except the emergency battery supply, during flight, accomplish the following:

(a) Within 10 flight hours after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''• In the event of failure of either DC generator during flight, do not attempt to reset the affected DC generator.

• In the event of failure of both DC generators during flight, one attempt to reset each of the generators may be made, as follows:

—If the first attempt to reset a generator is successful, do not attempt to reset the other generator.

—If the first attempt to reset a generator is not successful, one attempt to reset the other generator may be made.

—If neither attempt to reset the generators is successful, land at the nearest suitable airport.''

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

send it to the Manager, International Branch, ANM–116.

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

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

Note 3: The subject of this AD is addressed French telegraphic airworthiness directives T98–148–076(B) and T98–149–038(B), both dated March 20, 1998.

(d) This amendment becomes effective on May 8, 1998.

Issued in Renton, Washington, on April 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10918 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–126–AD; Amendment 39–10491; AD 98–08–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–08–11 that was sent previously to all known U.S. owners and operators of certain McDonnell Douglas Model MD–11 and MD–11F series airplanes by individual notices. This AD requires opening the circuit breaker of the pneumatic sense line heater tape, installing an inoperative ring, and coiling and stowing the electrical wire to the circuit breaker of the pneumatic sense line heater tape. This AD also provides for an optional inspection, which, if accomplished, constitutes terminating action for deactivation of the pneumatic sense line heater tape. This action is prompted by a report indicating that, while an airplane was on the ground, fuel was found leaking from the fuel feed pipe of the number 2 engine due to inadequate clearance between the fuel feed pipe and the pneumatic sense line heater tape. The actions specified by this AD are intended to detect and correct such inadequate clearance, which could result in a hole in the fuel feed pipe caused by electrical arcing, and consequent fuel leakage and possible ignition of the fuel vapors.

DATES: Effective April 28, 1998, to all persons except those persons to whom it was made immediately effective by emergency AD 98–08–11, issued on April 6, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 28, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 22, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roscoe Van Dyke, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5254; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On April 6, 1998, the FAA issued emergency AD 98–08–11, which is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. That action was prompted by a report indicating that, while a McDonnell Douglas Model MD–11 series airplane was on the ground, fuel was found leaking from the fuel feed pipe of the number 2 engine. Investigation revealed that electrical arcing between a pneumatic sense line heater tape and the fuel feed pipe of the number 2 engine caused a hole in the pipe. As a result of this finding, the operator inspected five additional airplanes, of which one airplane was found to have inadequate clearance between the fuel feed pipe and the pneumatic sense line heater tape. No evidence of arcing or chafing was detected. Such inadequate clearance, if not corrected, could result in a hole in the fuel feed pipe caused by electrical arcing, and consequent fuel leakage and possible ignition of the fuel vapors.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–36A030, dated April 2, 1998. The alert service bulletin describes procedures for opening the circuit breaker of the pneumatic sense line heater tape, installing an inoperative ring, and coiling and stowing the electrical wire to the circuit breaker of the pneumatic sense line heater tape. (Accomplishment of the above actions deactivates the pneumatic sense line heater tape.) The alert service bulletin also describes procedures for performing an inspection to determine if adequate clearance exists between the fuel feed pipe and pneumatic sense lines, and repositioning of the pneumatic sense lines, if necessary. Accomplishment of this inspection eliminates the need for deactivation of the pneumatic sense line heater tape. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 98–08–11 to detect and correct inadequate clearance between the fuel feed pipe and the pneumatic sense line heater tape, which could result in a hole in the fuel feed pipe caused by electrical arcing, and consequent fuel leakage and possible ignition of the fuel vapors. The AD requires opening the circuit breaker of the pneumatic sense line heater tape, installing an inoperative ring, and coiling and stowing the electrical wire to the circuit breaker of the pneumatic sense line heater tape. This AD also provides for an optional inspection to determine if adequate clearance exists between the fuel feed pipe and pneumatic sense lines, and repositioning of the pneumatic sense lines, if necessary; which, if accomplished, constitutes terminating action for deactivation of the pneumatic sense line heater tape. The actions are

required to be accomplished in accordance with the alert service bulletin previously described.

The FAA is considering further rulemaking action to supersede this AD to require accomplishment of the optional terminating action currently specified in this AD. However, the proposed compliance time for accomplishment of that action is sufficiently long so that prior notice and time for public comment will be practicable.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on April 6, 1998, to all known U.S. owners and operators of certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–126–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–08–11 McDonnell Douglas: Amendment 39–10491. Docket 98–NM–126–AD.

Applicability: Model MD–11 and MD–11F series airplanes, having manufacturer's fuselage numbers 0447 through 0552 inclusive, and 0554 through 0620 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a hole in the fuel feed pipe of the number 2 engine caused by electrical arcing, and consequent fuel leakage and possible ignition of the fuel vapors, accomplish the following:

(a) Within 7 days after the effective date of this AD, open the circuit breaker of the pneumatic sense line heater tape, install an inoperative ring, and coil and stow the electrical wire to the circuit breaker of the pneumatic sense line heater tape, in accordance with Phase 1 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–36A030, dated April 2, 1998. Accomplishment of these actions deactivates the pneumatic sense line heater tape.

Note 2: The pneumatic sense line heater tape of the number 2 engine has been deactivated. This deactivation may cause a nuisance shutdown of the bleed air system of the number 2 engine at top of descent.

(b) Accomplishment of the inspection to determine if adequate clearance exists between the fuel feed pipe and pneumatic sense lines, and repositioning of pneumatic sense lines, if necessary, in accordance with Phase 2 of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–36A030, dated April 2, 1998; constitutes terminating action for the deactivation of the pneumatic sense line heater tape.

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

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–36A030, dated April 2, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 28, 1998, to all persons except those persons to whom it was made immediately effective by emergency AD 98–08–11, issued on April 6, 1998, which contained the requirements of this amendment.

Issued in Renton, Washington, on April 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10774 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–27]

Revision of Class E Airspace; Alice, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace at Alice, TX. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to runway (RWY) 16 and 34 at Old Hoppe Place Airport, Agua Dulce, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Old Hoppe Place Airport, Agua Dulce, TX.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

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

SUPPLEMENTARY INFORMATION:

History

On January 20, 1998, a proposal to amend 14 CFR Part 71 to revise Class E airspace at Alice, TX, was published in the **Federal Register** (63 FR 2913). The proposal was to revise the Class E airspace at Alice, TX. The development of a GPS SIAP to RWY 16 and 34 at Old Hoppe Place Airport, Agua Dulce, TX, has made this rule necessary. The intended effect is to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations at Old Hoppe Place Airport, Agua Dulce, TX.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The Rule

This amendment to 14 CFR Part 71 revises the Class E airspace located at Alice, TX, to provide Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Old Hoppe Place Airport at Agua Dulce, TX, excluding that airspace within the Corpus Christi, TX, Class E airspace area.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Alice, TX (Revised)

Alice International Airport, TX
(Lat. 27°44′27″N., long. 98°01′38″W.)
Orange Grove NALF, TX
(Lat. 27°54′04″N., long. 98°03′06″W.)
Navy Orange Grove TACAN
(Lat. 27°53′43″N., long. 98°02′33″W.)
Kingsville, Kleberg County Airport, TX
(Lat. 27°33′03″N., long. 98°01′51″W.)
Agua Dulce, Old Hoppe Place Airport, TX
(Lat. 27°48′01″N., long. 97°51′04″W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Alice International Airport and within 2 miles each side of the 135° bearing from the airport extending from the 7.5-mile radius to 9.8 miles southeast of the airport and within a 7.2-mile radius of Orange Grove NALF and within 1.6 miles each side of the 129° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius to 11.7 miles southeast of the airport and within 1.5 miles each side of the 320° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius to 9.7 miles northwest of the airport and within a 6.5-mile radius of Kleberg County Airport and within a 6.3-mile radius of Old Hoppe Place Airport excluding that airspace within the Corpus Christi, TX, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on April 13, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–10808 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–1]

Modification of Class E Airspace; Washington Court House, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Washington Court House, OH. A Nondirectional Beacon-A (NDB–A) Standard Instrument Approach Procedure (SIAP) has been developed for Fayette County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius and enlarges the northeast extension of the existing controlled airspace.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, February 13, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Washington Court House, OH (63 FR 7330). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Washington Court House, OH, to accommodate aircraft executing the NDB–A SIAP and IFR operations at Fayette County Airport by increasing the radius and enlarging the northeast extension to the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Washington Court House, OH [Revised]

Washington Court House, Fayette County Airport, OH
(Lat. 39°34″13″N., long. 83°25′14″W.)
Court House NDB
(Lat. 39°35″58″N., long. 83°23′32″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Fayette County Airport and within 6.4 miles either side of the 037° bearing from the Court House NDB, extending from the 6.5-mile radius to 7.0 miles northeast of the NDB, and within 2.2 miles either side of the 037° bearing from the court house NDB, extending from the 6.5-mile radius to 10.0 miles northeast of the NDB.

* * * * *

Issued in Des Plaines, Illinois on April 10, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–10804 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–4]

Modification of Class E Airspace; Springfield, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Springfield, IL. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31, Amendment 1, has been developed for Capital Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, February 13, 1998, the FAA proposed to amend 14 CFR part 71

to modify Class E airspace at Springfield, IL (63 FR 7327). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Springfield, IL, to accommodate aircraft executing the ILS Rwy 31 SIAP, Amendment 1, and IFR operations at Capital Airport by increasing the radius of the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL IL E5 Springfield, IL [Revised]

Springfield, Capital Airport, IL
(Lat. 39°50′38″ N., long. 89°40′39″ W.)
Capital VORTAC
(Lat. 39°53′32″ N., long. 89°37′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Capital Airport and within 3.1 miles either side of the Capital VORTAC 040° radial, extending from the 6.8-mile radius to 10.7 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on April 10, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–10803 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–3]

Modification of Class E Airspace; Athens, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Athens, OH. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 25, has been developed for Ohio University Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of, and adds a northeast extension to, the existing controlled airspace.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, February 13, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Athens, OH (63 FR 7326). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Athens, OH, to accommodate aircraft executing the ILS Rwy 25 SIAP and IFR operations at Ohio University Airport by increasing the radius and adding a northeast extension to the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

a significant economic impact on a substantial number of entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Athens, OH [Revised]

Athens-Albany, Ohio University Airport, OH
(Lat. 39°12′39″ N., long. 82°13′53″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Ohio University Airport and within 4.6 miles either side of the 061° bearing from the Ohio University Airport, extending from the 6.4-mile radius to 12.3 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on April 10, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–10802 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–2]

Modification of Class E Airspace; Lawrenceville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Lawrenceville, IL. A Nondirectional Beacon (NDB) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 4, Amendment 5, has been developed for Mount Carmel Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of, and adds a southwest extension to, the existing controlled airspace.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, February 13, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Lawrenceville, IL (63 FR 7328). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Lawrenceville, IL, to accommodate aircraft executing the NDB or GPS Rwy 4 SIAP, Amendment 5, and IFR operations at Mount Carmel Municipal Airport by increasing the radius of the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL IL E5 Lawrenceville, IL [Revised]

Lawrenceville-Vincennes International Airport, IL
(Lat. 38°45′51″ N., long. 87°36′20″ W.)
Mount Carmel Municipal Airport, IL
(Lat. 38°36′24″ N., long. 87°43′36″ W.)
Lawrenceville VOR/DME
(Lat. 38°46′12″ N., long. 87°36′14″ W.)
Mount Carmel NDB
(Lat. 38°36′43″ N., long. 87°43′34″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Lawrenceville-Vincennes International Airport, and within 4.8 miles either side of the Lawrenceville VOR/DME 018° radial, extending from the 7.0-mile radius to 7.0 miles northeast of the VOR/DME; and within a 6.5-mile radius of Mount Carmel Municipal Airport, and within 2.7

miles either side of the 196° bearing from the Mount Carmel Municipal Airport, extending from the 6.5-mile radius to 7.4 miles south of the airport, and within 6.4 miles either side of the 208° bearing from the Mount Carmel NDB, extending from the 6.5-mile radius to 7.0 miles southwest of the NDB.

* * * * *

Issued in Des Plaines, Illinois on April 10, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–10801 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–007; Order No. 587–G]

Standards for Business Practices of Interstate Natural Gas Pipelines

April 16, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending § 284.10 of its regulations governing standards for conducting business practices and electronic communication with interstate natural gas pipelines. The Commission is incorporating by reference, in § 284.10(b), the most recent version (Version 1.2) of standards promulgated by the Gas Industry Standards Board (GISB). The Commission also is adopting, in new § 284.10(c), regulations, not developed by GISB, governing intra-day nominations, operational balancing agreements (OBAs), netting and trading of imbalances, standardization of communications over the public Internet, and notices of operational flow orders. These business practices and communication standards supplement standards adopted by the Commission in Order Nos. 587, 587–B, and 587–C. 61 FR 39053 (Jul. 26, 1996) 62 FR 5521 (Feb. 6, 1997), 62 FR 10684 (Mar. 10, 1997).

DATES: Effective May 26, 1998. On August 1, 1998 pipelines must implement § 284.10(b), which incorporates by reference Version 1.2 of the GISB standards, and the regulations, in §§ 284.10(c)(3)(ii) through (v), relating to the standards for information posted on pipeline web sites, the content of information provided electronically, the use of numeric designations, and retention of electronic information.

The implementation date for the regulations regarding intra-day nominations, § 284.10(c)(1)(i), operational balancing agreements, § 284.10(c)(2)(i), trading of imbalances, § 284.10(c)(2), and Internet notification of critical notices, § 284.10(c)(3)(vi), will be established when the Commission adopts standards relating to these activities.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington D.C. 20426. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

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

Standards for Business Practices of Interstate Natural Gas Pipelines

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Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hėert, Jr.

The Federal Energy Regulatory Commission (Commission) is amending § 284.10 of its regulations governing standards for conducting business practices and electronic communication with interstate natural gas pipelines. The Commission is incorporating by reference, in § 284.10(b) of its regulations, the most recent version (Version 1.2) of standards promulgated by the Gas Industry Standards Board (GISB). The Commission also is adopting regulations, in new § 284.10(c) of its regulations, governing intra-day nominations, operational balancing agreements (OBAs), netting and trading of imbalances, standardization of communications over the public Internet, and notices of operational flow orders.

I. Background

In Order Nos. 587, 587–B, and 587–C[1] the Commission adopted regulations

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations

to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In those orders, the Commission incorporated by reference consensus standards developed by GISB, a private, consensus standards developer composed of members from all segments of the natural gas industry. The standards established uniform requirements for conducting critical industry business practices—Nominations, Flowing Gas, Invoicing, and Capacity Release. The standards also required pipelines to use the Internet as the means of conducting business transactions electronically as well as for providing customers with general information.

In Order No. 587–C, however, the Commission did not adopt standards approved by GISB concerning intra-day nominations, operational balancing agreements, and imbalances. The Commission found that those standards did not clearly outline the pipelines' obligations. The Commission gave GISB and the industry until September 1, 1997 to propose additional standards in these areas.

In addition, throughout its deliberations in 1996, GISB had been unable to reach consensus on whether standards are needed in several areas—title transfer tracking, ranking of gas packages, treatment of compressor fuel, operational balancing agreements, imbalance resolution, operational flow orders, multi-tiered allocations, and additional pooling standards. The Commission staff held a technical conference on December 12–13, 1996, to consider these issues.

Subsequently, on September 2, 1997, GISB filed with the Commission its latest revisions to the consensus standards, Version 1.2. It also filed a report on its progress in attempting to resolve the issues reserved for further consideration by Order No. 587–C and some of the disputed issues considered at the technical conference.

In the Notice of Proposed Rulemaking (NOPR) issued on November 12, 1997,[2] the Commission proposed to adopt Version 1.2 of the GISB standards. The Commission also considered the issues left unresolved by GISB and proposed regulations that would require pipelines to:

- Give firm intra-day nominations priority over already nominated and scheduled interruptible transportation (thus permitting firm shippers to change their nomination quantities during the day and bump scheduled interruptible service);
- Enter into operational balancing agreements at all pipeline to pipeline interconnects;
- Permit shippers to offset imbalances across contracts and trade imbalances amongst themselves when such imbalances have similar operational impact on the pipeline's systems;
- Post all information and conduct all business transactions using the public Internet and internet protocols by June 1, 1999 and comply with other standards regarding communication over the Internet.

Comments on the NOPR were due by December 18, 1997. Fifty-five comments were filed.[3]

In addition, in several areas where the Commission did not propose regulations, the Commission provided guidance in the NOPR on its policies to aid GISB's development of standards in these areas. The Commission asked for comment from GISB and the industry on the development of standards in these areas by March 31, 1998. On March 23, 1998, GISB filed with the Commission a report containing its approved intra-day nomination standards and a progress report on its process for developing standards in the other areas discussed in the NOPR.

II. Discussion

A. Introduction

Through GISB's consensus process, the gas industry has been able to work together to pass a set of mutually-agreed upon standards that have greatly contributed to providing a more efficient and reliable transportation and communication system. In previous orders, the Commission has recognized this contribution and incorporated the GISB standards into the Commission regulations. But it is only to be expected that a standards organization composed of representatives from every facet of the gas industry would disagree over the need for standards in certain areas, particularly when the disputes center on regulatory policy decisions. Although some commenters take issue with aspects of the regulations proposed in the NOPR, they virtually all support the Commission's determination to resolve the divisive policy disputes that are impeding GISB's standards development efforts.

In this rule, therefore, the Commission is addressing the disputed policy issues so that the industry can move forward and develop the standards needed to further integrate the pipeline grid. The Commission is adopting regulations establishing the scheduling priority of intra-day nominations for firm service and requiring pipelines to enter into operational balancing agreements (OBAs) and to permit imbalance trading. It also is standardizing communications by requiring that, by June 1, 1999, all transactions between pipelines and their customers will be transacted using the public Internet.

The business practices regulations adopted here will enable shippers to move gas more easily across multiple pipelines. Establishing one rule governing the priority of intra-day nominations will permit firm shippers to coordinate nomination changes across multiple pipelines without having a different priority regime on one pipeline break the nomination chain. The OBA and imbalance trading regulations will increase the reliability of shipments crossing multiple pipeline by reducing the business and financial risks of imbalances and the associated penalties.

The Commission's requirement that pipelines conduct all business transactions over the public Internet represents the culmination of the Commission's efforts to replace the current individual, and idiosyncratic electronic bulletin board system of each pipeline, with a standardized method of conducting business electronically across all the pipelines. Although GISB's standards have moved much information and many electronic transactions to the Internet, those standards are incomplete and do not eliminate the need for shippers to use the individual pipeline electronic bulletin boards. The adoption of this regulation will fulfill the original vision of creating a system in which all electronic communications and transactions will take place in a standardized format.

Creation of a standardized communication system promises to markedly increase the efficiency of transactions. As just one small example, in the past, shippers would have to log-on to each pipeline's private bulletin board seriatim to obtain information on available capacity on the pipeline. With the use of the Internet, shippers can now easily use one Internet connection to go to GISB's homepage, click on a pipeline's hypertext link, obtain the

Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997).

[2] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 62 FR 61459 (Nov. 18, 1997), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,527 (Nov. 12, 1997).

[3] The commenters, and the abbreviations used in this order, are listed in the Appendix.

information they want, and then return and find the information from another pipeline, without having to log-off or change computers or programs. Those shippers using GISB's standardized datasets can realize even more efficiency because they can download the same information from multiple pipelines in a standardized format and, if they choose, directly import that information into their gas management systems or other software programs where the information can be manipulated to show the available capacity along a proposed path.

The regulations adopted in this rule are not the final riff of the standardization set.[4] There is still much work to be done. With the policy questions resolved, the Commission is looking to GISB and the industry to develop the technical standards needed to implement these policies in the most uniform and efficient manner possible. In addition, in other areas, the Commission has outlined the need for the development of additional standards and is establishing a timetable for submission of standards in these areas.

Specifically, in this rule, the Commission is amending § 284.10(b) of its regulations to incorporate by reference the most recent version of GISB's standards, Version 1.2. Pipelines must implement the new version on the first day of the month following 90 days after the publication of this order in the **Federal Register**.

Further, the Commission is establishing its own business practices and communications standards in new § 284.10(c) of its regulations. The business practices standards will require pipelines to:

- Give firm intra-day nominations priority over already nominated and scheduled interruptible transportation service and permit firm intra-day nominations submitted on the day prior to gas flow to go into effect at the start of the gas day;
- Enter into operational balancing agreements at all interstate and intrastate pipeline to pipeline interconnects; and
- Permit shippers to offset imbalance across contracts and trade imbalances amongst themselves when such imbalances have similar operational impact on the pipeline's systems.

The electronic communication standards will require pipelines to:

- Post all information and conduct all business transactions using the public Internet and internet protocols by June 1, 1999;
- Adhere to standards governing the provision of information on pipeline web sites and retention of electronic records of transactions;
- Notify shippers of critical events affecting the system, such as operational flow orders, by posting the information on pipeline web sites and by direct notice either through Internet E-Mail or notification to the shipper's Internet address.

With respect to implementation of the requirements in § 284.10(c), the Commission is heeding the commenters who argue that the Commission should defer implementation of some of the regulations until GISB has developed the associated standards needed to implement the requirements.[5] The Commission agrees that implementation of the intra-day nomination, OBA, imbalance trading, and critical notice notification regulations would be more effective if they occurred only once, after GISB and the industry have the opportunity to develop appropriate standards. The Commission, therefore, will defer implementation of these regulations to coincide with the implementation of standards to implement these regulations.

A consensus of the industry supports GISB's Annual Plan for 1998 under which intra-day standards will be developed by the first quarter of 1998 and OBA and imbalance trading standards by the second quarter of 1998.[6] GISB has already filed its completed intra-day standards with the Commission, and the Commission will be issuing a NOPR contemporaneous with this rule proposing to adopt the intra-day standards. The Commission will establish a timetable for the filing of proposed standards for OBA and imbalance trading that follows the industry consensus in GISB's Annual Plan, with standards in these areas due by June 30, 1998. Since GISB has not established a schedule for developing standards for critical notices, the Commission is setting a deadline of December 31, 1998, for submission of such standards. While some commenters suggest that implementation of Internet communications be delayed to coincide with GISB's development of standards,[7] the June 1, 1999 deadline already seems to build in sufficient time for GISB and the industry to develop the necessary standards, and the Commission will not change this date.

In addition, in the November 12, 1997 NOPR, the Commission found no need to propose regulations in other disputed areas—title transfer tracking, cross-contract ranking, multi-tiered allocations, fuel reimbursement, and penalty calculations. The Commission, however, did provide guidance on its policy in these areas to remove obstacles to the development of standards. The Commission requested comments from GISB and the industry by March 31, 1998, proposing standards based on the Commission guidance with respect to title transfer tracking and cross-contract ranking.

A consensus of the industry, as reflected in the GISB 1998 Annual Plan, has recommended that due to resource commitments and the difficulty of developing standards for title transfer tracking and cross-contract ranking, the schedule for development of final standards in these areas should be postponed until the fourth quarter of 1998. The Commission will accept the industry consensus and delay the deadline for submission of standards for title transfer tracking and cross-contract ranking.

The Commission will first address the regulations adopted by this rule. The Commission will then discuss those areas in which it is not adopting regulations requested by commenters, but instead is providing policy guidance as to the direction of future standardization efforts.

B. Regulations Adopted by This Rule

1. Version 1.2 of the Standards

a. Adoption of version 1.2. The Commission is adopting Version 1.2 of the GISB standards. Version 1.2 principally revises the datasets used to conduct business transactions with the pipelines.[8] Version 1.2 also contains interpretations of the standards. The Commission proposed to adopt the interpretations, because, although they would not be determinative, they would help to provide reliable guides to the industry's understanding of the standards in the event disputes arise.

No commenter has objected to adoption of Version 1.2 of the GISB

[4] *See* Order No. 587, 61 FR at 39057, III FERC Stats. & Regs. Regulations Preambles, at 30,060 (standards development is like a jazz musician who takes a theme and constantly revises, enhances, and reworks it).

[5] *See* comments by ANR/CIG, Enron, INGAA, NGPL, NGC, NWIGU, (intra-day standards), Altra (OBA and imbalance trading), TransCapacity (imbalance trading), ECT, NGC, NGSA (critical notices).

[6] December 18, 1997 letter from INGAA, AGA, and NGSA to James J. Hoecker (filed in Docket No. RM96–1–007).

[7] Comments by ANR/CIG, Columbia Gas/Columbia Gulf, Enron, Koch, NGPL, NGSA, Southern.

[8] The datasets are essentially a uniform template that shippers can use to conduct business with multiple pipelines.

standards. TransCapacity and El Paso contend the Commission should give great weight to the interpretations. Koch, SGPC, and ANR/CIG, while not objecting to the adoption of the interpretations, maintain that pipelines should not be required to modify their tariffs to incorporate them. ANR/CIG also contend there is no need for pipelines to modify their tariffs to incorporate the Version 1.2 standards by reference unless their tariffs are inconsistent with the new standards.

Version 1.2 improves the datasets to better reflect pipeline business practices. The Commission will adopt Version 1.2 to be implemented on the first day of the month following 90 days after the publication of this order in the **Federal Register**. Pipelines need not modify their tariffs to incorporate the interpretations, just as they did not have to incorporate the GISB principles in their tariffs.[9] Pipelines, however, will need to make compliance filings to adopt Version 1.2 of the standards into their tariffs since their tariffs reflect an older version number.[10] Pipelines also will need to make any other tariff changes to conform their tariffs to the new standards.[11] The tariff changes must be filed not less than 30 days prior to the date for implementing Version 1.2 of the standards.[12]

b. Hiatus in implementing new versions and waivers. The NOPR also requested comment on two issues: Whether the Commission should refrain from adopting further dataset changes for a period of a year or more and whether the Commission should continue to grant pipelines waivers that permit them to deviate from the standardized datasets. Many commenters support the concept of a hiatus of about a year in order to give pipelines and shippers a chance to implement the standards.[13] But even some of those supporting a hiatus contend the hiatus could not be absolute, because there will be a need to adjust the standards to clean-up errors [14] or to address other compliance issues.[15] Others urge that the current schedule of issuing standards every six months or so is appropriate for the start-up phase of software development in which errors need to be corrected.[16] Some also point out that new standards need to be developed for new needs.[17] In its March 23, 1998 filing, GISB anticipates completion of Version 1.3 of the standards by July 1998. It then projects updates of various portions of the standards occurring on an annual basis, with Version 2 (update of Flowing Gas and Invoicing) by July 1999 and Version 2 (update of Nominations and Capacity Release) by July 2000.

Because the regulations adopted in this proceeding require changes to the existing standards, granting a significant hiatus on adoption of revised datasets at this time is inappropriate. To ensure that shippers can fully take advantage of the benefits from the regulations, the appropriate standards need to be implemented as soon as feasible. As reflected in GISB's projected schedule, a longer time period between adoption of revised versions may be more appropriate once the initial phase of standardization is complete and the focus turns to maintenance and improvement of the datasets.

In implementing Order No. 587, the Commission granted pipelines two types of waivers. It granted some, generally smaller, pipelines, whose computer systems were not yet ready to implement the standards, extensions of time to comply with the electronic communication requirements.[18] It also granted waivers permitting some major pipelines to use non-standardized data elements to accommodate specific business practices while their requests for changes to the datasets were pending at GISB.[19]

In the NOPR, the Commission asked whether the time for permitting these waivers had ended and whether all pipelines should be required to adhere to the Version 1.2 standards. The pipelines contend the Commission should continue to grant waivers on a case-by-case basis if a need is shown, although the comments did not differentiate between the extensions of time for small pipelines to implement the standards and the waivers for larger pipelines of dataset compliance.[20] Koch claims that Version 1.2 may still contain errors that need to be corrected. Other commenters contend the need for waivers has ended, and pipelines now need to conform to the standardized data elements.[21]

The Commission will examine requests for extensions of waivers on a case-by-case basis. However, because waivers are antithetical to the concept of standardization, such extensions will be disfavored. Non-uniform implementation of the datasets on major pipeline systems, in particular, creates burdens for shippers because they have to maintain unique sets of data elements to conduct business solely on those pipelines with waivers. Pipelines, therefore, will have a heavy burden of justifying any request for a waiver of the data elements.

2. Regulations Establishing Priority of Intra-Day Nominations

The Commission is adopting regulations in § 284.10(c)(1)(i) establishing the scheduling priority for intra-day nominations. The regulations require pipelines to accord an intra-day nomination submitted by a firm shipper scheduling priority over nominated and scheduled volumes for interruptible shippers. Pipelines are to provide an interruptible shipper with advance notice that its scheduled volumes are to be reduced as well as notice of whether penalties will apply on the day its scheduled volumes are reduced. In addition, the regulation requires that an intra-day nomination submitted on the day prior to gas flow will take effect at the start of the gas day at 9 a.m. CCT.

a. Background. (1) Commission policy on service priority. Under the GISB standards, shippers submit initial nominations at 11:30 a.m. for gas to flow on the next gas day (starting at 9 a.m.).[22] An intra-day nomination is any nomination submitted after the initial nomination.[23] An intra-day nomination can be made either on the day prior to gas flow (after 11:30 a.m.) or on the day of gas flow.[24] The current standards require a pipeline to permit one intra-

[9] Order No. 587 at 61 FR 39060, III FERC Stats. & Regs. Regulations Preambles at 30,066.

[10] *See* Texas Eastern Transmission Corporation, 77 FERC ¶ 61,175, at 61,646 (1996) (pipelines incorporating standards by reference in their tariffs must include number and version).

[11] In filing to implement Version 1.2, pipelines need to change all references to GISB standards in their tariffs to Version 1.2. The version number applies to all standards contained in GISB's Version 1.2 Standards Manuals, including standards that have not changed from prior versions.

[12] 18 CFR 154.207.

[13] Comments by Columbia Gas/Columbia Gulf (one year), Duke Energy Interstate Pipelines, Engage, Koch, Latitude (every two years) MGE, NGC, NGSA, Nicor Gas, PG&E, ProEnergy, Williston Basin.

[14] *See* comments by Duke Energy Interstate Pipelines and Koch.

[15] *See* comment by NGSA and PG&E.

[16] Comments by Altra, ECT, Enron, INGAA, SoCal Gas/SDG&E, TransCapacity.

[17] *See* comment by SoCal Gas/SDG&E.

[18] *See* Gulf States Transmission Corporation, 79 FERC ¶ 61,102 (1997).

[19] *See* Texas Eastern Transmission Corporation, 79 FERC ¶ 61,223 (1997).

[20] *See* Comments of Duke Energy Interstate Pipelines, INGAA, Koch, NGPL, Williston Basin.

[21] *See* Comments of Altra, ECT, Engage, MGE, NGC, NGSA, PG&E, SoCal Gas/SDG&E, TransCapacity.

[22] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.1 and 1.3.2.

[23] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.2.4.

[24] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.2.7.

day nomination four hours prior to gas flow.[25]

The Commission's policy since Order No. 636 has been that firm shippers, who pay reservation charges, are entitled to service superior to that of interruptible shippers. Interruptible shippers, by definition, take the risk that their service will be interrupted if firm shippers choose to use their capacity.

In Order No. 636, the Commission did not require pipelines to provide intra-day nomination opportunities and, therefore, did not address the intra-day priority issue in that rule. In the Order No. 636 restructuring proceedings, some pipelines were continuing or proposing to add intra-day nomination opportunities. The Commission allowed them to do so and also permitted those pipelines to continue tariff provisions under which scheduled interruptible nominations would not be bumped by firm intra-day nominations.

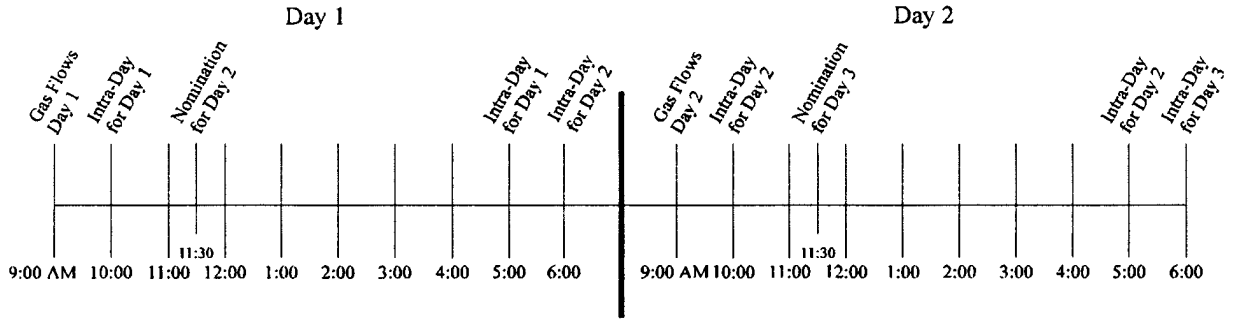
However, as intra-day nominations became more prevalent, the Commission's policy changed and it began to require that intra-day nominations conform to its general policy giving firm service priority over interruptible service.[26] Thus, the Commission found that firm service intra-day nominations should be entitled to bump scheduled interruptible service. The Commission, however, concluded that interruptible shippers should receive notice of their rescheduled quantities and an opportunity to renominate.[27] The Commission also determined that bumped interruptible shippers should not be subject to penalties directly related to the bump on the day on which the bump takes place.[28]

When Order No. 587 required all pipelines to implement at least one intra-day nomination, the Commission determined that those pipelines filing to institute intra-day nominations on their systems had to follow the general policy on service priority and permit firm intra-day nominations to bump scheduled interruptible service upon reasonable notice.[29] On those pipelines with pre-Order No. 587 tariff provisions that prohibited bumping of interruptible service, the Commission permitted the no-bump provisions to stand, because the pipeline filings were strictly compliance filings, and the Order No. 587 standards did not address the priority issue for intra-day nominations.[30]

(2) GISB deliberations on intra-day nominations. In Order No. 587–C, the Commission recognized that the divergent ways in which pipelines had implemented the intra-day nomination requirements prevented shippers from coordinating their intra-day nominations across interconnecting pipelines. The Commission requested that GISB provide recommendations as to standards for coordinating intra-day nominations by September 1, 1997.

In its September 2, 1997 filing, GISB reported that it had been able to reach certain agreements on intra-day issues; for example, it submitted a proposed schedule establishing three synchronization times when shippers could coordinate their intra-day nominations: 6 p.m. (to take effect on the next gas day), and 10 a.m. and 5 p.m. to take effect on the same gas day.

The GISBTask Force's Model Intra-day Nomination Timeline



GISB reported, however, that it had been unable to resolve certain policy issues, principally whether, and under what circumstances, intra-day nominations by firm shippers could bump or displace previously scheduled interruptible service. Interruptible shippers did not want their service to be disrupted, while firm shippers argued that their payment of reservation charges entitled them to nomination priority over interruptible service.

According to GISB's March 23, 1998 filing, it has approved the intra-day synchronization schedule and, in addition, has passed 18 new or revised intra-day nomination standards. The approved standards, however, do not resolve the bumping question. If the Commission determines to require bumping in this rule, the standards do not resolve the question of when a firm intra-day nomination submitted on the day prior to gas flow (6 p.m.) and which bumps interruptible service would take effect. The standards leave that date to be determined by the Commission in this rule.

(3) NOPR proposals. In the November 12, 1997 NOPR, the Commission agreed

[25] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.10.

[26] *See* Tennessee Gas Pipeline Company, 73 FERC ¶ 61,158, at 61,456 (1995).

[27] *Id.*

[28] *Id.* (daily variance charge waived, but only for the day on which the bump takes place).

[29] *See* El Paso Natural Gas Company, 77 FERC ¶ 61,176 (1996); Alabama-Tennessee Natural Gas Company, 79 FERC ¶ 61,117 (1997); Algonquin Gas Transmission Company, 78 FERC ¶ 61,281 (1997); ANR Pipeline Company, 78 FERC ¶ 61,142 (1997); Arkansas-Western Pipeline Company, 78 FERC ¶ 61,250 (1997); Canyon Creek Compression Company, 78 FERC ¶ 61,003 (1997); CNG Transmission Corporation, 78 FERC ¶ 61,131 (1997); Great Lakes Gas Transmission Limited Partnership, 79 FERC ¶ 61,194 (1997); Iroquois Gas Transmission System, L.P., 79 FERC ¶ 61,196 (1997); K N Interstate Gas Transmission Company, 79 FERC ¶ 61,208 (1997); Mojave Pipeline Company, 78 FERC ¶ 61,153 (1997); National Fuel Gas Supply Corporation, 78 FERC ¶ 61,332 (1997); NorAm Gas Transmission Company, 79 FERC ¶ 61,069 (1997); Overthrust Pipeline Company, 78 FERC ¶ 61,285 (1997); Questar Pipeline Company, 78 FERC ¶ 61,305 (1997); Southern Natural Gas Company, 78 FERC ¶ 61,125 (1997); Texas Gas Transmission Corporation, 79 FERC ¶ 61,175 (1997); Trailblazer Pipeline Company, 77 FERC ¶ 61,328 (1996); Viking Gas Transmission Company, 78 FERC ¶ 61,243 (1997); Young Gas Storage Company, Ltd., 79 FERC ¶ 61,030 (1997).

[30] *See* Transwestern Pipeline Company, 78 FERC ¶ 61,146 (1997); Florida Gas Transmission Company, 77 FERC ¶ 61,177 (1996).

that the three intra-day nomination times established by GISB would significantly improve shippers' ability to coordinate intra-day nominations. The Commission sought to achieve greater coordination in intra-day scheduling by resolving the dispute within GISB over bumping of interruptible service. The Commission proposed to follow its current policy and require pipelines to provide for firm intra-day nominations to bump scheduled interruptible service. The Commission also required that an interruptible shipper be given notice that its scheduled volumes would be reduced.

While not proposing a regulation, the Commission sought to resolve the dispute at GISB over the time at which an intra-day nomination submitted at 6 p.m. (on the day prior to gas flow) which bumps an interruptible shipper can take effect. The Commission concluded that the firm intra-day nomination should take effect at the start of gas flow at 9 a.m., rather than at 5 p.m. the next day, as suggested by interruptible shippers. The Commission reasoned that firm shippers pay for their service priority and have the right for their intra-day nomination to take effect as soon as possible. In addition, in accordance with the report from the GISB intra-day nomination task force, the Commission stated that those pipelines permitting three intra-day nomination opportunities could submit a request to exempt the last intra-day nomination opportunity from the bumping rule. Providing a final no-bump opportunity, the Commission reasoned, would provide stability to the nomination process.

The Commission will first address the comments on its proposal to permit firm intra-day nominations to bump scheduled interruptible service. The Commission will then address several related issues: the imposition of penalties on bumped interruptible shippers, the provision of an overnight rescheduling opportunity, the relative priority of firm primary and firm secondary service, and the effect of its intra-day standards on pipelines employing a rolling or continuous intra-day process.

b. Bumping. (1) Comments. Most commenters agree with the Commission that industry-wide coordination of intra-day nominations is needed,[31] although a few contend that issue should be addressed on a pipeline specific basis.[32] And, a large majority of the commenters support the Commission's decision that firm intra-day nominations should bump interruptible, at least under some circumstances.[33]

The major area of disagreement is how to implement the bumping requirement given the intra-day schedule proposed by GISB. NGC, NGSA, ProEnergy, Columbia Gas/Columbia Gulf take issue with the Commission's determination that a firm shipper should be permitted to submit a nomination at 6 p.m. (on the day prior to gas flow) to become effective at 9 a.m. (the beginning of gas flow). They contend that permitting the 6 p.m. bump would decrease the value and certainty of interruptible service. Since the interruptible shipper will not be notified of the bump until after normal working hours, they assert, the shipper will not know it has been bumped until the next morning and will have no opportunity to renominate. NGSA is concerned that bumping at 9 a.m., without a renomination opportunity before the bump takes effect, could result in an unplanned shut-in of gas.[34] Rather than a 9 a.m. effective time, these four parties contend the Commission should establish that the 6 p.m. intra-day nomination becomes effective at 5 p.m. the next day so that interruptible shippers will have an opportunity to renominate.

Taking a different tack, PGT and Pan Alberta do not object to the timing of the 6 p.m. nomination, but contend that no bumping should be permitted after gas starts to flow. They argue that permitting bumping of flowing gas will devalue interruptible service and create logistical difficulties for market participants by complicating the balancing process and requiring last minute adjustments to marketing plans. They further contend that permitting bumping after gas flows is inconsistent with the Canadian practice, which will cause interconnection problems.

Firm shippers, on the other hand, support the Commission's proposal that firm intra-day nominations should bump interruptible service both on the day prior to the gas day and on the gas day itself. They particularly support the Commission's proposal that a firm intra-day nomination at 6 p.m. will take effect at 9 a.m.[35] They contend that their payment of reservation charges entitles them to such priority and that, if they nominate on the day prior to gas flow, that nomination should be effective at the start of gas flow, rather than eight hours later. Indicated End Users argue that delaying the bump from 9 a.m. until 5 p.m. essentially provides interruptible shippers with eight hours of firm service while degrading the value of firm service. Such a result, it asserts, is particularly inappropriate since bumping occurs only on pipelines with no excess capacity, where firm service is accordingly extremely valuable.

(2) Commission determination. The Commission has determined that intra-day nominations for firm capacity should be given scheduling priority over scheduled and flowing interruptible service. The vast majority of the comments support this regulation, and the regulation is consistent with the priority rights to which firm shippers are legitimately entitled. This issue cannot be left to individual determinations on a pipeline specific basis, as suggested by Koch, NWIGU, Viking, and Williston Basin. Continuation of the current bifurcated system is inconsistent with the creation of an integrated pipeline grid and would effectively reduce the effectiveness of firm shippers' intra-day nominations on the majority of pipelines that permit bumping. A firm shipper nominating gas across multiple pipelines needs to be able to coordinate its intra-day nominations. Under the present system, if even one pipeline in its nomination chain has a no-bump rule, the shipper may be unable to have its entire chain of intra-day nominations confirmed. Thus, a single approach to bumping is necessary to integrate the pipeline grid.

With respect to the principal disputed issue—the effective time of an intra-day nomination submitted on the day prior to gas flow (the 6 p.m. intra-day nomination under the GISB schedule)—the Commission finds that the intra-day nomination should become effective at the start of the gas day at 9 a.m., and will amend its regulations to make clear that an intra-day nomination submitted on the day prior to gas flow will take effect at the start of the gas day.

Firm shippers are paying reservation charges for priority rights and those

[31] Comments by AGA, Altra, Burlington, Centra Manitoba, Columbia Gas/Columbia Gulf, ECT, Indicated End Users, K N Interstate Group, National Fuel Distribution, NGC, NGSA, Nicor Gas, Pan Alberta, Peoples/North Shore, PG&E, Piedmont.

[32] Comments by Koch, NWIGU, Viking, Williston Basin.

[33] Comments by Burlington, Cascade, Centra Manitoba, Columbia Gas/Columbia Gulf, ECT, Engage, Florida Cities, FPL, Indicated End Users, INGAA, MCV, Minnegasco, Mississippi Distributors, MoPSC, MLGW, National Fuel Distribution, NGC, NGSA, NGPL, Pan Alberta, PGC, *et al.*, PGT, Peoples/North Shore, PG&E, Piedmont, ProEnergy, ProLiance, SGPC, SoCal Gas/SDG&E, TVA. *But see* comments by Enron, K N Interstate Group, Koch, Viking, Williston Basin (opposing bumping).

[34] These parties also note that firm shippers wanting greater flexibility in nominations can subscribe to no-notice service.

[35] Comments by Indicated End Users, Mississippi Distributors, National Fuel Distribution, PGC, *et al.*, SoCal Gas/SDG&E, TVA.

rights should include the right to have a nomination become effective as early as possible on the gas day following the nomination. Interruptible shippers voluntarily take the risk that their service will be interrupted and while they are entitled to advance notice of such interruption, they should not be able to prevent firm shippers from having their nominations take effect at the earliest possible time. Gas flows on the interstate grid 24-hours a day, and is consumed throughout the day, so interruptible shippers need to be prepared to adjust gas volumes even during non-business hours. The interruptible shippers will receive sufficient advance notice (approximately 11 hours) to reduce flows if necessary. They will still have the two additional intra-day opportunities during the gas day (the 10 a.m. and 5 p.m. intra-day opportunities) to reschedule their gas. And, interruptible shippers have the tools, such as pooling, gas package identifiers, and ranking, that they can use to manage their gas supplies in the event of bump.[36] If interruptible shippers still find the bumping risk unacceptable, they have the opportunity to obtain firm capacity either from the pipeline or through the capacity release system.

While the commenters contend that bumping creates the risk that gas will be shut-in without an opportunity to reschedule, that could occur under the existing system as well. During the regular scheduling process, an interruptible shipper takes a risk that a firm nomination may result in a reduction in or termination of its flow from one day to the next, a change that must take effect at 9 a.m. in the morning. Prior to Order No. 587, many pipelines provided no opportunity for the interruptible shipper to reschedule that gas prior to having to implement the reduced flow. Even after Order No. 587, many pipelines do not provide an intra-day scheduling opportunity prior to the start of the gas day in which case the interruptible shippers are unable to reschedule gas prior to the beginning of gas flow. Indeed, interruptible shippers are better off in many ways under the new regulation, than they were prior to the expansion of the intra-day nomination process. Before adoption of multiple intra-day nominations, interruptible shippers could have their volumes reduced with no opportunity to renominate that gas, while under the multiple intra-day nomination schedule, interruptible shippers bumped by a 6 p.m. intra-day nomination will still have two opportunities to reschedule gas on an industry-wide basis (the 10 a.m. and 5 p.m. intra-day opportunities).

The Commission will follow the GISB consensus and permit pipelines with three intra-day nomination opportunities to exempt the last intra-day opportunity from bumping. Both firm and interruptible shippers support GISB's and the Commission's proposal that no bumping should take place at the third intra-day nomination opportunity.[37] Local distribution companies (LDCs) contend that allowing bumping at the third opportunity would interfere with their efforts to manage their own systems. A few commenters contend that making the third intra-day opportunity non-bumping is inconsistent with the priority to which firm service is entitled.[38] The Commission, however, agrees with the consensus of the GISB members that making the third intra-day nomination non-bumping creates a fair balance between firm shippers, who will have had two opportunities to reschedule their gas, and interruptible shippers and will provide some necessary stability in the nomination system, so that shippers can be confident by mid-afternoon that they will receive their scheduled flows.

c. Penalties for bumped interruptible shippers. In *Tennessee Gas Pipeline Company,*[39] the Commission permitted the pipeline to implement a tariff provision under which firm intra-day nominations bumped scheduled interruptible gas, but waived the pipeline's daily variance penalty for bumped interruptible shippers on the day of the bump. Referring to this decision, the Commission, in the NOPR, stated that pipelines filing to implement the regulation giving firm intra-day nominations priority over scheduled interruptible gas should consider whether bumped interruptible shippers should be exempt from certain penalties on the day of the bump.

Pipelines as well as some shippers contend that the pipelines must be able to assess penalties against interruptible shippers or else shippers will have no incentive to comply with the bump and the pipelines' management of their system will be jeopardized.[40] Columbia Gas/Columbia Gulf maintain that penalties should be waived only if the interruptible shipper conforms its flow to the rescheduled volumes. The pipelines contend that they do not have the system flexibility to permit overuse of capacity even on a single day.[41]

Shippers maintain that penalties should be waived for bumped interruptible shippers.[42] They contend that interruptible shippers should not be subject to penalties when the shipper is unable to reschedule gas and may not be able to get a point operator to change physical volumes. NGC maintains the Commission should not just consider waiving penalties, but affirmatively adopt a rule that no penalties can be assessed on bumped shippers.

Given the variety of penalty provisions in pipeline tariffs, the waiver of penalties for bumped shippers will have to be considered when pipelines make compliance filings. The Commission will set forth below some general principles for assessing when pipelines should waive penalties for bumped interruptible shippers. No penalties should be imposed on bumped shippers if the pipeline fails to provide appropriate notice of a bump. Once notified, shippers are expected to make a good faith effort to adjust their flows to conform to revised scheduling volumes. But the Commission recognizes that in some cases the shortened notice period for intra-day nominations (three hours under the GISB timeline) may make such adjustments difficult. As in *Tennessee,* therefore, pipelines should waive non-critical penalties, such as daily scheduling or variance penalties, for the day of the bump. But these penalties would be waived only for the day of the bump; interruptible shippers should remain responsible for the excess gas put on the system and would be subject to all penalties in subsequent days resulting from the excess gas.

The Commission also recognizes the pipelines' need to maintain control of their systems in critical situations, when they invoke operational flow orders. In these cases, bumped interruptible shippers may not be entitled to special treatment on penalties, because, when OFOs are in effect, the pipelines are less likely to be able to absorb extra gas on their systems and all shippers may have difficulty adjusting to the OFO. Waiving penalties for bumped interruptible

[36] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.18, 1.3.23, 1.3.24. *See* text accompanying notes 100 and 93, *infra.* Pooling together with ranking permit shippers to designate which supplies or markets should be cut first in the event scheduled volumes are reduced. Thus, producers can rank those supply sources where volumes can be changed most easily as the first to be cut in the event of a bump.

[37] Comments by Burlington, Engage, INGAA, NGSA, Nicor Gas Peoples/North Shore.

[38] Comments by Cascade, TVA.

[39] 73 FERC ¶ 61,158, at 61,456 (1995).

[40] Comments by Enron, INGAA, NGPL, Nicor Gas, NGT/MRT, Southern, TransCapacity, Cascade.

[41] *See* comments by INGAA, Enron, NGPL, Southern.

[42] Comments by ECT, FPL, National Fuel Distribution, NGC, NGSA, PGC, *et al.*

shippers in critical situations, therefore, could come at the expense of reduced service or increased penalties on other shippers. The Commission, however, expects pipelines to comply with the principle embodied in standard 1.1.14 which provides:

where a nomination is required by the service provider to make an effective physical change necessary to comply with an Operational Flow Order, unless critical circumstances dictate otherwise, an Operational Flow Order penalty should not be assessed unless the shipper is given the opportunity to correct the circumstance giving rise to the Operational Flow Order and fails to do so or the action(s) taken fails to do so. The opportunity to correct the critical circumstance should include the opportunity to:

(a) Make a nomination, which, once confirmed and scheduled would cure the circumstance giving rise to the Operational Flow Order, or

(b) Take other appropriate action which cures the circumstance giving rise to the Operational Flow Order.[43]

For instance, under this principle, where an OFO would require an interruptible shipper (which is bumped by a firm service intra-day nomination at 6 p.m. the day prior to gas flow) to make a nomination to effect a physical change to comply with the OFO, the pipeline should afford the interruptible shipper the opportunity to make a new intra-day nomination at the next intra-day nomination opportunity (10 a.m.) to cure the circumstance giving rise to the OFO. If the interruptible shipper can make such a change, no OFO penalties should be charged for the period between 9 a.m. and 5 p.m. when the interruptible shipper's 10 a.m. intra-day nomination would take effect. However, if the interruptible shipper is unable to cure the OFO at the 10 a.m. intra-day nomination opportunity all applicable OFO penalties would apply. These principles appear to strike a fair balance between the operational needs of the pipelines and the protection of shippers.

When pipelines file to implement the regulations, the Commission will consider whether pipelines should waive specific penalties for bumped interruptible shippers. Section 284.10(c)(1)(i)(A) also requires pipelines to notify bumped interruptible shippers if penalties for overrunning their scheduled quantities will apply on the day of the bump.

d. Other Issues. (1) Overnight rescheduling opportunity. In the NOPR, the Commission decided not to propose a regulation requiring pipelines to provide an overnight rescheduling opportunity for interruptible shippers which are bumped. PGC, *et al.*, contend that the Commission should require pipelines to permit interruptible shippers to renominate bumped supply overnight. NGPL, on the other hand, contends that pipelines cannot provide overnight renominations, because confirmation of these nominations could not take place in the evening and early morning.

Pipelines wishing to provide greater certainty to interruptible shippers may provide an overnight opportunity for interruptible shippers to reschedule bumped gas. However, the Commission agrees with NGPL that given the confirmation difficulties occasioned by overnight rescheduling, pipelines should not be required to provide such a service. The 11 hour advance notice to interruptible shippers and the interruptible shippers' ability to renominate at the 10 a.m. intra-day opportunity provides sufficient protection to interruptible shippers.

(2) Priority of firm capacity to primary and secondary points. In the NOPR, the Commission restated its policy that, once scheduled, intra-day nominations for firm service to primary receipt or delivery points do not bump previously scheduled firm capacity to secondary points. ECT, K N Interstate Group, and NWIGU support the current policy that intra-day nominations to firm primary points do not bump already scheduled gas at secondary points. ECT and NWIGU maintain that giving firm primary and secondary points firm priority is necessary for the capacity release process to work efficiently. On the other hand, MGE and NGT/MRT contend the Commission should change the policy to give intra-day nominations to firm primary points priority over previously scheduled firm capacity at secondary points. They assert that firm shippers pay for such primary point rights. Cascade maintains that Commission policies permitting exceptions to priority rules need to be reconsidered as the industry moves to a more continuous and contiguous scheduling system under which the pipelines may reschedule the entire system more frequently than once a day. Koch, PG&E, and SoCal Gas/SDG&E request clarification that the Commission's statements of priority regarding the impact of intra-day nominations on scheduled service to firm secondary points do not affect specific resolution of priority issues with respect to the Koch and El Paso pipelines.

At this time, the Commission will not adopt a regulation requiring pipelines to revise existing tariff priorities relative to the rights of intra-day nominations to firm primary points to affect scheduled volumes to firm secondary points. Given the potential effects of changing the priority rules relating to intra-day nominations to secondary points, such as potentially reducing the ability of shippers to obtain released capacity and to use that capacity at secondary points, changes in priority rules require additional consideration by the Commission and the industry.

(3) Pipelines processing intra-day nominations on a continuous or rolling basis. Some pipelines currently process intra-day nominations on a continuous or rolling basis permitting the shipper to choose when to submit its intra-day nomination. Others use a batch process in which all intra-day nominations are processed at the same time.

CNG, Enron, Nicor Gas, Peoples/North Shore, Southern, and TransCapacity contend that pipelines should be able to revise their prior continuous intra-day nomination procedures to conform to the GISB batch schedule. CNG maintains that pipelines should not be held to prior intra-day schedules based on different operating assumptions. CNG and Enron maintain that changing to a batch process should not be deemed a degradation of service. Peoples/North Shore and Nicor Gas maintain that continuous processing complicates LDCs' supply planning because they have to make operational changes throughout the gas day.

AGA, on the other hand, is concerned that pipelines currently offering continuous service should not be able to unnecessarily degrade their services by changing to the batch process. While Peoples/North Shore support the batch process, they argue that pipelines offering special services with more than the required number of intra-day opportunities should not be able to reduce those to the standard three.

Adoption of the three synchronization times is not necessarily inconsistent with continuous intra-day processing, since the shipper can simply choose whether to time its nominations to achieve synchrony with other pipelines. However, if a pipeline finds that continuation of the continuous process will disrupt its system, it should be able to change its procedures to conform to the industry standards. The efficiency gained by the entire industry in being able to coordinate nominations across the pipeline grid outweighs any potential diminution of service resulting solely from the change in the method of processing the nominations. Pipelines, however, should not use the change to batch processing to reduce the number of intra-day opportunities to which

[43] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.1.14.

shippers are entitled. Although these additional intra-day opportunities are not coordinated across pipelines, they still provide shippers with benefits, particularly to those shippers revising storage or other nominations that do not need to be coordinated with nominations on other pipelines.

3. Regulation Requiring Pipelines To Enter Into Operational Balancing Agreements

In § 284.10(c)(2)(i), the Commission is adopting a regulation requiring each interstate pipeline to enter into an Operational Balancing Agreements at all points of interconnection between its system and the system of another interstate or intrastate pipeline.

a. Background. An operational balancing agreement (OBA) is a contract between two physically interconnected parties specifying the procedures to be used in processing imbalances or differences in hourly flows between the parties. GISB passed a standard requiring pipelines to enter into OBAs at all interstate and intrastate pipeline interconnects where economically and operationally feasible. In Order No. 587–C, the Commission declined to adopt this standard, finding the phrase economically and operationally feasible too vague to define pipeline obligations. In the NOPR, the Commission proposed to require interstate pipelines to enter into OBAs with all interconnecting interstate and intrastate pipelines.

b. Adoption of the regulation. Almost all the commenters either support the regulation or do not oppose it. INGAA and some of the pipelines suggest the regulation is not needed since OBAs already exist at over 91% of interconnects between interstate pipelines. Enron contends that, instead of mandating that pipelines enter into OBAs, the Commission should adopt a regulation prohibiting pipelines from enacting tariff provisions that inhibit the use of OBAs at interconnect points.

The Commission concludes the regulation is needed. As the commenters point out, OBAs have increased the efficiency and reliability of the pipeline grid. An OBA ensures that a shipper, once it has properly nominated and had its gas confirmed, will not be subjected to imbalance penalties resulting from the transfer of gas between the pipelines. Enron's suggestion that the Commission limit the regulation to one that merely prohibits pipelines from adopting tariff provisions inhibiting the development of OBAs does not go far enough, because it imposes no affirmative obligation on the pipelines to enter into OBAs.

Other issues raised by the comments will be discussed below.

c. Definition of intrastate pipeline. Section 284.10(c)(2)(i) requires interstate pipelines to enter into OBAs at all interstate and intrastate pipeline interconnects. The comments principally concern the scope of the term intrastate pipeline. The pipelines contend it should be limited to intrastate pipelines only (defined by Koch as those with transmission facilities that do not cross state lines) and should not include gatherers and LDCs.[44] ANR/CIG contend it should include only intrastate pipelines regulated by the Commission which would obviate the possibility that interstate pipelines would have to file for waivers if they cannot negotiate an acceptable OBA with an unregulated entity. The pipelines argue that expanding the requirement to gatherers and LDCs would be too burdensome, particularly if they had to file for a waiver every time they could not negotiate an acceptable agreement.

TransCapacity and PGC, *et al.*, assert the requirement should extend to all interconnect points where nominations need to be confirmed with multiple parties behind the point, specifically including interconnects with LDCs and gatherers. TransCapacity contends that the burden of including these points is minimal if GISB develops a model OBA.

The proposed regulation uses the term intrastate pipeline, as contained in the original GISB formulation. The term intrastate pipeline should apply to pipelines providing transmission services, as opposed to gathering or local distribution functions. To aid in identifying those pipelines to which the regulation applies, the term will apply to all pipelines performing interstate transportation that are subject to the Commission's regulations under Subparts C and G of Part 284.[45] As National Fuel Distribution suggests, this constitutes a good beginning, but, after experience is gained, consideration should be given to expanding the definition so that interstate pipelines will be expected to negotiate OBAS with all those transporting gas for others, such as gatherers and LDCs.

As ANR/CIG suggest, since the requirement applies only to OBAs between interstate pipelines and intrastate pipelines regulated by the Commission, pipelines have no need to file for waivers. While the Commission expects that interconnecting parties will be able to negotiate acceptable OBA conditions, if an intractable dispute should arise, they can submit the dispute to the Commission for resolution.

d. Date by which pipelines must execute OBAs. Enron questions whether pipelines can be expected to enter into an OBA by a date certain, while NGC contends the Commission needs to set an outside date by which the OBA process must be completed. The Commission recognizes that pipelines must be given some time to negotiate and enter into OBAs and, therefore, would expect that pipelines should be able to complete the OBA process within three months after the Commission adopts final regulations governing OBAs.

e. Requirement to make OBA contracts available. NGPL objects to the requirement that pipelines maintain OBAs and provide them to requesting parties, asserting the Commission has offered no justification for the requirement. NGPL would not object to posting the OBA operator and the points covered by the OBA. PG&E contends OBAs are proprietary contracts and should be filed under seal. SoCal Gas/SDG&E and TransCapacity maintain OBAs must be publicly available.

Section 4 of the Natural Gas Act requires that pipelines:

> file * * * and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale * * * and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

Since OBAs are contracts relating to the provision of transportation service, they are jurisdictional. The Commission, however, has not required pipelines to file OBAs with the Commission.[46] Instead, pipelines must make them available, along with all relevant records of volumes and amounts paid under OBAS, to the Commission and any person requesting copies.

f. Development of a standard OBA and other issues relating to negotiation and implementation of OBAs. Several commenters contend that GISB should develop a standard OBA and pipelines should be required to accept the standard OBA.[47] A standard OBA, they assert, will reduce the burden of having to individually negotiate OBA terms in

[44] Comments by ANR/CIG, Enron, INGAA, Koch, National Fuel Distribution, SGPC, Williston Basin.

[45] 18 CFR 284.121–126; 18 CFR 284.224.

[46] *See* Transcontinental Gas Pipe Line Corporation, 65 FERC ¶ 61,315, at 62,437 (1994) (although OBAs are jurisdictional, filing is unnecessary if copies are made available by the pipeline).

[47] Comments by NGC, SoCal Gas/SDG&E, TransCapacity.

every instance. The pipelines oppose a requirement that they adhere to a standard OBA, because, they assert, an OBA needs to deal with issues specific to the interconnected parties.[48]

Development of a standard OBA would be of significant value in setting forth terms that are reasonably fair to both parties, and GISB should work on developing such a contract. Pipelines, however, would not have to agree to the standard OBA if its terms are inapplicable in a particular situation.

Pipelines raise questions about negotiation and implementation of OBAs. El Paso seeks clarification that it can insist on inclusion of certain necessary terms, such as creditworthiness guarantees and other assurances of performance. K N Interstate Group, Koch, and NGPL ask if pipelines can terminate OBAs for non-performance. NGT/MRT ask whether pipelines can reject OBAs, without filing for a waiver, where the OBA would inhibit pipeline operations. SGPC raises concerns about having to enter into unreasonable terms and conditions with unregulated entities, such as gatherers.

Pipelines can insist that OBAs contain reasonable terms that are standard in the industry. Development of a standard OBA would provide a benchmark for comparison. Based on the history of OBAs, the Commission does not expect numerous cases in which parties fail to perform. However, pipelines would have a right to terminate an OBA for substantial, consistent non-performance, but must do so in a non-discriminatory fashion and should make every effort to work out any difficulties with the other contracting party.

Pipelines cannot unilaterally decide not to enter into an OBA with an interconnecting pipeline. As discussed previously, interstate pipelines must enter into OBAs only with intrastate pipelines regulated by the Commission. Any disputes over OBA terms and conditions between interconnected parties can be submitted to the Commission for resolution.

NGSA argues the OBA regulation should be expanded to require the downstream party to adhere to the pre-determined allocations of the upstream party. Without such a requirement, it claims the OBA cannot properly allocate volumes to the appropriate downstream customer when capacity is scarce.

The Commission, at this time, does not have sufficient information to impose this as a requirement for all OBAs. As NGSA recognizes, this issue is related to the question of how to handle multi-tiered allocations on which GISB will be developing standards by the fourth quarter of 1998. GISB should consider how to handle upstream and downstream pre-determined allocations when it considers the issues relating to a standard OBA and multi-tiered allocations.

4. Regulation Requiring Pipelines To Net Imbalances and Permit Imbalance Trading

In § 284.10(c)(2)(ii), the Commission is requiring pipelines to permit shippers (including agents) to offset imbalances on different contracts held by the shipper and to trade imbalances with other shippers so long as the imbalances have similar operational impact on the pipeline. In their filings to comply with this regulation, each pipeline must delineate the largest operational area in which imbalances can be traded without affecting system operations. Pipelines also will be expected to propose procedures governing the method by which they will post and process imbalance trades provided to them by shippers or shippers' agents, including third-party firms that would conduct imbalance trading for shippers. GISB is examining standards to make the posting and processing of imbalance trades more uniform and efficient, and the Commission will defer implementation of the imbalance trading requirement until after approval of standards governing imbalance trading, which are due to be filed on June 30, 1998 according to GISB's 1998 Annual Plan.

Under the regulation, pipelines are not required to establish a computerized system on which trading would take place, although they would be free to establish such a system and to assess a separate fee for using that system. If a pipeline does establish its own trading system, it must provide equal and non-discriminatory access for shippers trading their own imbalances or those using third-party services.

The Commission will address below the comments dealing with the adoption of the requirement itself and the operational details.

a. Adoption of imbalance trading. Most of the comments favor or do not oppose the imposition of imbalance trading.[49] Those supporting imbalance trading contend that it is needed to offset the tightened balancing tolerances, increased penalties, and gas forfeiture provisions implemented by pipelines.

WGP and SGPC oppose the requirement, contending that permitting imbalance trading could reduce financial incentives for shippers to stay in balance. WGP also argues that if a pipeline accounts for operational imbalances at the end of the month, a severe imbalance in one direction at the beginning of the month would not be operationally offset by a corresponding imbalance running the other way at the end of the month.

Permitting shippers to trade imbalances in the same operational area enables shippers to avoid imbalance charges without jeopardizing system reliability. When individual shipper imbalances offset each other, the pipeline as a whole is in balance. The Commission does not agree with WGP and SGPC that imbalance trading will significantly weaken shippers' incentives to stay in balance. As NGSA points out, shippers are unlikely to allow large imbalances to accumulate, because they run the risk that they will be subject to penalties if they are unable to find a shipper with an offsetting imbalance with whom to trade. For example, if one shipper has a financial incentive to underdeliver gas, other shippers likely will have the same incentive and all the imbalances will run in the same direction and be untradable. Thus, imbalance trading will ensure that imbalance penalties are linked more closely to operational integrity, so that shippers are not penalized for imbalances that do not affect pipeline operations.

WGP's example of imbalances occurring at different times of the month appears to have little to do with imbalance trading. Currently, a single shipper may run positive imbalances early in the month and negative ones at the end of the month. Despite WGP's concern about potential adverse operational affects on a daily basis, the shipper's imbalances will offset each other by the end of the month, resulting in no imbalance penalties. Thus, establishing imbalance trading on a monthly basis will not change the relative operational impacts of imbalances on a daily basis.

b. Operational details. Most of the commenters address operational aspects of imbalance trading, such as whether imbalances can be traded across rate schedules, the role of agents, and what services pipelines are required to provide.

[48] Comments by CNG, INGAA, K N Interstate Group.

[49] Comments by Altra, Burlington, ECT, Engage, INGAA, K N Interstate Group (pipelines account for imbalances differently and pipelines should define operational impact), MoPSC, MGE, NGPL, NGC, NGSA, Nicor Gas, Peoples/North Shore, PGC, *et al.*, PG&E, ProEnergy, ProLiance, SoCal Gas/SDG&E, TransCapacity.

(1) Accommodating imbalance trading to system requirements. INGAA argues that each pipeline should be able to accommodate imbalance trading to the requirements of its system. The regulation does permit each pipeline to structure imbalance trading to its system, because pipelines need only permit imbalance trading in areas where the imbalances have similar operational effect. When pipelines file to comply with this requirement, they must define the largest possible areas on their systems in which imbalances have similar operational effect and explain why imbalances crossing those lines are not sufficiently similar in operational effect.

(2) Trading across rate schedules or rate zones. Section 284.10(c)(2)(ii) requires pipelines to permit imbalance trades as long as they have similar operational impact on the pipeline. Some of the pipelines contend that further restrictions are appropriate. ANR/CIG, El Paso, and NGPL contend imbalance trading should be limited to trades within rates zones.

Whether imbalance trading should be permitted across rate zones depends on the operational characteristics of the pipeline.[50] As stated earlier, each pipeline must delineate in its compliance filing, the largest operational area in which imbalances can be traded without affecting system operations.

Other pipelines contend they should not have to permit imbalance trades that affect transportation charges.[51] El Paso maintains a pipeline may lose revenue if imbalances on discounted contracts are traded with those on full price contracts. Williston Basin argues that imbalances should not be traded across different contract classes, providing the following example. If a shipper has a positive imbalance of 1,000 Dth under an interruptible contract [52] and trades that imbalance with a shipper that has a 1,000 Dth negative imbalance on a firm contract,[53] Williston Basin claims it would have received revenues only on 100 Dth at the higher interruptible rate and revenues based on 1,100 Dth at the lower firm commodity rate. Williston Basin contends that if the trade was between interruptible contracts alone, it would receive revenues on 1,200 Dth at the higher interruptible rate. (100 Dth for the shipper with the positive imbalance and 1,100 Dth for the shipper with the negative imbalance).

Permitting pipelines to limit imbalance trading to contracts within the same rate schedule would significantly reduce the efficacy of the imbalance trading program and is unrelated to operational needs of the pipeline. Trading would be restricted because shippers would not only have to search out offsetting imbalances in the same operational area, they would have to find offsetting imbalances under the same rate schedule. Such a restriction on trading is unrelated to pipeline operations since, regardless of the rate schedule under which the gas is shipped, the pipeline is physically in balance so long as imbalances net out.

The pipelines have not made clear how they lose transportation revenue from imbalance trading across firm and interruptible or maximum rate and discounted contracts.[54] The Commission's policy is to require pipelines to permit shippers to offset imbalances across contracts under different rate schedules.[55] If a pipeline can document that such trading will cause a loss of transportation revenue, the solution is not to restrict imbalance trading, but for the pipeline to devise an appropriate mechanism to ensure that it is made whole for all appropriate transportation charges.[56]

(3) Pipeline fees for providing imbalance trading services. Commenters raise questions about the pipelines' ability to charge fees for imbalance trading services. NGPL is uncertain which services pipelines must provide and for which a fee can be charged. NGC contends that pipelines with current imbalance trading programs should not be able to charge a fee and that no fee should be charged for shippers trading amongst themselves. CNG and Columbia Gas/Columbia Gulf contend the pipelines should not post imbalances, but provide a space on their EBB or web site for shippers to post imbalances. Altra is concerned that pipelines may abuse the imbalance trading process by establishing affiliates with preferential access to pipeline delivery and receipt information. Altra further maintains pipelines should be precluded from hosting the trading process, because it fears that allowing the pipelines to participate in a rate-based environment would preclude competitive markets from working most efficiently.

To clarify, pipelines will be required, without charging a separate fee, to notify shippers of their imbalances and post imbalances automatically if shippers provide pipelines with standing authority for posting. Pipelines also should permit shippers the opportunity to post their own imbalances in the same location. Pipelines also must process, without charging a separate fee, imbalance trades submitted by shippers or third-parties acting to facilitate imbalance trading.

The posting of imbalances will permit shippers to negotiate their own trades. Pipelines also can set up an imbalance trading or auction process by which shippers can arrange to trade imbalances and charge a separate fee for this service. The Commission will not forbid pipelines from hosting such an imbalance trading service, as Altra suggests, since such a prohibition would limit potential competition. If pipelines charge a separate fee for such a service, third-parties providing a similar service should not be unduly disadvantaged. Pipelines establishing such a system or dealing with an affiliate, however, must act non-discriminatorily in processing imbalance trades submitted by shippers or third-parties and comply with the Commission's standards of conduct with respect to sharing of relevant information.

(4) Standards and procedures for trading imbalances. Commenters raise questions about the procedures that pipelines should adopt to facilitate netting of imbalances and imbalance trading.[57] PG&E argues pipelines should file tariff changes to establish the protocols for imbalance trading so shippers can comment.

[50] Trunkline Gas Company, 64 FERC ¶ 61,141, at 62,134 (1993) (denying request for netting of imbalances across rate zones where the imbalance within each zone may have operational impact on system operations).

[51] Comments by Columbia Gas/Columbia Gulf, Enron, El Paso, Williston Basin.

[52] The shipper delivers 1,100 Dth into the system of which the pipeline delivers only 100 Dth off the system.

[53] The shipper delivers 100 Dth into the system and the pipeline delivers 1,100 Dth off the system.

[54] In the example given by Williston Basin, the pipeline's transportation revenues for the quantity of gas delivered for each shipper appears the same with or without imbalance trading. The pipeline delivers only 100 units of interruptible volume and charges for the amount delivered. The only potential loss of revenue would be from resolution of the imbalance through cash-out. Under Commission policy, however, pipelines are not entitled to such penalty revenue; such charges are imposed only to discourage conduct inimical to the operations of the system.

[55] *See* Panhandle Eastern Pipeline Company, 64 FERC ¶ 61,009, at 61,066 (1993); Trunkline Gas Company, 64 FERC ¶ 61,141, at 62,133 (1993); Algonquin Gas Transmission Company, 63 FERC ¶ 61,188, at 62,373 (1993).

[56] *See* Panhandle Eastern Pipeline Company, 64 FERC ¶ 61,009, at 61,066 (1993).

[57] ECT argues pipelines should automatically offset imbalances across a shipper's contracts. Enron argues that pipelines need to establish practical parameters for trading such as setting a fixed time frame for shippers to trade imbalances, keeping the pipeline out of shipper trading negotiations and agreements, except to process the resulting adjustments to the parties, and limiting trading activity to the immediately preceding production month's activity to avoid cross-month price arbitrage.

As discussed earlier, the development of standards for processing imbalance trading would make the process more efficient, and the Commission, therefore, is deferring implementation of the imbalance netting and trading requirement until after approval of standards governing imbalance trading, which are due to be filed on June 30, 1998 according to GISB's 1998 Annual Plan. Pipelines will have to make tariff filings to establish the parameters of their trading areas as well as other aspects of their programs, if not covered by the standards. At that time, shippers will have an opportunity to comment on these provisions.

Enron and Koch raise questions about a statement in the NOPR that shippers may be willing to put gas on a pipeline system for a fee in order to resolve another shipper's imbalance. Koch maintains that shippers should not be physically permitted to add or take away gas to resolve historic imbalances. Enron requests clarification that imbalance trading should reflect end of the month imbalances and not daily incremental needs.

The Commission will clarify that the regulation relates to the pipelines' current methods for accounting for imbalances and does not require pipelines to institute daily imbalance procedures, if they are not already present on the system. However, if a pipeline presently imposes daily imbalance penalties, it should establish a means of permitting shippers to trade those imbalances before assessing penalties. The regulation also does not require pipelines to permit shippers to add gas to the system at other than the normal scheduling opportunities.

(5) Agents. The Commission has proposed to allow agents for shippers to offset imbalances across contracts and to trade imbalances. National Fuel Distribution contends that permitting agents to provide an imbalance netting service will diminish pipelines' control of their systems. Columbia Gas/Columbia Gulf contend that offset and trade options should not be extended to shippers' agents unless they are acting for the shipper. They contend agents do not have title to the gas, but act only as a surrogate for nominating supplies and some contracting activity. ProLiance argues that there is no reason to exclude agents from imbalance netting or trading.

National Fuel Distribution does not explain why permitting agents to participate in netting imbalances or trading imbalances will affect pipelines' control of their systems. As long as imbalances offset each other within the relevant operational area, there should be no negative operational effects on the pipeline. In fact, since all shippers will be able to trade imbalances, there is no reason why agents should not be able to offset imbalances on the contracts they manage. Columbia Gas/Columbia Gulf's concern with agents is similarly unclear. For imbalance trading to work efficiently, pipelines must process imbalance trades by those acting on behalf of shippers. A third-party, for example, may establish a computerized service to facilitate imbalance trades for shippers, and the pipeline will need to process the results of those trades. Any issues with establishing the proper scope of agency should be worked out between the pipeline, the third-party, and the parties involved.

5. Electronic Communication Using the Internet

a. Background. For many years, pipelines have communicated with their customers using direct dial up connections to pipeline Electronic Bulletin Boards (EBBs). Each pipeline EBB is a proprietary system, with unique software, log-on, and other procedures. The uniqueness of each pipeline's EBB raises costs to those who ship across multiple pipelines, since shippers must maintain redundant computers and communication software and train their staff in the idiosyncracies of each pipeline's system.

Creating greater standardization in electronic communication was one of the first standardization tasks the Commission and GISB undertook. The current communication system reflects a tripartite approach. First, shippers can still use EBBs to conduct interactive transactions with the pipelines and obtain information from the pipelines.

Second, pipelines must permit shippers to conduct many of the important business transactions in the industry, such as nominations, flowing gas, invoicing, and capacity release, using datasets in ASC X12 electronic data interchange (EDI) format [58] transmitted over the Internet. An EDI dataset is a highly structured or formatted method of conducting computer-to-computer communication.[59] To make use of EDI over the Internet, the user must have its own Universal Resource Locator (URL) address [60] and be able to translate the formatted information into the report or display it desires. For instance, a user could, if it wanted, translate the EDI information into the same display it now receives from an EBB. Or, it could use the EDI data to feed a more sophisticated gas management computer system.

Third, some information, such as pipeline tariffs, affiliate information, and available capacity, that is posted on EBBs also is posted on pipeline web sites.[61] This information, however, is not transactional, like a nomination, in which the shipper needs to communicate with the pipeline; the information is posted on web sites for shippers to read or to download.

Although GISB's standards state that all current EBB transactions should be achieved through one mode of communication,[62] the standards developed by GISB do not cover all transactions now conducted electronically over EBBs. Pipelines are continuing to post information and conduct many transactions on their proprietary EBBs.

In § 284.10(c)(3), the Commission is adopting a series of regulations to standardize electronic communication, specifically requiring pipelines to: post all information and conduct all business transactions using the public Internet and internet protocols by June 1, 1999; adhere to specific standards in posting information on pipeline web sites and in maintaining electronic records; and provide shippers with notice of critical system events by using the Internet. The Commission will discuss these requirements below.

b. Regulation requiring pipelines to conduct all transactions over the Internet. In § 284.10(c)(3)(i), the Commission is requiring pipelines to provide all electronic information and conduct all electronic transactions over the public Internet. The Commission further is requiring pipelines to provide private networks with non-discriminatory connections using internet tools, internet directory services, and internet communication protocols upon payment of a reasonable fee to recover the costs of providing such an interconnection. The comments address both the Commission's proposed use of the Internet to conduct all transactions and various aspects of

[58] ASC X12 is a standardized format for electronic transmission of documents. Standards for the use of such documents are promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC).

[59] An EDI dataset is analogous to a spread-sheet with each block or location containing specific information that is then processed by a computer. A computer program can translate from the raw EDI data to whatever format or display the user wants.

[60] To maintain a URL address, the user has to have its own Internet server and establish a connection to the Internet.

[61] 18 CFR 284.10(b)(i)(iv) (1997), Electronic Delivery Mechanism Related Standards 4.3.6.

[62] 18 CFR 284.10(b)(1)(iv) 1997), Electronic Delivery Mechanism Related Standards 4.3.6.

its implementation, which are discussed below.

(1) The requirement to use the internet to conduct transactions. The commenters generally support the requirement to move transactions to the Internet to establish a single, efficient mode of conducting business with all pipelines.[63] Only two commenters oppose requiring pipelines to move all electronic communication to the Internet. Koch argues that, rather than requiring that all transactions be conducted over the Internet, the Commission should require pipelines to conduct only basic, minimum transactions over the Internet, such as the EDI transactions contained in Version 1.2 of the datasets. Wisconsin Distributors contend that the Internet may not be reliable enough and that pipelines must have back-up systems, such as EBBs, available to avoid degradation of reliability.

The Commission is adopting the requirement that all transactions and information be conducted using the Internet, because, as the majority of the comments recognize, moving to a single, standardized mode of communication is necessary to achieve an efficient communication system. GISB has considered the reliability and security issues relating to the use of the Internet for conducting transactions and concluded that these concerns can be met.[64] Indeed, as Wisconsin Distributors note, the Internet backbone itself is reliable; most of the difficulties with Internet connections are the result of problems with the Internet servers of the parties and not the Internet itself, problems that can also affect pipeline EBBs.[65] Pipelines, therefore, must make sure that they test their Internet systems prior to implementation. Since problems with Internet communications generally will result from problems with pipeline servers or with the Internet Service Provider (ISP) used to connect the pipeline's server to the Internet, GISB and the pipelines should consider measures to ensure communication reliability, such as mirrored (duplicate) servers and the use of a back-up ISP. Pipelines also may keep their EBBs functional for one year after implementation of the Internet system, solely as a back-up.

Moving to the Internet is intended to eliminate the idiosyncracies resulting from the EBB system. Thus, the goal of the regulation would be defeated if, as Koch suggests, only some functions were moved to the Internet, since shippers still would be forced to use the EBBs for other transactions.

(2) Implementation of the regulation. (a) EDI v. interactive web sites and the future of EBBs. The principal division between the comments is over how the proposal is to be implemented and what will happen to EBBs. Several commenters envision a system where the current interactive EBBs will become interactive web sites.[66] This would mean that shippers would be able to conduct transactions in much the same way they do today, by having a person type information on the computer screen. NGSA argues that the standards should include both EDI and an interactive web site.

TransCapacity and Gaslantic contend that requiring pipelines to provide interactive web sites fails to achieve the necessary standardization. They contend that except for the few informational components already required to be posted on web pages,[67] all transactions should be conducted through EDI dataset transactions. TransCapacity asserts that an EDI solution would be far less expensive for the pipelines to implement than an interactive web approach. It maintains that GISB need only create a few more datasets to transfer all EBB functions to EDI and that implementation of these datasets will be relatively simple, since the infrastructure for transferring EDI data already exists. Koch similarly urges that the requirement only apply to EDI transactions. Requiring a dual EDI and interactive web-based system, it asserts, is just as inefficient as the current dual EDI and EBB system and pipelines would have to make substantial investments to create an interactive web-based system.

TransCapacity further asserts that if pipelines are able to recover their interactive web site costs through their cost-of-service, the less efficient interactive web-based system will receive an unfair subsidy relative to shippers implementing EDI on their own or by using third-parties. The shippers using the interactive web site will incur no incremental charge,[68] while those using EDI will incur costs for implementing this solution. It argues that if pipelines want to provide an interactive web based or EBB approach they should do so only if they impose a separate charges for this service. Other commenters similarly contend that once the Internet solution is implemented, pipeline recovery of dial-up EBB costs through cost-of-service should be discontinued.[69]

According to GISB's 1998 Annual Plan, it is convening an Internet transition task force to consider how to effectuate the transition to full Internet communications. However, according to the minutes of the GISB Executive Committee Meeting of February 12, 1998, GISB also appears divided over which model of Internet communication should be adopted.[70]

To guide the industry's deliberations, the Commission will explain below the general outline of how the standardized communications policy should be implemented.

First, pipelines conducting business transactions electronically must conduct all such transactions using EDI format. The industry, and the Commission, chose EDI as the standardized method for conducting transactions with all pipelines using a single uniform methodology. Many of the efficiency benefits from establishing the infrastructure to process EDI transactions would be lost unless shippers can use EDI for conducting all business transactions with the pipelines. Thus, the pipelines and GISB need to create EDI datasets for all transactions not yet standardized.

Second, pipelines may, but will not be required to, provide interactive web sites. Pipelines will be permitted cost-of-service recovery in subsequent section 4 rate cases for the costs of the interactive web site only if the pipelines together with GISB create standards governing the access to, presentation,

[63] *See* comments by Altra, CNG, Duke Energy Interstate Pipelines, ECT, Engage, Enron, Gaslantic, INGAA, K N Interstate Group, Latitude, MGE, NGSA, Nicor Gas, PGC, *et al.*, PG&E, Piedmont, ProEnergy, SoCal Gas/SDG&E, Southern, TransCapacity.

[64] K N Interstate Group states that no pipelines have experienced difficulties with the Internet and that stocks and bonds are traded over the Internet, reflecting the financial industry's confidence in the security of the Internet.

[65] The Internet is designed to maintain communication even if portions of the network go down. What is now termed the Internet initially was conceived during the cold war as a communication method to maintain continuing transmission capability in the event of nuclear war. The concept was to replace the point-to-point networks, where each site on the network was dependent on the link before it, with a web network, where information could find its own path even if a section was destroyed. *See e.g.*, Bruce Sterling, Short History of the Internet, http://www.forthnet. gr/forthnet/isoc/short.history.of.internet (Feb. 27, 1997). The more likely eventuality, therefore, is an individual problem such as a pipeline or customer's Internet service provider going down, just as in the current EBB system a pipeline or customer's EBB computer can malfunction.

[66] Comments by Duke Energy Interstate Pipelines (migrate EBBs to the Internet), NGSA (should require interactive web sites), Southern (not sacrifice the ease of use of EBBs).

[67] 18 CFR 284.10(b)(1)(iv) (1997), Electronic Delivery Mechanism Related Standards 4.3.6.

[68] Shippers not paying demand rates, in effect, would receive the interactive EBB solution for free.

[69] Comments by Altra, NGC, NGSA.

[70] *See* GISB's March 23, 1998 filing (Volume I, Appendix 9).

and format (''look and feel'') of the sites. This approach will enable the pipelines to respond to shippers' needs while still providing a reasonably standardized method of communication. As NGC notes, many electric utilities collaborated on developing a common Internet site that not only provided shippers with a standardized format, but significantly reduced the utilities' development costs as well. The pipelines and GISB should give serious consideration to pursuing a similar course.

Third, the pipelines must assure a level playing field for shippers using EDI and the interactive web site. Regardless of which system is used, the shipper must obtain the same service and same information handling and response priority from the pipeline. All transactions available on the interactive web site also must be available through standardized EDI communications.

Fourth, by the June 1, 1999 conversion to Internet communications, communications using EBBs should cease. Continued use of EBBs past June 1, 1999 would only delay the move to a standardized communication system. Pipelines, however, may maintain EBBs solely as a back-up system for a period of one year after the June 1, 1999 date for implementing Internet communication. Pipelines must remove EBB costs from cost-of-service in any general section 4 rate case effective after June 1, 2000. Pipelines also may request recovery of any stranded costs resulting from discontinuation of EBBs that are incurred during the test period of a general section 4 rate case that removes EBB costs from cost-of-service.[71] New investments in EBB technology will not be recoverable.

TransCapacity suggests that permitting pipelines cost-of-service recovery for standardized interactive web sites provides a subsidy to the users of the interactive web site. But the Commission does not find an undue preference. The costs of implementing the EDI standards currently are included in pipeline cost-of-service even though not all shippers may use this approach. While, in theory, pipelines could impose separate charges for EDI and interactive web sites, allocating costs between the services could prove difficult, given the integrated nature of communication systems. Thus, including all standardized approaches in the pipelines' cost-of-service will permit shippers to choose the communication approach that best fits their business needs.

[71] 18 CFR Part 154, subpart D.

(b) Third-party networks. In a related issue, several commenters oppose the proposal that pipelines provide connections to third-party networks. Enron argues that pipelines should not have to support value-added-networks (VANs) that charge for connections. The K N Interstate Group maintains that maintenance of third-party connections is inconsistent with a commitment to standardization, would be expensive, and is not needed for security concerns. NGPL asks for clarification of the requirement, contending that issues need to be resolved such as standards governing these networks, network obligations for interfacing with pipelines, and network responsibility for failure to perform all necessary tasks in a timely manner. TransCapacity and Altra support the requirement, contending that third-party networks should be accommodated as long as they are willing to pay all costs of the interconnection. Altra contends that such connections can be made at relatively low cost by means of a simple router where both the Internet and third-party transactions go through the same system with the same priority.

The Commission will require pipelines to provide third-party connections as long as the third-party pays a reasonable fee, to be included in the pipeline's tariff, reflecting the costs to the pipeline of providing the connection.[72] Third-parties would have to use the same datasets and internet protocols as the EDI services. The pipelines also must provide the same information handling and response priority for those using the standard Internet services and third-party networks. GISB should consider whether any additional standards are necessary to ensure that third-party and Internet connections receive equal priority.

Pipelines will not have to pay VAN charges, as raised by Enron; those charges would have to be paid by the third-party. Moreover, there should be no added costs or burdens on the pipelines since under the regulation, the third-party networks would have to communicate using the same internet tools, protocols, and directory services as would be used for the pipelines' Internet service.

(c) Transactions covered. Enron, while not disagreeing with the regulation, maintains it is too broad. Enron argues that the use of Internet communications should be limited to those functions now conducted over EBBs, and not other electronic transactions, such as funds transfers. All transactions provided on EBBs are covered by the regulation. GISB should consider how to handle other electronic transactions, such as funds transfers, in the most standardized fashion possible.

(3) Implementation date. The final rule requires pipelines to implement the requirement to move all communications to the Internet by June 1, 1999. In the NOPR, the Commission stated that while the June 1, 1999 deadline should give GISB sufficient time to develop any needed standards, the pipelines should be prepared to move to the Internet by the June 1, 1999 deadline regardless of whether standards are developed.

Several commenters argue that implementation should not precede the development of standards even if implementation is delayed.[73] They contend that pipeline implementation prior to standardization would be wasteful, since pipelines would have to revise their systems after the standards are developed.

The pipelines[74] and Latitude contend that June 1, 1999 is too aggressive a timetable for implementation. In particular, the pipelines object to the deadline because such an effort would drain resources from pipeline efforts to ensure that their computer systems are not subject to the Year 2000 problem (the use of only two digits, *e.g.* 98, to represent the year, causing problems if 00 is interpreted as 1900 rather than 2000). Duke Energy Interstate Pipelines contend that the June 1, 1999 deadline should require pipelines to do nothing more than move their EBBs to the Internet. Any further standardization, it recommends, should take place after 2000.

NGC and TransCapacity argue that the June 1, 1999 deadline is achievable and should not be changed. TransCapacity maintains the pipelines are using the Year 2000 issue as a pretext for delay and there is no reason why pipelines could not implement additional EDI standards by June 1, 1999. Other commenters argue the Commission should require the pipelines to begin testing their Internet solutions at least three months before the deadline and that GISB should be given an interim

[72] The Commission similarly has required electric utilities to provide connections to third-party networks using the same protocols as the connections to the Internet. Open Access Same-Time Information System, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 31,035, at 31,619 (Apr. 24, 1996).

[73] Comments by ANR/CIG, Columbia Gas/Columbia Gulf, Enron, Koch, NGPL, NGSA, Southern.

[74] Comments by CNG, Columbia Gas/Columbia Gulf, Duke Energy Interstate Pipelines, INGAA, Latitude, NGPL, Southern, WGP.

deadline of June 1, 1998 to develop standards.[75]

The Commission agrees that the development of standards for moving to the Internet is necessary and is encouraged by GISB's development of task forces to begin this process. The June 1, 1999 implementation date, however, should provide the industry with sufficient time to develop appropriate standards prior to implementation and also permit inauguration of the new system during the summer months, when pipelines are not running at peak. With the wide-spread availability of commercial Internet solutions, it does not appear developing a standardized Internet communication system should represent a major technological challenge. Maintaining the June 1, 1999 deadline will give all parties an incentive to reach agreement on standards and proceed with implementation expeditiously.

While the general issue of computer readiness for the Year 2000 has received much publicity, the pipelines have not shown that this problem is of such magnitude for them that implementation of the regulation should be delayed across the board. The pipelines refer generally to the problem, but do not provide any details about the scope of their difficulties, such as by showing how many pipelines even have a problem, how many systems are affected, or the extent of the resources needed to address the problem. Moreover, the regulation adopted here requires only that pipelines conduct transactions using EDI, and the pipelines do not contend that implementing that requirement by June 1, 1999 creates a technological problem.

As discussed earlier, pipelines may not continue to use their EBBs past the June 1, 1999 implementation deadline.[76] For those pipelines that choose to replace their EBBs with interactive web sites, the ready availability of commercial Internet solutions suggests the development of an interactive web site is not such a daunting technological feat that it would unduly interfere with correcting a particular pipeline's problem in accommodating the transition to the Year 2000. In addition, as discussed earlier, pipelines can save significant monetary and personnel resources as well as provide a more standardized product if, instead of each pipeline developing a proprietary solution, they collaborated on development of a standardized Internet communication system, as was done in the electric industry.

c. Regulations for posting information on web sites. In Order No. 587–C, the Commission adopted GISB standard 4.3.6 requiring pipelines to post information relating to pipeline tariffs, affiliate transactions, operationally available capacity, system notices, and an Index of Customers for viewing in HTML format on pipeline Internet web sites. The Commission is incorporating by reference standards 4.3.5 and 4.3.16 of GISB's Version 1.2, which will require that pipelines provide for downloads of the posted documents either in hyper-text mark-up language (HTML) or rich-text-format (RTF). Additionally, in § 284.10(c)(3)(ii), the Commission is adopting regulations requiring pipelines to adhere to the following standards with respect to the posted information: the documents must be accessible to the public over the public Internet using commercially available web browsers, without imposition of a password or other access requirement; users must be able to search an entire document online for selected words and users must be able to copy selected portions of the documents; and documents on the Web site should be directly downloadable without the need for users to first view the documents on the web site.

ECT contends more standards are necessary, for example, to establish common methods of doing text searches. It also contends that HTML should not be used for downloads as provided in GISB standard 4.3.16 because the printed version of HTML documents may lose formatting features and because of the difficulty in printing entire HTML documents if the documents are broken into separate linked chapters or pages. It recommends that all downloads be provided solely in RTF format. Altra contends that there should be a common URL or Internet name for all standardized documents. Latitude contends the Commission needs to protect against web sites that are specifically tailored to a particular proprietary Internet browser. SGPC argues pipelines should be able to rely upon the most recent software.

The Commission will adopt the proposed regulations as providing a basic foundation for posting upon which GISB can improve. GISB has established its own ''Look and Feel'' task force to develop a consistent and uniform presentation for information posted on pipeline web sites.

With respect to Latitude's concern, § 284.10(c)(3)(ii)(A) provides that web sites must be viewable using commercially available browsers, which protects against a pipeline making its site accessible to only one browser. In response to SGPC's comment about current software versions, standards 4.3.6 and 4.3.16 require that all information be posted in HTML and downloadable in HTML or RTF format. Therefore, pipelines should not be requiring the use of other software to view information on or download information from web sites. While pipelines should accommodate reasonably current versions of web browsers, they should not be required to accommodate browsers that have been out-of-date for several years. GISB should consider the development of standards reflecting the level of HTML coding that should be supported. At this point, the Commission sees no reason to depart from the industry consensus permitting pipelines to download documents in HTML, as ECT suggests. That, along with other standardization issues, such as the use of a common URL designation for documents, should be examined by GISB as it continues its deliberations.

d. Regulations requiring that pipelines provide a cross-reference table for numeric designations. In many places in the standardized datasets, GISB has used a common code to represent the shipper's name. GISB has chosen to use the numeric designation provided by Dun & Bradstreet (DUNS) as the means of identifying shippers. But there is no requirement in the standards to provide a table cross-referencing the numeric designation with the shipper's name. In § 284.10(c)(3)(iii), the Commission, therefore, is requiring pipelines to provide a table cross-referencing any numeric designation with the applicable name or other information being represented.

No party objects to this regulation. NGC asks the Commission to clarify that the numeric representation is for the EDI datasets, used for computer-to-computer interaction only. It maintains that numeric designations are not useful for information provided on web sites for human to computer interaction. NGSA maintains that a standardized cross-reference table needs to be developed so that shippers can use the format across all pipelines.

The regulation requiring that pipelines provide a cross-reference table when using numeric designations is needed to ensure that the Commission and shippers can identify parties to a transaction. For instance, without a cross-reference table, neither the Commission nor other shippers can identify what shipper is receiving capacity on a capacity release

[75] Comments by NGC, NGSA, ProEnergy, SoCal Gas/SDG&E.

[76] EBBs may be maintained only as back-up systems.

transaction, information which Commission regulations require to be publicly available. When the Commission previously required pipelines to use a common code to identify pipeline transaction points, it similarly required the pipelines to provide a cross-reference table at a cost not to exceed the expenses of shipping and handling.[77]

The GISB standards require the use of numeric representations only for EDI, computer-to-computer communication. The Commission agrees with NGC that numeric designations should not be used for information posted on web sites for computer-to-human interaction. The Commission also agrees with NGSA that GISB either should develop a single, central cross-reference table or else establish standards governing the cross-reference tables provided by the pipelines.

Altra contends that, rather than using DUNS numbers, GISB should develop its own cross-reference table. Altra maintains that Dun & Bradstreet will not agree to permit pipelines to provide a cross-reference table and that, even if it did, the DUNS number is not a precise enough designation, because the number is not distinctly assignable to a particular party.

The Commission will continue to accept the industry consensus to use DUNS numbers. However, if DUNS will not permit the development of a cross-reference table, the industry either needs to develop its own cross-reference table or cease using numeric designations and return to using names.

e. Requirement that information be the same regardless of the format in which it is provided. Under the Commission regulations adopted here, pipeline customers can (or will be able to) obtain information and transact business using a number of formats, EBBs (until implementation of the Internet communication methods), EDI datasets, or interactive web sites. In § 284.10(c)(3)(iv), the Commission is adopting a regulation requiring that the informational content must be the same regardless of the format in which it is provided.

Altra strongly supports this regulation to ensure that all functions achievable on one format can be achieved through the other formats, and no commenter has opposed it. Given the different methods that pipelines can use to provide information, it is crucial that the content be the same regardless of the format. For instance, information about operationally available capacity is available currently on EBBs, pipeline web sites, and EDI downloads. The information obtained using each of these methods needs to be the same.

f. Regulation regarding the retention period for electronic information. In the NOPR, the Commission had proposed to expand the current three-year requirement for retention of electronic EBB data to a five year period for retention of all electronically conducted transactions. The pipelines oppose the extension as being unwarranted, unjustified, and burdensome.[78] ANR/CIG point out that they conduct more than 6,000 nominations and confirmations each day and that, on an industry-wide basis, this would amount to tens of thousands of nominations and confirmations, figures which do not include the requirement to maintain records of other transactions. ANR/CIG suggest adoption of the GISB two-year requirement for maintenance of electronic data.

MGE, NGSA, and ProEnergy support the five year requirement. TransCapacity contends there is no need to retain every electronic transaction record for five years. It suggests the pipelines be required to maintain only summary electronic records, such as the end of day scheduled quantities dataset which summarizes the nomination activity for the day.

After reviewing its need for information, the Commission has determined not to change its current three year retention period for electronic information. The current requirement to retain electronic information in section 284.10(a) applies only to information maintained on EBBs. This requirement, therefore, needs to be updated to encompass all information and transactions conducted electronically regardless of form, such as EDI or other Internet-based communication. In section 284.10(c)(3)(v), the Commission is adopting a regulation requiring that pipelines retain for a period of three years records of all information displayed and transactions conducted electronically and be able to recover and regenerate all such electronic information and documents.[79]

Koch maintains that the data archived under this section should not be maintained on-line, but should be provided on disk or through other electronic means. Section 284.10(c)(3)(v) requires pipelines to make the information available in electronic form for a reasonable fee. Pipelines, therefore, need not maintain the information on line, but may make archived information available on disk or CD ROM.

g. Regulation requiring Internet notice for operational flow orders and other critical notices. In § 284.10(c)(3)(vi), the Commission is adopting a regulation requiring pipelines to provide notice of operational flow orders and other critical notices by posting the notice on their web sites and by notifying the affected customers directly either by Internet E-mail or notification to the customer's URL or Internet address. The Commission will address below the comments on the regulation as well as issues concerning the method of implementing the requirement.

(1) The use of Internet notification. Three commenters oppose the requirement to use Internet notification, contending that notice should be made by telephone or facsimile, at the customer's choice.[80] Their concern is that customers may not be available to check the Internet or read the notice.

The Commission concludes that, on balance, posting on the web site together with Internet E-mail or direct notice to an Internet address effects a reasonable balance between the shippers' need for notice and the pipelines' need to create an efficient automated system for communicating with all of their shippers. By permitting automated notice to all shippers simultaneously, Internet notification speeds up the notification process and removes any potential for disparate treatment between shippers as to the time at which they receive notice.[81] The commenters preferred solution, notification by telephone or fax, is not necessarily any more reliable than Internet notification since telephones or fax machines also may not be monitored and there would be no record that a notice was sent by the pipeline.

Even for after hours notice, Internet postings provide shippers with a

[77] *See* Standards For Electronic Bulletin Boards Required Under Part 284 Of The Commission's Regulations, Order No. 563–A, 59 FR 23624 (May 9, 1994), III FERC Stats. & Regs. Regulations Preambles ¶ 30,994, at 31,044–45 (May 2, 1994).

[78] Comments by ANR/CIG, Columbia Gas/Columbia Gulf, Enron (5 years unwarranted), INGAA, K N Interstate Group, Koch, NGPL (no justification), NGT/MRT.

[79] GISB standard 4.3.4 provides for two year retention of transactional data, but states that this requirement does not otherwise modify statutory, regulatory, or contractual record retention requirements. Because the Commission is continuing its current three year requirement for retention of electronic information, it will not adopt GISB standard 4.3.4.

[80] Comments by Florida Cities (costs too much for shippers to monitor Internet connections on a 24 hour basis), MGE (until Internet is tested, facsimile and telephone should be used), NGSA (mode of notification at shipper's choice).

[81] For example, one pipeline representative at the technical conference stated that even calling in all available personnel, about 24 people, it took them six hours to contact all affected parties using telephonic communication. Transcript of December 13, 1996 technical conference at 37.

significant amount of flexibility. Employees can check for critical notices on the Internet at home. In addition, the requirement for direct notice to E-mail and Internet addresses will enable those shippers who want telephonic or pager notification to receive such notice by purchasing software that automatically triggers telephones or pagers when an Internet message is received.

(2) Implementation after development of standards. ECT, NGC, and NGSA urge that prior to implementation of the Internet notice requirement, standardization of definitions and format is needed to differentiate types of notices so the notification software can properly determine whether to trigger the phone or pager.

The Commission agrees that standards are needed for this notification process to operate efficiently. In particular, a dataset will be needed for those customers relying upon EDI communication with the pipelines. Therefore, the Commission will defer implementation of this requirement until the necessary standards are developed by GISB. According to GISB's 1998 Annual Plan, no schedule has been set for development of standards for OFO notification. However, during the December 12–13, 1996 technical conference, members of the GISB Future Technology Task Force stated that, if needed, such standards could be developed and others pointed out that a similar dataset already exists for general, as opposed to customer specific, notices.[82] Modification of this dataset should not prove particularly difficult and GISB should be able to add this to its agenda for 1998. The Commission will expect GISB and others in the industry to propose such standards by December 31, 1998. Until that time, pipelines should continue to provide notice according to the provisions of their tariffs.

(3) Penalties and other implementation details. NGC, NGSA, and Nicor Gas argue that penalties should not be imposed for E-mail failures or if actual notice is not received. SoCal Gas/SDG&E contend that the pipelines should seek to notify the shipper using an alternative method if the pipeline is notified that the E-Mail was not delivered. On the other hand, INGAA, K N Interstate Group, and NGPL contend that E-mail should be the shippers' responsibility and not the pipelines.

The Commission finds no reason for pipelines to waive penalties except when the pipelines' notification system fails. Shippers are responsible for maintaining a current E-Mail or Internet address, and they should bear responsibility for failures by their chosen Internet provider. Pipelines, however, have little reason to leave shippers without notice in critical operational situations, since that could lead to adverse consequences for the system. Thus, the Commission fully expects the pipelines to try alternative methods in the event they have specific notice that electronic notice has not been received.

INGAA maintains the pipelines should be responsible for notifying only one E-Mail address. The Commission will not impose such an absolute requirement. Given the ease of automatic notification, shippers should be able to choose a reasonable number of addresses for notification, for example, if they want a different notification address for after-business-hours notification.

Columbia Gas/Columbia Gulf argue that pipelines should be able to conform their current procedures to the regulation without concern about shippers' arguments that a change constitutes a degradation of service. Florida Cities, however, maintains that the new regulation should not overturn a settlement on this issue on Florida Gas.

As a general matter, pipelines should be able to revise their notification procedures to conform to the regulation. However, while pipelines must comply with the regulation, they may also agree with their shippers to provide additional methods of notification. If a pipeline chooses to make a filing under section 4 of Natural Gas Act to eliminate or revise their current procedures, the Commission will be able to consider specific circumstances, such as settlements or rate issues, bearing upon the proposed change.[83]

C. Issues on Which the Commission Determined Not to Adopt Requested Regulations

In the NOPR, the Commission did not propose regulations as requested by some industry members in other areas in which GISB could not reach consensus—title transfer tracking, cross-contract ranking, multi-tiered allocations, fuel reimbursement, and penalty determinations. The Commission, however, did provide the industry with guidance as to its general policies in these areas to help facilitate GISB's consideration of standards in these areas.

1. Title Transfer Tracking

Title transfer tracking refers to the accounting for transfers of title to gas at a nomination point when no transportation is involved. Under Commission policy, shippers must have title to gas in order to transport the gas on a pipeline. Pipelines, therefore, have always had to perform some title transfer tracking to ensure that shippers have title to gas.[84]

However, with unbundling and the development of a more fluid gas market, gas purchase and sale transactions at nomination points are increasing dramatically. Thus, at an interconnect point, there may be multiple transfers of title before the gas is nominated on the downstream pipeline. In order for pipelines to confirm the gas nominated on the upstream and downstream pipelines, they need to know which upstream shipper(s) are delivering the gas to the shipper on the downstream pipeline.

GISB had begun the process of trying to create standards for title transfer tracking, but the industry segments differed over whether the pipelines should be required to establish a computerized title transfer tracking service. In the NOPR, the Commission stated that its policy was not to require pipelines to establish a service to account for the purchase and sale of gas between shippers independent of transportation. The Commission found it should be the shipper's responsibility to furnish sufficient information to the pipeline to establish its title to the gas and its right to nominate on the pipeline. The Commission noted that third-parties are now providing title transfer tracking services and concluded that pipelines must be willing to accept title transfer information from these third parties. The Commission requested GISB to submit standards, by March 31, 1998, governing pipeline obligations to accept confirmations by third-party title transfer trackers.

The Commission will address below comments on the Commission's determination not to propose a regulation requiring pipelines to provide title transfer tracking service and on several issues relating to the pipelines' processing of information

[82] Transcript of December 13, technical conference, at 32–31.

[83] A filing to change current procedures cannot be made as part of a filing to comply with the requirements of this rule. Any filing to change current procedures must be made as a separate section 4 filing.

[84] For example, if shipper A on an upstream pipeline transports gas to an interconnect with a downstream pipeline and transfers the gas to shipper B on the downstream pipeline, the pipelines would have to match those transactions as part of the process of confirming the nominations.

from third-party title transfer tracking service providers.

a. Pipeline obligations to provide title transfer tracking services. The pipelines and LDCs generally agree with the Commission's decision not to require pipelines to provide a title transfer tracking service.[85] NGC, NGSA, and ProEnergy oppose the decision. They contend that due to the nature of title transfer tracking service, it can be performed by only one party and that the pipelines are the best positioned to perform the service. They contend that third-parties have not emerged to provide this service.

NGC contends that having multiple parties provide title transfer tracking is inefficient, because the pipeline would still have to track title transfers running between the trackers. It suggests that the Commission's approach may open the door to a plethora of title transfer trackers each of which the pipeline would have to support. NGSA, while recognizing that title transfer tracking is not an integral requirement of natural gas transportation, contends the pipelines are the only parties capable of providing the service. It states GISB is considering an option under which pipelines would provide title transfer tracking services and asks the Commission to defer a final ruling on this issue until GISB has finished its considerations.

Altra agrees that only one party can efficiently perform the service, but it argues that, rather than having the pipelines perform the service, each pipeline should be required to choose the third-party provider for its system. TransCapacity, on the other hand, contends that monopoly provision of title transfer tracking service is not necessary. TransCapacity argues that pipelines can implement several provisions in their tariffs to ensure that they will deal with only *bona fide* title transfer tracking services.

GISB should not necessarily short-circuit on-going discussions over options for conducting title transfer tracking. If GISB reaches consensus that pipelines should be required to provide this service, the Commission will give that agreement great weight in later considerations of the issue.

Absent a consensus position from GISB, however, the Commission finds insufficient justification for proposing a regulation requiring pipelines to perform title transfer tracking services. It should be the shipper's responsibility to furnish the transporter with sufficient information to establish its title to gas and its right to nominate that gas on the pipeline. NGSA itself concedes that title transfer tracking is not an integral part of providing transportation of natural gas. While pipelines may wish to offer title transfer tracking as an added service option to their shippers, the Commission is not convinced at this juncture that the pipelines are the only possible or the best provider of the service and, therefore, should be required to provide it.

Rather than mandating that pipelines be the sole provider of title transfer tracking service, the Commission is opening the market to the force of competition from third-party service providers. The competition between providers, including those pipelines that wish to compete, should provide the proper incentive for firms to provide the level of title transfer tracking services that customers desire and for which they are willing to pay.[86]

It is incorrect to assume, as do the commenters, that the absence of third-party title transfer tracking services today means such services will not develop in the future. Hub and storage operators currently provide title transfer tracking services, and the pipelines accept their confirmations.[87] While independent third party title transfer trackers do not exist currently, that is not surprising since, as TransCapacity notes, until the NOPR, pipelines did not recognize an obligation to support confirmations from independent third-party title transfer tracking services. The provision of title transfer tracking services by storage and hub operators suggests that a market for this service exists and that parties other than pipelines can provide the service. Once GISB develops the standards and pipelines are required to support third-party title transfer trackers, firms will have incentives to enter this market, particularly if the demand for the service is as great as the commenters contend.

It also is not clear that pipelines must provide this service because a monopoly provider of title transfer tracking services is needed at each point or on each pipeline. The competitive market may develop naturally so that only one or a few title transfer tracking service exists at each point. The pipelines can propose tariff provisions, if it becomes necessary, to protect against NGC's concern that every shipper will designate itself as a title transfer tracking service provider.[88] Moreover, even if multiple title transfer trackers do prove to be inefficient, there are competitive solutions which would not require the Commission to mandate that pipelines provide the service. Shippers, either alone or together with pipelines, could solicit competitive bids for title transfer tracking services on each pipeline and choose the firm offering the best bid.[89]

In the NOPR, the Commission requested that GISB and others in the industry submit, by March 31, 1998, business practices and electronic communication standards for dealing with title transfer tracking. A consensus of the industry supports the GISB 1998 Annual Plan which provides for the development of such standards by the fourth quarter of 1998, and the Commission will therefore expect the submission of standards by December 31, 1998.

b. Timing of pipeline processing of title transfer tracking information. In the NOPR, the Commission stated that pipelines should accept title transfer tracking information as part of its process for confirming nominations. The pipelines point out that the GISB task force has not completed work on title transfer tracking standards, and the pipelines are not yet convinced title transfer tracking can be accomplished through the confirmation process.[90] Their principal concern is that, if title transfer tracking can be performed by any firm, multiple title transfer tracking services may develop and that processing all those transactions during the confirmation process would be burdensome. Most pipelines suggest title transfer tracking should be part of the nomination process.[91]

On the other hand, Columbia Gas/Columbia Gulf and TransCapacity maintain that title transfer tracking should be a part of the confirmation, rather than the nomination process. They also agree that title transfer tracking should take place earlier in the confirmation cycle than the 3:30 p.m. confirmation from point operators.

While GISB should seek to work out the details for conducting title transfer

[85] Comments by El Paso, Enron, INGAA, Koch, NGPL, Nicor Gas, Peoples/North Shore, SoCal Gas/SDG&E, TransCapacity.

[86] When pipelines are the sole provider of title transfer tracking, disputes have arisen as to the level of the service which should be provided. *See* El Paso Natural Gas Company, 81 FERC ¶ 61,174 (1997) (complaints about the extent of title transfer activity the pipeline should be required to process).

[87] *See* Moss Bluff Hub Partners, L.P., 80 FERC ¶ 61,181, at 61,475 (1997).

[88] For instance, TransCapacity notes pipelines could require that title transfer tracking services provide non-discriminatory service to anyone requesting the service and that they adhere to the GISB standards.

[89] Pipelines could even propose tariff provisions setting out the requirements for submitting bids to provide the service.

[90] Comments by Columbia Gas/Columbia Gulf, Enron, INGAA, NGPL, Williston Basin.

[91] Comments by Enron, NGPL.

tracking, the Commission does not want the timing of title transfer tracking processing to inhibit standards development. To forestall possible later disputes over this issue, the Commission generally agrees with Columbia Gas/Columbia Gulf and TransCapacity that title transfer tracking properly should be part of the confirmation process. First, the purpose of title transfer tracking is to confirm that gas nominated by a shipper will be at the nominated point. Physical point operators provide title transfer tracking services and their information generally is processed during the confirmation process. To ensure non-discriminatory treatment, the same rules should apply to independent third-party operators. Second, placing title transfer tracking in the nomination cycle could reduce market liquidity and comparability between physical and title transfer transactions. For instance, a shipper may arrange for physical flows up until the 11:30 a.m. nomination deadline. But those who wish to arrange for paper transactions would have to make earlier arrangements in order to permit the title transfer tracker sufficient time to process the paper transactions in time to meet the 11:30 a.m. deadline. Third, there is no reason now to suspect that multiple independent title transfer tracking services will arise or that the pipelines will be unable to develop reasonable measures to ensure that title transfer tracking does not unduly burden the confirmation process.

The compromise solution proposed by Columbia Gas/Columbia Gulf and TransCapacity would seem to satisfy the need to include title transfer tracking as part of the confirmation process while at the same time providing pipelines with time to process the title transfer tracking information and coordinate that information with the physical point operators. GISB should further explore this potential solution in its deliberations.

c. Other issues. In the NOPR, the Commission stated that pipelines could, if they chose, provide a title transfer tracking service and charge a fee for the service. TransCapacity requests clarification that such fees cannot be charged for processing title transfer tracking information from third-party service providers. The Commission agrees with TransCapacity. Pipelines may not charge a fee for processing nomination or confirmation information from point operators, other pipelines, or third-party title transfer tracking service providers. Pipelines may charge a separate fee only for tracking title transfers between parties that are independent of transportation.

NGC maintains that pipelines providing a title transfer tracking service should not be able to charge a separate fee, but should include the costs in their reservation charges. The Commission's policy has been to permit pipelines to charge a separate fee for title transfer tracking.[92] Charging a separate fee ensures that those using the service are not subsidized by the firm shippers paying reservation charges and can help to ensure that shippers will use the service only to the point at which the shippers' value from the service equals or exceeds the price charged.

ECT contends that, if pipelines do provide a title transfer tracking service, they should be able to require that all shippers submit their title transfer tracking information to the pipeline. Shippers should not have to use a pipeline's title transfer tracking service. If title transfer tracking is to develop as a competitive service, shippers should be able to choose whether to use the pipelines' title transfer tracking service or one provided by a third-party. Pipelines providing their own title transfer tracking service should enjoy no special advantages over third-party providers and must process all title transfer tracking information in a comparable manner.

Koch maintains that pipelines should not bear liability for title transfer tracking information provided by third-parties. The Commission finds no reason to distinguish between pipeline responsibilities to process title transfer tracking information and their responsibilities and liabilities with respect to processing a confirmation from a point operator or other connecting party.

K N Interstate Group maintains that pipelines should be able to require agency agreements with title transfer tracking service providers and shippers. As stated above, pipelines should be able to impose reasonable tariff requirements for dealing with third-party title transfer tracking services. GISB also can consider standards delineating the type of agency or other business agreements that are needed to facilitate the provision of title transfer tracking service.

2. Cross-contract ranking. Gas package ranking refers to the designation by a shipper of the amount of gas that will be allocated to particular markets or customers in the event the shipper's full nomination is not accepted. The standards adopted by the Commission already require pipelines to honor shipper ''rankings when making reductions during the scheduling process when this does not conflict with tariff-based rules.''[93] For example, if a shipper nominates 1,000 MMBtus under one contract for several markets, it can specify how to divide gas between markets if the full 1,000 MMBtus is not confirmed.

Shippers had complained that, under this standard, pipelines were not permitting them to rank gas supplies across contracts. In the NOPR, the Commission concluded that pipelines should permit cross-contract ranking so long as it does not affect the operational integrity of the pipeline's system. The Commission asked GISB and the industry to submit any additional standards necessary to facilitate cross-contract ranking by March 31, 1998.

Shippers and NGPL support cross-contract ranking.[94] TransCapacity, while supporting the requirement, suggests that implementation may require some pipelines that handle nominations on a contract basis to change systems so that they become point based. It suggests that either the Commission provide further guidance on this point or allow GISB to try to develop a way for pipelines to implement the requirement without changing their systems. Most pipelines, with the exception of NGPL, oppose cross-contract ranking, contending that it adds too much complexity to the nominations process.[95]

The Commission's policy is to provide shippers with the tools to enable them most effectively to manage their capacity. Shippers today may be shipping under a variety of contracts, including their own firm and interruptible contracts as well as capacity release contracts which have their own specific terms and conditions. Some pipelines permit cross-contract ranking or have structured their pooling to permit such ranking. The ability to allocate gas among these contracts gives shippers additional flexibility. As with title transfer tracking, a consensus of the industry supports the GISB 1998

[92] Trunkline Gas Company, 75 FERC ¶ 61,003 (1996) (approving a separate flat charge for title tracking service). *But see* Williams Natural Gas Company, 79 FERC ¶ 61,096 (1997) (permitting a separate fee, but rejecting a volumetric fee unrelated to costs of providing the service).

[93] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.23.

[94] Comments by Altra, MGE, NGC, NGSA, Nicor Gas, PG&E, Piedmont, ProEnergy, SoCal Gas/SDG&E, TransCapacity.

[95] Comments by K N Interstate Group (adds too much complexity on web based systems), NGT/MRT (make pipeline allocations unmanageable), SGPC (affects transportation priority rules and adds complexity), Viking (requires computer system upgrades and dataset revisions), Williston Basin (cause too many problems), WGP (should only be permitted between contracts or family of contracts of like priority and rate).

Annual Plan in which cross-contract ranking standards will be developed by the fourth quarter of 1998, and the Commission, therefore, will expect the submission of such standards by GISB and others by December 31, 1998.

Several shippers and pipelines raise concerns about one aspect of the NOPR dealing with whether shipper rankings across contracts should apply when transportation constraints require pipelines to restrict transportation based on tariff-based service priorities.[96] For example, if a shipper has nominated 100 units of gas under an interruptible contract and a 100 units under a firm contract, and the pipeline can schedule only the 100 units of firm transportation, which has a higher transportation priority, should the shipper be able to allocate the 100 units to the interruptible contract.[97]

Those opposing cross-contract ranking in this situation contend that permitting ranking in this case goes beyond what shippers were seeking in GISB and would improperly override scheduling priorities in pipeline tariffs. While the commenters recognize that permitting ranking would not completely obviate contractual priorities, they maintain it fudges the distinctions and priorities between contract types. NGC, one of the original and strongest proponents of cross-contract ranking, argues that ranking should not override transportation priorities. It argues that permitting such ranking could lead to gaming in which a shipper gains priority to a constrained point under a firm contract and then changes to an interruptible contract, thereby freeing up its firm capacity to gain access to another point, perhaps using an intra-day nomination. El Paso contends that permitting ranking to take precedence over scheduling allocations would cause confusion over which service should be billed as well as create confusion and problems during the confirmation process. On the other side, Altra, although its comment is not altogether clear, appears to contend that even when a cut occurs on the market side of the equation, shippers should be able to rank all contracts flowing into the market regardless of the contractual priority of the contract.

GISB should strive to develop mechanisms that provide shippers with the maximum flexibility to rank contracts for both supply and market cuts. GISB, however, should strive to develop a method for handling ranking that will not compromise the transportation priorities associated with firm and interruptible contracts.

3. Multi-Tiered Allocations

A pre-determined allocation is a set of instructions by owners of gas as to how gas should be allocated amongst them when the actual volumes do not match the scheduled volumes. The standards currently require pipelines to accept one tier of allocations from the upstream or downstream custody transfer party.[98] Some shippers requested the Commission to issue a regulation requiring pipelines to support multi-tiered allocations from all owners of gas, including the wellhead operator and each producer owner.

In the NOPR, the Commission found, as it did for title transfer tracking, that there was no basis for requiring pipelines to maintain the accounting for allocations occurring at the wellhead or at interconnections not affecting the pipeline. Since GISB had recognized that tracking multi-tiered allocations was another aspect of title transfer tracking, the Commission suggested that GISB work on standards to permit third-parties to track multi-tiered allocations.

Pipelines generally support the Commission's determination.[99] Columbia Gas/Columbia Gulf agree that pipelines should not be required to provide multi-tiered allocations, but they point out the current standards are not usable for pipelines or others who may wish to track multi-tiered allocations. They urge the Commission to ensure that GISB follow through and develop datasets appropriate for tracking multi-tiered allocations.

NGC, NGSA, and ProEnergy contend multi-tiered allocations are needed for producers to accurately account for their transactions. Pipelines should be required to perform the service, they assert, because pipelines have traditionally been the clearinghouse for all information related to gas transactions and are in a unique position to track multi-tiered allocations. TransCapacity argues that GISB currently is working on multi-tiered allocations and may have devised a solution in which all allocations can be made through a single or a series of levels.

The current regulations give those parties connecting with a pipeline the right to determine how gas is to be allocated at the interconnection with the pipeline system. The Commission fails to see why this right needs to be extended so that pipelines become responsible for maintaining the accounting records for allocations occurring at the wellhead or at interconnections not affecting the pipeline. The tracking of multi-tiered allocations should be no different than the tracking of title transfers, and third-parties tracking title transfers should also be able to account for allocations back to the wellhead. GISB's Annual Plan recognizes the interrelation between standards for title transfer tracking and multi-tiered allocations and targets the development of standards for both by the fourth quarter of 1998.

NGPL requests clarification about whether pipelines can charge a separate fee for tracking multi-tiered allocations. Pipelines choosing to provide a service tracking multi-tiered allocations may charge a separate fee, as they are permitted to do for title transfer tracking. Pipelines, however, cannot charge a separate fee for processing the single tier of allocations required by the current regulations.

4. Paper Pooling

Pooling refers to the aggregation of gas from multiple physical or logical points to a single physical or logical point.[100] The current standards provide shippers with the ability to both deliver gas from receipt points into at least one pool and receive quantities at a delivery point from at least one pool.[101] Some pipelines provide paper pools while others use physical pools in which shippers have to pay transportation charges to move gas into the pools. GISB could not reach a consensus on whether paper pooling should be mandated, and shippers asked the Commission for a regulation requiring that all pipelines establish paper pools into which shippers could deliver gas without any additional transportation charge. In the NOPR, the Commission declined to require pipelines to provide paper pooling, finding that those advocating paper pools had not provided a sufficient rationale for requiring the use of paper pools in all situations.

NGSA and ProEnergy maintain the Commission should require pipelines to provide paper pooling. They assert that pooling is a critical aspect of a competitive marketplace, because the

[96] Comments by ECT, El Paso, Enron, NGPL, NGC, TransCapacity.

[97] Even if the shipper in the example allocated the 100 units to the interruptible contract, it still could not receive more than the 100 units represented by its firm capacity contract. If the shipper had nominated no firm service, it would be unable to allocate any gas to the interruptible contract.

[98] 18 CFR 284.10(b)(1)(ii) (1997), Flowing Gas Related Standards 2.3.19.

[99] Comments by Columbia Gas/Columbia Gulf, K N Interstate Group, NGPl, Williston Basin.

[100] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.2.3.

[101] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.17 and 1.3.18.

aggregation of gas volumes eliminates the need to link each gas volume to a specific source and destination. They contend that no transportation charge should be charged since no transportation is provided.

The Commission agrees that pooling is an important aspect of the marketplace and its regulations require pipelines to offer pooling. The Commission, however, does not agree that for pooling to operate efficiently each pipeline must offer paper pooling in which those delivering gas into the pool are assessed no transportation charges. Those requesting mandatory paper pooling have not demonstrated why transportation charges must be assessed only on the outbound (out of the pool) transportation component. When a pool exists in a rate zone, a charge for transportation must be assessed either for gas coming into the zone or for gas leaving the zone. In appropriate circumstances, the Commission has recognized that pipelines may charge for transportation into pools.[102]

NGSA and NGC further contend that even if the Commission does not mandate paper pooling, it should enact into regulation its current policy that transportation into a pool is afforded the same transportation priority as the transportation out of the pool. This policy, however, is not sufficiently generic to be established through regulation. In the circumstances of some cases, for instance, the Commission has found that capacity should be allocated based on the priority of the transportation into the pool, rather than the transportation out of the pool.[103]

5. Reimbursement for Compressor Fuel

When shippers nominate gas on pipelines, they need to reimburse the pipelines for the gas needed to run compressors. The typical form of reimbursement is in-kind fuel reimbursement, where the shipper includes additional gas to cover the needs for compressor fuel. Typically, pipelines include the applicable percentages for fuel reimbursement in their tariffs. The Commission has adopted GISB standards that simplify the process of in-kind fuel reimbursement.[104] Some pipelines also have established tariff provisions under which the pipeline provides the fuel and receives reimbursement from the shipper for the cost, usually through a fuel cashout at an indexed price.

In the NOPR, the Commission found no need to adopt additional standards regarding in-kind or alternative fuel reimbursement mechanisms. The Commission, however, did find that pipelines should permit shippers, which do not want to calculate their own fuel charges, to contract with third-parties to provide the required fuel.

a. In-kind fuel reimbursement. Several commenters suggest that the existing in-kind fuel reimbursement standards should be strengthened. ECT maintains that the Commission often does not act on tariff filings to revise fuel changes until the end of the month, which does not provide sufficient time for shippers to reprogram their computers to accommodate the change. ECT recognizes section 4 of the Natural Gas Act (NGA) provides for 30-day notice prior to implementation of proposed changes, but it, nevertheless, asks for a requirement that fuel rates be made and accepted no later than the close of NYMEX trading, three days before the end of the month. NGSA requests the adoption of a regulation requiring fuel reimbursement to be calculated prospectively. ProEnergy maintains that monthly fuel rate changes do not provide sufficient predictability for parties to construct competitive gas transactions. It argues that to improve the certainty of the process, fuel changes should be made only once a year, with a mechanism to true-up actual with projected fuel use.

The existing fuel standards represent a consensus agreement of the industry, and the Commission does not find sufficient justification for imposing the disputed standards suggested by the shippers. Given the other risks that go into gas transactions, the change in cost represented by a fuel change is not such a significant component of the overall deal that it should dramatically affect shipper planning. Pipelines may need to file for fuel rate changes under section 4 of the NGA more frequently than the once a year recommended by the commenters. For example, a yearly true-up would not deal with a continued undercollection of fuel in individual months, which might require the pipeline to purchase fuel, rather than relying on in-kind reimbursement. The Commission also declines to restrict pipeline tariff filings for changes in fuel rates so that the effective date is three days prior to the end of the month, as ECT suggests. Even in those cases where the filing happens to put the Commission's order on the last day of the month, the shippers still have thirty days notice that the fuel rates may change and can have their computer changes ready to implement if the Commission approves the change.

b. *Fuel nominations from agents.* Most of the comments address the Commission's policy that pipelines should accept fuel nominations from shippers' agents. The pipelines maintain the requirement is too burdensome, because it introduces a second nomination that must be coordinated with the shipper's nomination, requires changes in fuel nominations with each intra-day nomination change, as well as creates other complexities such as establishing priorities for fuel nominations and determining which gas should be first through the meter.[105] The pipelines contend shippers already have sufficient flexibility for supplying fuel, since they can nominate fuel gas from a pool and can use a marketer or agent to provide all of their gas requirements. Nicor Gas agrees that permitting separate fuel nominations would create unnecessary burdens.

Several shippers,[106] and Tennessee Pipelines, support giving shippers the ability to buy fuel from a third-party, but some of the commenters raise issues that, they assert, should be considered by GISB in devising standards covering fuel nominations. PG&E contends the Commission should not require pipelines to support third-party fuel nominations now, but should defer decision until GISB works on appropriate standards. TransCapacity outlines a series of timing and other issues that need to be considered, such as what fuel gas to cut in the case of an unscheduled or bumped nomination, the need for standards regarding the simultaneity of fuel receipts to transportation, and the timing of fuel and related transportation nominations.

Throughout this proceeding, shippers have sought standards that would obviate the need, and the risk, of having to calculate fuel reimbursement across multiple pipelines. If a shipper wants 100 MMBtus delivered, it may want the flexibility to arrange for 100 MMBtus to

[102] *See* Northwest Pipeline Company, 80 FERC ¶ 61,361, at 62,240–41 (1997); Panhandle Eastern Pipeline Company, 78 FERC ¶ 61,283, at 62,215 (1997).

[103] *See* Northwest Pipeline Company, 79 FERC ¶ 61,259, at 62,119–20 (1997) (where shipper pays for transportation into a pool, the priority does not depend on the priority of the take-away contract).

[104] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.16, 13.3.28 through 1.3.30. The standards provide, in part, that pipelines must adhere to a standard method for calculating fuel, make fuel reimbursement percentages effective only at the beginning of the month, not reject nominations due to fuel differences of less than 5 Dth, and provide a fuel matrix for receipt and delivery point combinations.

[105] Comments by CNG, Enron, INGAA, K N Interstate Group, Koch, NGPL, NGT/MRT, Southern, Williston Basin, WGP.

[106] Comments by NGC, NGSA, PG&E, SoCal Gas/SDG&E, TransCapacity.

be injected into the system without having to worry about accurately calculating how much extra gas is needed to meet multiple pipeline fuel percentages. While the Commission is not requiring pipelines to provide an alternative to in-kind fuel reimbursement, the pipelines need to provide shippers with the option of contracting with a third-party who would be responsible for calculating and injecting the required amount of fuel. The option, suggested by the pipelines, of shippers using a marketer to purchase all their gas supplies is not a substitute for being able to use a marketer or third-party to provide fuel only. Shippers may want to use their own contracts to buy and transport their own gas, but use a third-party to avoid the difficulties of attempting to calculate accurately the extra fuel reimbursement across numerous pipelines.

Indeed, some pipelines have recognized shippers' demand for an alternative to in-kind fuel reimbursement and have included tariff provisions allowing shippers to buy their fuel from the pipeline.[107] To create a more competitive market, the Commission concludes that all pipelines should provide shippers the option of nominating their fuel requirements from an agent separately from their nomination of the gas used for transportation.

The Commission, however, will not require pipelines to honor fuel nominations from third-parties until GISB has an opportunity to consider the development of standards. The issues raised by third-party fuel reimbursement do not seem so intractable that a reasonable set of standards cannot be developed to cover this transaction. GISB has not established a schedule for development of such standards. But these issues seem related to the other issues relating to third-parties, such as title transfer tracking and multi-tiered allocations, and adding fuel standards to GISB's schedule for the fourth quarter of 1998 should not appreciably complicate the issues being considered by GISB. The Commission will, therefore, expect that proposed standards dealing with third-party fuel reimbursement will be filed on December 31, 1998, along with standards in these other areas.

6. Penalty Determinations

In the NOPR, the Commission declined to require pipelines to adopt a disputed standard that would have required pipelines to determine penalties on the basis of operational or actual data, whichever is less. NGSA contends the Commission should adopt a standard basing penalties on operational data. TransCapacity supports the Commission's current policy of making individual determinations on this issue. For example, it asserts that basing penalties on actual data is appropriate when pipelines have small wells for which installing telemetering is prohibitively expensive.

Going beyond the issue in dispute at GISB, NGC asks the Commission to impose a requirement that pipelines cash out imbalances at the price in effect in the month the imbalance occurred, rather than in the month when a prior period adjustment is made.

The Commission finds no compelling justification for requiring uniformity at this time on the limited issue of whether to base penalties on operational or actual data. While the Commission's general policy is that penalty categories should be determined based on the data provided by the pipeline to the shipper,[108] there may be instances, as TransCapacity points out, in which this policy should not be applied. Moreover, the issues raised by NGSA and NGC are only small pieces of the penalty puzzle. Rather than attempting to resolve these issues on a piecemeal basis, the Commission, and the industry, needs to consider penalty issues on a more comprehensive basis.

D. Market-Based Rates for Pipeline Services

In several places in this preamble, the Commission has indicated that pipelines may provide certain services—computerized imbalance trading, title transfer tracking, and tracking of multi-tiered allocations—and charge a separate fee for such services. WGP and Koch contend that pipelines should be able to charge market-based rates for such services, because they will be competing with third-party firms providing comparable services. Under the Commission's Alternative Rate Design Policy Statement,[109] pipelines providing such services may file a request for a Declaratory Order for market-based rates if they can demonstrate that effective competition for the service exists.

E. Implementation Schedule and Schedule for Submission of Additional Standards

To summarize, pipelines must comply with the following regulations August 1, 1998: (1) adoption of Version 1.2 of the GISB standards in section 284.10(b);[110] and (2) compliance with the requirements in § 284.10(c)(3)(ii) through (v) setting standards for posting information on pipeline web sites, requiring that content be the same regardless of the method of communication, requiring a cross-reference table for numeric designations, and establishing a retention policy for electronic information.

Implementation of the regulations regarding intra-day nominations, § 284.10(c)(1)(i), operational balancing agreements, § 284.10(c)(2)(i), trading of imbalances, § 284.10(c)(2)(ii), and Internet notification of critical notices, § 284.10(c)(3)(vi), will take place on a date to be set in the order adopting standards relating to these activities.

Pipelines must implement the regulation requiring the use of the Internet for conducting transactions, § 284.10(c)(3)(i), by June 1, 1999.

The Commission expects the submission of proposed standards in the following areas by the dates specified:

June 30, 1998
- Operational Balancing Agreements and Imbalance Trading

December 31, 1998
- Title Transfer Tracking, Cross-Contract Ranking, Fuel Reimbursement, and Critical Notice Notification

III. Information Collection Statement

OMB's regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. Respondents subject to

[107] *See* Koch Gateway Pipeline Company, 73 FERC ¶ 61,375 (1995), *reh'g denied*, 74 FERC ¶ 61,212 (1996), *reh'g denied*, 75 FERC ¶ 61,096 (1996), *aff'd*, 108 F.2d 397 (D.C. Cir. 1997); Natural Gas Pipeline Company of America, 64 FERC ¶ 61,295, at 63,072 (1993).

[108] See Algonquin Gas Transmission Company, 63 FERC ¶ 61,188, at 62,374 (1993); Texas Eastern Transmission Corporation, 63 FERC ¶ 61,100, at 61,486 (1993); Transcontinental Gas Pipe Line Corporation, 55 FERC ¶ 61,446, at 62,369 (1991). Under the Commission's policy, a shipper would be responsible only for the penalty category it reasonably could have anticipated based on the information provided by the pipeline. The cash out price, however, should be based on the actual imbalance incurred.

[109] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines (Request for Comments), 74 FERC 61,076 (1996).

[110] In filing to implement Version 1.2, pipelines need to change all references to GISB standards in their tariffs to Version 1.2. The version number applies to all standards contained in GISB's Version 1.2 Standards Manuals, including standards that have not changed from prior versions.

the filing requirements of this Rule shall not be penalized for failing to respond to these collections of information unless the collections of information display valid OMB control numbers.

The collections of information related to the subject Final Rule fall under the existing reporting requirements of FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal) (OMB Control No. 1902–0154) and FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines (OMB Control No. 1902–0174). The following estimates of reporting burden are related only to this Rule and include the costs for pipelines to comply with Version 1.2 of the GISB standards and the Commission's regulations regarding intra-day nominations, the use of OBAs at pipeline interconnects, the trading of imbalances, and communications using the Internet. The burden estimates are primarily related to start-up and will not be on-going costs except for the recordkeeping requirement.

Public Reporting Burden: (Estimated Annual Burden).

Affected data collection	Number of respondents	Total responses (annual)	Estimated hours per response	Estimated total hours (annual)
FERC–545	93	93	58	5,394
FERC–549C	93	93	4,483	416,919
Total	93	93	4,541	422,313

The total annual hours for collection (including recordkeeping) is estimated to be 422,313. The average annualized cost for all 93 respondents is projected to be the following:

Affected data collection	Annualized capital/startup costs	Annualized costs (operations and maintenance)	Total annualized costs
FERC–545	$284,303	$0	$284,303
FERC–549C	21,641,327	333,321	21,974,648
Total	21,925,630	333,321	22,258,951

Koch questions the Commission's estimate of about $240,000 per respondent, contending, in particular, that it underestimates the costs of complying with the Internet requirements. Although Koch recognizes the difficulty of estimating costs for services not yet offered, it anticipates approximately $2 million in start-up costs for Internet compliance alone.

Koch is the only commenter raising questions about the Commission's cost estimates. From the context of Koch's comment, it appears to be questioning the costs of establishing an interactive web site. But, as discussed earlier, this rule does not require pipelines to establish an interactive web site; they are required only to conduct Internet communications using EDI files, which Koch itself claims are less expensive. Moreover, from the Commission's experience, the costs for pipelines to create standardized interactive web sites should not be inordinate. The Commission strongly encourages pipelines to jointly develop a standardized interactive web site, which should significantly reduce the costs for developing such systems. As NGC points out, electric utilities saved substantial sums by jointly developing their standardized Internet communication system. In any event, even if Koch's estimate were accurate, the cost would be a one-time expenditure and the benefits to the entire industry from creating a standardized communication system would be worth the cost.

The GISB standards and Commission regulations adopted in this Rule are necessary to further the process begun in Order No. 587 of creating a more efficient and integrated pipeline grid by standardizing the business practices and electronic communications of interstate pipelines. Requiring interstate pipelines to comply with these standards and regulations will reduce the variations in pipeline business and communication practices and will permit pipelines and their customers to more efficiently obtain information from and transact business across multiple pipelines.

The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in this Final Rule will be reported directly to the industry users and later be subject to audit by the Commission. This information also will be retained for a three year period. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, 202–208–1415] or the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission, 202–395–3087].

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[111] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[112] The actions taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that

[111] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[112] 18 CFR 380.4.

requires no construction of facilities.[113] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[114] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted in this rule impose requirements only on interstate pipelines, which are not small businesses, and these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. No comments were submitted to the Commission alleging any significant economic effect on small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VI. Effective Date

These regulations will become effective May 26, 1998. The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements; Incorporation by reference.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In section 284.10, paragraph (a)(6) is added, paragraph (b)(1) is revised, and paragraph (c) is added to read as follows:

§ 284.10 Standards for pipeline business operations and communications.

(a) * * *

(6) A pipeline's obligation to provide information pursuant to this paragraph will terminate when all relevant information is provided pursuant to paragraph (c)(3)(i) of this section.

(b) *Incorporation by reference of GISB standards.* (1) An interstate pipeline that transports gas under subparts B or G of this part must comply with the following business practice and electronic communication standards promulgated by the Gas Industry Standards Board, which are incorporated herein by reference:

(i) Nominations Related Standards (Version 1.2, July 31, 1997), with the exception of Standard 1.3.32;

(ii) Flowing Gas Related Standards (Version 1.2, July 31, 1997), with the exception of Standards 2.3.29 and 2.3.30;

(iii) Invoicing Related Standards (Version 1.2, July 31, 1997);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.2, July 31, 1997), with the exception of 4.3.4; and

(v) Capacity Release Related Standards (Version 1.2, July 31, 1997).

* * * * *

(c) *Business practices and electronic communication requirements.* An interstate pipeline that transports gas under subparts B or G of this part must comply with the following requirements. The regulations in this paragraph adopt the abbreviations and definitions contained in the Gas Industry Standards Board standards incorporated by reference in paragraph (b)(1) of this section.

(1) Nominations.

(i) Intra-day nominations.

(A) A pipeline must give scheduling priority to an intra-day nomination submitted by a firm shipper over nominated and scheduled volumes for interruptible shippers. When an interruptible shipper's scheduled volumes are to be reduced as a result of an intra-day nomination by a firm shipper, the interruptible shipper must be provided with advance notice of such reduction and must be notified whether penalties will apply on the day its volumes are reduced.

(B) An intra-day nomination submitted on the day prior to gas flow will take effect at the start of the gas day at 9 a.m. CCT.

(2) Flowing gas.

(i) Operational balancing agreements. A pipeline must enter into Operational Balancing Agreements at all points of interconnection between its system and the system of another interstate or intrastate pipeline.

(ii) Netting and trading of imbalances. A pipeline must establish provisions permitting shippers and their agents to offset imbalances accruing on different contracts held by the shipper with the pipeline and to trade imbalances with other shippers where such imbalances have similar operational impact on the pipeline's system.

(3) Communication protocols.

(i)(A) All electronic information provided and electronic transactions conducted by a pipeline must be provided on the public Internet. A pipeline must provide, upon request, private network connections using internet tools, internet directory services, and internet communication protocols and must provide these networks with non-discriminatory access to all electronic information. A pipeline may charge a reasonable fee to recover the costs of providing such an interconnection.

(B) A pipeline must implement this requirement no later than June 1, 1999.

(ii) A pipeline must comply with the following requirements for documents constituting public information posted on the pipeline web site:

(A) The documents must be accessible to the public over the public Internet using commercially available web browsers, without imposition of a password or other access requirement;

(B) Users must be able to search an entire document online for selected words, and must be able to copy selected portions of the documents; and

(C) Documents on the web site should be directly downloadable without the need for users to first view the documents on the web site.

(iii) If a pipeline uses a numeric or other designation to represent information, an electronic cross-reference table between the numeric or other designation and the information represented must be available to users, at a cost not to exceed reasonable shipping and handling.

(iv) A pipeline must provide the same content for all information regardless of the electronic format in which it is provided.

(v) A pipeline must maintain, for a period of three years, all information displayed and transactions conducted electronically under this section and be able to recover and regenerate all such electronic information and documents. The pipeline must make this archived information available in electronic form for a reasonable fee.

[113] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[114] 5 U.S.C. 601–612.

(vi) A pipeline must post notices of operational flow orders, critical periods, and other critical notices on its Internet web site and must notify affected parties of such notices in either of the following ways to be chosen by the affected party: Internet E-Mail or direct notification to the party's Internet URL address.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 95C–0399]

Listing of Color Additives for Coloring Sutures; D&C Violet No. 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Violet No. 2 as a color additive in glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures for general surgery. This action responds to a petition filed by United States Surgical Corp.

DATES: This regulation is effective May 27, 1998; except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by May 26, 1998.

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

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of October 23, 1995 (60 FR 54379), FDA announced that a color additive petition (CAP 5C0248) had been filed by United States Surgical Corp., 150 Glover Ave., Norwalk, CT 06856. The petition proposed to amend the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 as a color additive in glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures for general surgery. The petition was filed under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(d)(1)).

II. Regulatory History

The regulatory history of D&C Violet No. 2 was summarized in a final rule published in the **Federal Register** of May 7, 1990 (55 FR 18865). Since the publication of the May 7, 1990, final rule, other uses of D&C Violet No. 2 have been approved by the agency. For example, in a final rule published in the **Federal Register** on March 14, 1994 (59 FR 11718), FDA amended § 74.3602 to list D&C Violet No. 2 for use to color poly(ε-caprolactone) absorbable sutures for use in general surgery.

III. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive in the device comes into direct contact with the body for a significant period of time (section 721(a) of the act). D&C Violet No. 2 is added to glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures in such a way that at least some of the color additive will come into contact with the body when the sutures are in place. In addition, the sutures are intended to be absorbed by the body, and during the absorption, the color additive will be deposited in body tissue. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the petitioned use of the color additive is subject to the statutory listing requirement.

IV. The Color Additive

D&C Violet No. 2 is principally 1-hydroxy-4-[(4-methylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 81–48–1). It is manufactured by either condensation of quinizarin with *p*-toluidine or by condensation of 1-hydroxy-halogenoanthroquinone with *p*-toluidine. Because no chemical reaction consumes all the starting materials and yields only the desired product, both the resulting reaction mixture and commercial product will contain residual amounts of the starting materials, including *p*-toluidine. This fact is significant because Weisburger et al., have demonstrated that *p*-toluidine is a carcinogen in the mouse (Ref. 1).

Residual amounts of reactants, such as *p*-toluidine, and manufacturing aids are commonly found as impurities in chemical products, including color additives.

V. Determination of Safety

Under the general safety clause of the act (section 721(b)(4) of the act) for color additives, a color additive cannot be listed for a particular use unless a fair evaluation of the data available to FDA establishes that the color additive is safe for that use. FDA's color additive regulations (21 CFR 70.3(i)) define ''safe'' as ''reasonable certainty that no harm will result from the intended use of the color additive.''

The color additives anticancer, or Delaney, clause of the color additive amendments (section 721(b)(5)(B) of the act) provides that no noningested color additive shall be deemed safe and shall be listed if, after tests that are appropriate for evaluating the safety of the additive for such use, it is found to induce cancer in man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is reasonable certainty that no harm will result from the proposed use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

VI. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, D&C Violet No. 2, will result in exposure to no greater than 3.8 milligrams per person over a 70-year lifetime or an estimated daily intake (EDI) of 0.15 microgram per person per day (/p/d) (Ref. 2).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 3), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small daily intake resulting from the proposed use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by *p*-toluidine, the carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of *p*-toluidine has two aspects: (1) Assessment of exposure to the impurity from the proposed use of the additive,

and (2) extrapolation of the risk observed in the animal bioassay to the conditions of exposure to humans.

A. p-Toluidine

FDA has estimated the lifetime exposure to *p*-toluidine from the petitioned use of D&C Violet No. 2 in glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures to be no more than is 0.3 nanogram (ng)/p/d (Ref. 2). The agency used data from a long-term rodent bioassay on *p*-toluidine conducted by Weisburger et al. (Ref. 1), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the additive. The authors reported that the rodent bioassay showed that the test material caused an increased incidence of hepatomas (liver tumors).

Based on the agency's estimate that exposure to *p*-toluidine will not exceed 0.3 ng/p/d. FDA estimates that the upper-bound limit of lifetime human risk from the proposed use of the subject additive is 2×10^{-11} or 2 in 100 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to *p*-toluidine is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to *p*-toluidine would result from the proposed use of the additive.

B. Specifications

The agency has also considered whether specifications are necessary to control the amount of *p*-toluidine present as an impurity in D&C Violet No. 2. The additive is currently produced as a certified color additive for use in externally applied drugs and cosmetics, in sutures, and in contact lenses in accordance with 21 CFR part 80. Based upon the low level of exposure to *p*-toluidine that results under the current specifications for D&C Violet No. 2 in § 74.1602 (21 CFR 74.1602), the agency concludes that the specifications listed in § 74.1602 are adequate to ensure the safe use of this color additive and to control the amount of *p*-toluidine that may exist as an impurity in the color additive when used in glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures for general surgery.

VII. Conclusions on Safety

FDA has evaluated the data and information in the petition and other relevant material. Based on this information the agency concludes that: (1) The proposed use of D&C Violet No. 2, at a level not to exceed 0.2 percent by weight of the suture material, for coloring glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures is safe; and (2) the color additive will achieve its intended coloring effect, and thus, is suitable for this use. The agency therefore, is amending the color additive regulations in § 74.3602 as set forth below.

VIII. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IX. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

X. Objections

Any person who will be adversely affected by this regulation may at any time on or before May 26, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Weisburger, E. K. et al., ''Testing of Twenty-One Environmental Aromatic Amines or Derivatives for Long-Term Toxicology or Carcinogenicity,'' *Journal of Environmental Pathology and Toxicology*, 2:325–356, 1978.

2. Memorandum from the Chemistry Review Team, FDA, to the Indirect Additives Team, FDA, concerning ''CAP 5C0248: United States Surgical Corporation. Use of D&C Violet No. 2 as a colorant in synthetic absorbable surgical suture. Correction of Exposure Estimate.,'' dated March 6, 1997.

3. Kokoski, C. J., ''Regulatory Food Additive Toxicology'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, published by S. Karger, New York, NY, pp. 24–33, 1985.

4. Report of the Quantitative Risk Assessment Committee, FDA, concerning ''Upper Bound Lifetime Risk for *p*-Toluidine in D&C Violet No. 2 Used as a Color Additive for glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures designated as USSC Monofilament polysorb sutures (UMPS),'' dated September 4, 1997.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

2. Section 74.3602 is amended by adding paragraph (b)(2)(v) to read as follows:

§ 74.3602 D&C Violet No. 2.

* * * * *

(b) * * *

(2) * * *

(v) At a level not to exceed 0.2 percent by weight of the suture material for coloring glycolide/dioxanone/trimethylene carbonate tripolymer absorbable sutures for use in general surgery.

* * * * *

Dated: April 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–10779 Filed 4–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H–049]

RIN 1218–AA05

Respiratory Protection; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; correction.

SUMMARY: OSHA is correcting errors in the regulatory text of the Respiratory Protection final rule that appeared in the **Federal Register** on January 8, 1998 (63 FR 1152).

DATES: These corrections become effective on April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, OSHA Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Telephone: (202) 219–8148.

SUPPLEMENTARY INFORMATION: On January 8, 1998 (63 FR 1152), OSHA promulgated revised regulations for respiratory protection in general industry (part 1910), shipyards (part 1915), marine terminals (part 1917), longshoring (part 1918), and construction (part 1926).

Subsequently, technical and typographic errors were discovered in the regulatory text. This notice is being published to correct these errors. With the exception of the explanations discussed below, these corrections are self-explanatory.

In paragraph (i)(1)(ii), *Breathing air quality and use*, the reference to ''Type 1—Grade D breathing air'' has been corrected to read ''Grade D breathing air'' to conform to the ANSI/Compressed Gas Association Commodity Specification for Air, G–7.1–1989.

Paragraph (n)(3) is corrected to state that the respiratory protection provisions of the previous standard, 29 CFR 1910.134 as contained in the 29 CFR parts 1900 to 1910.999 edition of the Code of Federal Regulations published July 1, 1997, will continue in effect until October 5, 1998, the date for full compliance with the revised standard, rather than April 8, 1998, the effective date of the revised standard.

In Appendix A, in the protocol for the Bitrex qualitative fit test, the part numbers for the fit test hood assembly now match the part numbers given in the saccharin qualitative fit test protocol. Also, in the generated aerosol quantitative fit testing protocol, a reference for using P100 filters as one of the methods to filter exhaust air flow from the fit test chamber is incorrect and is deleted. In the condensation nuclei counter quantitative fit test protocol, the requirement in paragraph (a)(1) that a high-efficiency filter be fitted has been revised to allow for the fit testing of additional types of filters as appropriate. For the controlled negative fit test protocol, the pressure setting for the default test pressure has been changed from −1.5 mm to the correct value of −15 mm.

In Appendix C a typographic error in Part A, Section 2, question 11(e) has been corrected to read ''d. Any other eye or vision problem: Yes/No''.

Appendix D has been entitled ''mandatory'' since the employer is required by paragraph (k)(6) of the standard to provide the basic advisory information on respirators presented in Appendix D to any employees who voluntarily use respirators.

Since some of the 13 carcinogens are vapors, language has been added to paragraph (c)(4)(iv) of § 1910.1013 permitting the use of air-purifying canisters or cartridges, in addition to particulate filters. This provision requires appropriate respirator filters for these carcinogens.

This correction removes the provision in the revised Lead standard (§ 1910.1025(f)(1)(i)) that limits respirator use to a maximum of 4.4 hours per day. The 4.4 hour requirement had been removed earlier by OSHA (see 60 FR 52859).

Typographic errors in provisions in the Benzene standard (§ 1910.1028 (g)(2)(i)), Acrylonitrile standard (§ 1910.1045 (h)(2)(i)), and the Formaldehyde standard (§ 1910.1048 (g)(2)(i)) that referenced § 1910.134 (d)(3)(iii)(b)(1) have been corrected to read (d)(3)(iii)(B)(1).

Appendix E of the Methylenedianiline standard (§ 1910.1050), which specifies fit testing protocols, has been removed to match changes made to other substance specific standards. These changes require the use of the fit testing protocols in Appendix A of the revised respiratory protection standard.

The Methylene chloride standard limits respiratory protection to supplied-air respirators except for emergency escape. Paragraphs (d)(3)(iii)(B) (1) and (2) of the revised respiratory protection standard address the use of end-of-service-life indicators or change schedules for cartridges and canisters, and do not apply to supplied-air or emergency escape respirators. Accordingly, these paragraphs have been removed from the respiratory protection program required by the Methylene chloride standard to be in compliance with the revised § 1910.134 respiratory protection standard.

The correction to paragraph (h)(2)(iv) of the Asbestos standard for the construction industry reinstates an earlier revision made by OSHA to this standard. This revision permitted the use of PAPRs with HEPA filters or supplied-air respirators with HEPA egress cartridges under the conditions specified in this paragraph (see 60 FR 33985).

All these corrections to the standard are deemed to be ''minor'' amendments within the meaning of 29 CFR 1911.5. OSHA finds good cause, pursuant to 29 CFR 1911.5 and the Administrative Procedure Act, for promulgating the corrections without notice and opportunity for public comment.

Correction of Publication

The following corrections are made in the final rule for Respiratory Protection published in the **Federal Register** on January 8, 1998 (63 FR 1152).

Respiratory Protection [Correction]

§ 1910.134 [Correction]

1. On page 1275, first column, paragraph (i)(1)(ii), lines 2 and 3, are corrected to read ''meet at least the requirements for Grade D breathing air described in''.

2. On page 1275, first column, paragraph (i)(4)(ii), line 4, is corrected to read ''requirements for Grade D''.

3. On page 1276, second column, paragraph (n)(3), line 2, the date ''April 8, 1998'' is corrected to read ''October 5, 1998''.

4. On page 1278, third column, paragraph (a)(1), line 10, the reference ''parts #14 and #15'' is corrected to read ''parts # FT 14 and # FT 15''.

5. On page 1280, first column, paragraph (11), lines 3 and 4, are corrected to read ''filter (i.e., high efficiency particulate filter) before release.''

6. On page 1280, third column, following the equation, paragraph (a)(1) is revised to read: ''(1) Check the respirator to make sure the sampling probe and line are properly attached to the facepiece and that the respirator is fitted with a particulate filter capable of preventing significant penetration by the ambient particles used for the fit test (e.g., NIOSH 42 CFR 84 series 100, series 99, or series 95 particulate filter) per manufacturer's instruction.''

7. On page 1281, second column, paragraph (a)(2), line 2, the reference ''−1.5 mm'' is corrected to read ''−15 mm''.

8. On page 1283, second column, question 11, lines 6 and 7, are corrected to read ''d. Any other eye or vision problem: Yes/No''.

9. On page 1284, second column, line 17, is corrected to read ''Appendix D to § 1910.134 (Mandatory)''.

§ 1910.1003 13 Carcinogens [Correction]

10. On page 1286, first column after Table 1, paragraph (c)(4)(iv), lines 5 and 6 are corrected to read: ''use a half-face filter-type respirator with filters for dusts, mists, and fumes, or air-purifying canisters or cartridges. A respirator''.

§ 1910.1025 Lead [Correction]

11. On page 1287, second column following Table II, paragraph (f)(1)(i) is revised to read: ''(i) Periods necessary to install or implement engineering or work-practice controls.''

§ 1910.1028 Benzene [Correction]

12. On page 1289, third column following Table 2, paragraph (g)(2)(i), line 2, the reference ''(d)(3)(iii)(b)(1)'' is corrected to read ''(d)(3)(iii)(B)(1).''

§ 1910.1045 Acrylonitrile [Correction]

13. On page 1291, second column following Table 1, paragraph (h)(2)(i), line 5, the reference ''(d)(3)(iii)(b)(1)'' is corrected to read ''(d)(3)(iii)(B)(1)''.

§ 1910.1048 Formaldehyde [Correction]

14. On page 1293, second column, paragraph (g)(2)(i), line 5, the reference ''(d)(3)(iii)(b)(1)'' is corrected to read ''(d)(3)(iii)(B)(1)''.

§ 1910.1050 Methylenedianiline [Correction]

15. On page 1293, first column following Table 1, paragraph 28, is revised to read ''28. Section 1910.1050 is amended by removing Appendix E, and revising paragraph (h) and the first paragraph of Section III to Appendix A to read as follows:''.

§ 1910.1052 Methylene chloride [Correction]

16. On page 1295, second column following Table 1, paragraph (g)(1)(i), is revised to read ''(i) Periods when an employee's exposure to MC exceeds the 8-hour TWA PEL, or STEL (for example, when an employee is using MC in a regulated area).''

17. On page 1295, third column following Table 1, paragraph (g)(2)(i), line 5, the reference ''(d)(1)(iii))'' is corrected to read ''(d)(1)(iii) and (d)(3)(iii)(B)(1) and (2)).''

§ 1926.1101 Asbestos [Correction]

18. On page 1298, first and second columns following Table 1, paragraph (h)(3)(iv) is revised to read:

''(iv) In addition to the above selection criteria, when employees are in a regulated area where Class I work is being performed, a negative exposure assessment of the area has not been produced, and the exposure assessment of the area indicates the exposure level will not exceed 1 f/cc as an 8-hour time weighted average, employers must provide the employees with one of the following respirators:

(A) A tight-fitting powered air-purifying respirator equipped with high efficiency filters;

(B) A full facepiece supplied-air respirator operated in the pressure-demand mode equipped with HEPA egress cartridges; or

(C) A full facepiece supplied-air respirator operated in the pressure-demand mode equipped with an auxiliary positive pressure self-contained breathing apparatus. A full facepiece supplied-air respirator operated in the pressure-demand mode equipped with an auxiliary positive pressure self-contained breathing apparatus must be provided under such conditions when the exposure assessment indicates exposure levels above 1 f/cc as an 8-hour time weighted average.''

Dated: April 15, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 98–10795 Filed 4–22–98; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills; Determination Regarding State Statute

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Determination of substantially identical state statute.

SUMMARY: The Department of the Treasury is announcing that it has reviewed the recently enacted South Dakota law adopting Revised Article 8 of the Uniform Commercial Code—Investment Securities (''Revised Article 8'') and has determined that it is substantially identical to the uniform version of Revised Article 8 for purposes of interpreting the rules in 31 CFR Part 357, Subpart B (the ''TRADES'' regulations). Therefore, that portion of the TRADES rule requiring application of Revised Article 8 if a state has not adopted Revised Article 8 will no longer be applicable for South Dakota.

EFFECTIVE DATE: April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa A. Crosby, Attorney-Advisor, (202) 219–3320, or Cynthia E. Reese, Deputy Chief Counsel, (202) 219–3320.

SUPPLEMENTARY INFORMATION: On August 23, 1996, The Department published a final rule to govern securities held in the commercial book-entry system, now referred to as the Treasury/Reserve Automated Debt Entry System (''TRADES''). 61 FR 43626.

In the commentary to the final regulations, Treasury stated that for the 28 states that had by then adopted Revised Article 8, the versions enacted were ''substantially identical'' to the uniform version for purposes of the rule. Therefore, for those states, that portion of the TRADES rule requiring application of Revised Article 8 was not invoked. Treasury also indicated in the commentary that as additional states adopt Revised Article 8, notice would be provided in the **Federal Register** as to whether the enactments are substantially identical to the uniform version so that the federal application of Revised Article 8 would no longer be in effect for those states. Treasury adopted this approach in an attempt to provide certainty in application of the rule in response to public comments. This notice addresses the recent adoption of Article 8 by South Dakota.

Treasury has reviewed the South Dakota enactment and has concluded that it is substantially identical to the uniform version of Revised Article 8. Accordingly, if either § 357.10(b) or § 357.11(b) directs a person to South Dakota, the provisions of §§ 357.10(c) and 357.11(d) of the TRADES rule are not applicable.

Dated: April 16, 1998.

Van Zeck,

Commissioner of the Public Debt.

[FR Doc. 98–10810 Filed 4–22–98; 8:45 am]

BILLING CODE 4810–39–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NE 052–1052a; FRL–6002–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Nebraska; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Nebraska plan for implementing the Municipal Solid Waste (MSW) Landfill Emission Guideline (EG) at 40 CFR part 60, subpart Cc, which was required pursuant to section 111(d) of the Clean Air Act (Act). The state's plan was submitted to the EPA on January 6, 1998, in accordance with the requirements for adoption and submittal of state plans for designated facilities in 40 CFR part 60, subpart B. The plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This action is effective June 22, 1998, unless by May 26, 1998, relevant adverse comments are received.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Act, the EPA has established procedures whereby states submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards are set pursuant to sections 108 and 109 of the Act). As required by section 111(d) of the Act, the EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding state implementation plan approval) which states must follow in adopting and submitting a section 111(d) plan. Whenever the EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, the EPA establishes EGs in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a state's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, the EPA published an EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds, other organic compounds, methane, and hazardous air pollutants. To determine whether control is required, nonmethane organic compounds (NMOC) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction, or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), states were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG, or by December 12, 1996. If there were no designated facilities in the state, then the state was required to submit a negative declaration by December 12, 1996.

II. Analysis of State Submittal

The official procedures for adoption and submittal of state plans are codified in 40 CFR part 60, subpart B, sections 60.23 through 60.26. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, compliance assurance and enforcement requirements, and cross-references to the MSW landfill EG.

On January 6, 1998, the state of Nebraska submitted its section 111(d) plan for MSW landfills for implementing the EPA's MSW landfill EG.

The Nebraska plan includes documentation that all applicable subpart B requirements have been met. More detailed information on the requirements for an approvable plan and Nebraska's submittal can be found in the Technical Support Document (TSD) accompanying this action, which is available on request.

The Nebraska plan cross referenced both the NSPS subpart WWW and EG subpart Cc to adopt the requirements of the Federal rule. The state has ensured, through this cross referencing process, that all the applicable requirements of the Federal rule have been adopted into the state plan. The emission limits, testing, monitoring, reporting and recordkeeping requirements, and other aspects of the Federal rule have been adopted. Nebraska rule Chapter 18, 004, contains the applicable requirements.

Nebraska demonstrated that it has the legal authority to implement and enforce the applicable requirements. The state provided evidence that it complied with the public notice and comment requirements of 40 CFR part 60, subpart B.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, the EPA is approving Nebraska's January 6, 1998, submittal of its section 111(d) plan for the control of landfill gas from existing MSW landfills, except those located in Indian Country.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the state plan revision should relevant adverse comments be filed. This rule will be effective June 22, 1998, without further

notice unless the Agency receives relevant adverse comments by May 26, 1998.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 22, 1998, and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state plan. Each request for revision to the state plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State plan approvals under section 111 of the Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal state plan approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids the EPA to base its actions concerning state plans on such grounds. See *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Controller General 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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 9, 1998.

Dennis Grams,

Regional Administrator, Region VII.

Part 62, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart CC—Nebraska

2. Subpart CC is amended by adding an undesignated center heading and § 62.6913 to subpart CC to read as follows:

Air Emissions From Existing Municipal Solid Waste Landfills

§ 62.6913 Identification of plan.

(a) *Identification of plan.* Nebraska plan for control of landfill gas emissions from existing municipal solid waste landfills and associated state regulations submitted on January 6, 1998.

(b) *Identification of sources.* The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, and have design capacities greater than 2.5 million megagrams and nonmethane organic emissions greater than 50 megagrams per year, as described in 40 CFR part 60, subpart Cc.

(c) *Effective date.* The effective date of the plan for municipal solid waste landfills is June 22, 1998.

[FR Doc. 98–10855 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IA 051–1051a; FRL–6002–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Iowa; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Iowa plan for implementing the Municipal Solid Waste (MSW) Landfill Emission Guideline (EG) at 40 CFR part 60, subpart Cc, which was required pursuant to section 111(d) of the Clean Air Act (Act). The state's plan was submitted to the EPA on December 22, 1997, in accordance with the requirements for adoption and submittal of state plans for designated facilities in 40 CFR part 60, subpart B. The plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This action is effective June 22, 1998 unless by May 26, 1998 adverse or critical comments are received.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Act, the EPA has established procedures whereby states submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards are set pursuant to sections 108 and 109 of the Act). As required by section 111(d) of the Act, the EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) which states must follow in adopting and submitting a section 111(d) plan. Whenever the EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, the EPA establishes EGs in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a state's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, the EPA published an EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c), and NSPS for new MSW landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds, other organic compounds, methane, and hazardous air pollutants (HAP). To determine whether control is required, nonmethane organic compounds (NMOC) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction, or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), states were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG, or by December 12, 1996. If there were no designated facilities in the state, then the state was required to submit a negative declaration by December 12, 1996.

II. Analysis of State Submittal

The official procedures for adoption and submittal of state plans are codified in 40 CFR part 60, subpart B, sections 60.23 through 60.26. Subpart B addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, compliance assurance and enforcement requirements, and cross-references to the MSW landfill EG.

On December 22, 1997, the state of Iowa submitted its section 111(d) plan for MSW landfills for implementing the EPA's MSW landfill EG.

The Iowa plan includes documentation that all applicable subpart B requirements have been met. More detailed information on the requirements for an approvable plan and Iowa's submittal can be found in the technical support document (TSD) accompanying this action, which is available on request.

The Iowa plan cross-referenced both the NSPS subpart WWW and EG subpart Cc to adopt the requirements of the Federal rule. The state has ensured, through this cross-referencing process, that all the applicable requirements of the Federal rule have been adopted into the state plan. The emission limits, testing, monitoring, reporting and recordkeeping requirements, and other aspects of the Federal rule have been adopted. Iowa rules 567–23.1(5)''a'' and 567–22.101(1)''c'' contain the applicable requirements.

Iowa demonstrated that it has the legal authority to implement and enforce the applicable requirements. The state provided evidence that it complied with the public notice and comment requirements of 40 CFR part 60, subpart B.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, the EPA is approving Iowa's December 22, 1997, submittal of its section 111(d) plan for the control of landfill gas from existing MSW landfills, except those located in Indian Country.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the state plan revision should relevant adverse comments be filed. This rule will be effective June 22, 1998 without further notice unless the Agency receives relevant adverse comments by May 26, 1998.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 22, 1998, and no

further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state plan. Each request for revision to the state plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State plan approvals under section 111 of the Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal-state plan approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids the EPA to base its actions concerning state plans on such grounds. See Union Electric Co. v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General 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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 9, 1998.

Dennis Grams,

Regional Administrator, Region VII.

Part 62, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. Subpart Q is amended by adding an undesignated center heading and § 62.3913 to read as follows:

Air Emissions From Existing Municipal Solid Waste Landfills

§ 62.3913 Identification of plan.

(a) *Identification of plan.* Iowa plan for control of landfill gas emissions from existing municipal solid waste landfills and associated state regulations submitted on December 22, 1997.

(b) *Identification of sources.* The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, and have design capacities greater than 2.5 million megagrams and nonmethane organic emissions greater than 50 megagrams per year, as described in 40 CFR part 60, subpart Cc.

(c) *Effective date.* The effective date of the plan for municipal solid waste landfills is June 22, 1998.

[FR Doc. 98–10853 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 88

[FRL–5994–5]

RIN 2060–AH56

Clean Fuel Fleet Program

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule; delay of implementation date.

SUMMARY: The provisions of subpart C of Title II of the Clean Air Act require states with certain ozone and carbon monoxide (CO) nonattainment areas to revise their State Implementation Plans (SIP) to incorporate a Clean Fuel Fleet

Program. Under this program, specified percentages of new vehicles acquired by covered fleet operators in certain ozone and CO nonattainment areas must meet EPA's clean-fuel vehicle (CFV) emissions standards. Today's action delays by one model year, the requirement that a covered area's State Implementation Plan implement a Clean Fuel Fleet Program (CFFP) fleet operator purchase requirement. As a result, EPA may approve a CFFP SIP revision which provides that covered fleet operators must include a certain percentage of CFVs in their fleet vehicle purchases each year beginning with model year 1999. This action is intended to ensure successful implementation of the CFFP, and to ensure that an adequate supply of appropriate vehicles is available for fleet operators to purchase and use once the program is underway, so that compliance with the mandatory purchase requirements will be possible and economically feasible for covered fleet operators.

DATES: This rule will become effective on June 8, 1998 unless the Agency receives relevant adverse comment by May 26, 1998. Should the Agency receive such comments, it will publish notification withdrawing this rule.

ADDRESSES: Interested parties may submit written comments in response to this rule (in duplicate if possible) to Public Docket No. A–97–53. It is requested that a duplicate copy may be submitted to Sally Newstead at the address in the **FOR FURTHER INFORMATION CONTACT** section below. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW, Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 5:30 p.m. on weekdays, excluding holidays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Sally Newstead, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone (734) 668–4474.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The statutory authority for this action is provided by sections 246 and 301 of the Clean Air Act.

Background

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should relevant adverse comments be filed. This rule will be effective June 8, 1998 without further notice unless the Agency receives relevant adverse comments by May 26, 1998. If EPA receives such comments, EPA will publish a document withdrawing this final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule.

The Clean Air Act, as amended in 1990 (''CAA'' or ''the Act''), requires certain states to adopt and submit to EPA a State Implementation Plan (SIP) containing a CFFP for nonattainment areas with 1980 populations greater than 250,000 that are classified as serious or worse for ozone, or with a design value of at least 16.0 ppm for carbon monoxide (CO). The nonattainment areas currently covered by the requirement to adopt and submit a CFFP are Atlanta, Washington DC metropolitan area, Chicago-Gary-Lake Counties, Milwaukee-Racine, Baton Rouge, and Denver-Boulder.[1]

Section 246 of the CAA provides that a states' SIP submission must require fleet operators with 10 or more vehicles that are centrally fueled or capable of being centrally fueled, to include a specified percentage of clean-fuel vehicles (CFVs) in their new vehicle purchases each year. In addition, states CFFP SIP submissions must comply with other specifications in Section 246, including the requirement that covered fleet operators must operate their CFVs in covered nonattainment areas on a clean alternative fuel, defined as a fuel on which the vehicle meets EPA's CFV standards when using such fuel. EPA promulgated emissions standards for CFVs in September 1994. *See* 40 CFR Part 88. EPA estimates that demand for CFVs by covered fleets in model year[2] 1998 would be approximately 47,000 light duty vehicles and 12,000 heavy duty vehicles.

Start Date for CFFP Purchase Requirement

Section 246(c) of the CAA provides that the specified percentage of new light duty vehicle purchases by covered fleet operators that must be CFVs in a given model year shall be 30% in model year 1998, 50% in model year 1999, and 70% in model year 2000 and later years, if certain categories of new vehicles (light duty trucks (LDTs) below 6000 lbs gross vehicle weight rating (GVWR) and light duty vehicles (LDVs)) certified to the Phase II CFV exhaust emissions standards are offered for sale in California.[3] In March 1993, EPA stated its expectation that the vehicles specified in Section 246(c) would be offered for sale in California by model year 1997, and therefore states' SIP submissions should provide for implementation of the CFFP purchase requirement beginning in model year 1998. EPA also stated its intent to delay this implementation date if it later determined that the requisite vehicles would not be offered for sale in California in model year 1997. *See* 58 FR 11888 (March 1, 1993).

EPA cannot mandate that vehicle manufacturers produce CFVs for fleets to purchase to meet the CFFP requirements—Congress intended that the creation of a market for CFVs would provide an incentive for vehicle manufacturers to produce and sell such vehicles outside California, ultimately resulting in broader market penetration. The specification in section 246 (c) that certain vehicles meeting CFV exhaust emissions standards must be available for sale in California for implementation of the CFFP purchase requirement to begin in model year 1998 was intended to provide a minimum level of reasonable assurance that complying vehicle technology was available and being produced.[4] Without some such evidence of vehicle availability, fleet operators cannot realistically be expected to comply with the CFFP purchase requirements. However, Section 246 is not clear on the issue of how many of the vehicles specified in Section 246(c) must be offered for sale in California before triggering

[1] States with covered nonattainment areas may opt out of the CFFP with an adequate substitute program. *See* CAA Section 182(c)(4)(B). Eleven states have opted out of the CFFP pursuant to this provision. Areas reclassified for ozone, that have a 1980 population of at least 250,000, must also submit a SIP revision with a CFFP within one year of such reclassification. *See* CAA Section 246(a)(3).

[2] A ''model year'' for purposes of fleet operators' compliance with CFFP purchase requirements, and as used in this notice, is not the same as ''model year'' as defined for purposes of motor vehicle production. The definition of ''model year'' for the CFFP means September 1 of the preceding year through August 31 of the named year. Therefore, model year 1998 for the CFFP runs from September 1, 1997 through August 31, 1998. *See* 40 CFR 88.302–94.

[3] The Phase II CFV exhaust emissions standards are found in CAA Section 243(a)(2) and 243(b)(2), and include standards for non-methane organic gases (NMOG), CO, oxides of nitrogen (NO_X), particulate matter (PM), and formaldehyde that are identical to California's Low Emission Vehicle (LEV) exhaust emissions standards.

[4] *See A Legislative History of the Clean Air Act Amendments of 1990,* Volume 1 at 903.

implementation of the CFFP purchase requirements.

In today's action, EPA is delaying the start date that the SIP must contain for implementation of the CFFP purchase requirements from model year 1998 to model year 1999, and intends to approve state SIP submissions with CFFPs that start in model year 1999. EPA has received information from various stakeholders, including states, covered fleet operators, and vehicle manufacturers on this issue, and has concluded that a delay until model year 1999 will result in a successful, effective fleet program that advances the penetration of CFVs and clean alternative fuels into the national market, and is consistent with the provisions of Section 246(c) and with Congress' intent in adopting the CFFP provisions of the Act.

The legislative history of the 1990 amendments to the CAA indicates that, in adopting the CFFP, Congress made a clear choice between two alternatives: requiring auto manufacturers to produce and sell CFVs, or creating a market for CFVs and for clean alternative fuels by requiring fleet operators to purchase such vehicles and operate on such fuels. In choosing the latter option, Congress attempted to minimize the burden on fleet operators by requiring some evidence of vehicle availability in California as a precondition to implementation of the purchase requirement before model year 2001. However, the Act does not provide a clear indication of Congressional intent regarding the number of vehicles in each weight category specified in Section 246(c) that must be offered for sale in California to trigger the fleet operators' purchase requirement. Because the CAA is silent on this particular issue, and in the absence of a clear indication of Congressional intent, it is appropriate for EPA to reasonably exercise its discretion in a way that furthers the goals of the CFFP provisions, and determine whether a sufficient number of requisite vehicle models are offered for sale in California to require that other states SIPs implement the CFFP in MY1998.

Auto manufacturers have certified a number of vehicle models to the LEV standards in California on California reformulated gasoline, and EPA expects these vehicles could be certified as federal CFVs. However, because of the Act's requirement that fleet operators operate CFVs on clean alternative fuels, as defined in Section 241(b), fleet operators who purchase such CFVs to meet CFFP purchase requirements may have to operate these vehicles on California reformulated gasoline, which is generally not available outside California. EPA cannot conclude at this time that federal reformulated gasoline or federal conventional gasoline qualify as clean alternative fuels for CFVs certified to LEV standards on California reformulated gasoline, due to potential emissions differences resulting from differences in fuel composition between California reformulated gasoline and federal fuels. EPA expects that manufacturers could certify LEVs that have been certified to California LEV standards on California reformulated gasoline as federal CFVs on federal fuels—if manufacturers did so, fleet operators could purchase such vehicles to meet CFFP purchase requirements, and operate them on federal fuels in covered nonattainment areas without violating the fuel use requirement of the CFFP. Certain new light duty trucks (LDTs) below 6000 pounds GVWR and new light duty vehicles (LDVs) certified to LEV exhaust emissions standards are currently being offered for sale in California. However, only a limited number of LDTs below 6000 lbs. GVWR were certified to California's LEV standards and offered for sale in California in MY1997 as indicated in the following chart.

LIST OF CERTIFIED CA LEVS OFFERED FOR SALE IN CALIFORNIA IN MY97

[As of April 1997]

Manufacturer	Certification number	Models	Type	Standard	Fuel
Ford	FORD–LDV–97–01–00	Escort, Escort Wagon	LDV	LEV	CA RFG.
	FORD–LDV–97–38–00	Sable, Sable Wagon, Taurus, Taurus Wagon.	LDV	LEV	CA RFG.
General Motors	GM–LDT–97–29–00	Astro AWD (C&P)* Passenger	LDT	LEV	CA RFG.
	GM–LDT–97–40–00	Safari AWD (P), Astro AWD (C&P)	LDT	LEV	CA RFG.
Honda	HONDA–LDV–97–19–00	Civic, del Sol	LDV	LEV	CA RFG.
	HONDA–LDV–97–20–00	Civic	LDV	LEV	CA RFG.
	HONDA–LDV–97–21–00	Civic, del Sol	LDV	LEV	CA RFG.
	HONDA–LDV–97–22–00	Civic	LDV	LEV	CA RFG.
Nissan	NISSN–LDV–97–06–00	Sentra/200SX	LDV	LEV	CA RFG.
Suzuki	SUZUK–LDV–97–05–00	Metro	LDV	LEV	CA RFG.
	SUZUK–LDV–97–06–00	Metro, Swift	LDV	LEV	CA RFG.
Toyota	TOYOT–LDV–97–11–00	Camry	LDV	LEV	CA RFG.
	TOYOT–LDV–97–12–00	Camry	LDV	LEV	CA RFG.

* P=Passenger, C=Cargo.

In order to meet the MY98 purchase requirements, fleet operators must have placed vehicle orders in April, 1997; however, the supply of federally certified CFVs at this time was limited. Based on the limited numbers of light duty vehicles and trucks offered for sale in California in MY1997, and particularly the limited number of LDTs <6000 pounds GVWR, EPA believes that a short delay of the required implementation date of the CFFP for one model year is reasonable to avoid the potential for serious disruption of the initial implementation of this program from an inadequate supply of vehicles. Given the list of current federally certified CFVs, the available choices for passenger cars, pick-up trucks, vans and sport utility vehicles is limited to the following:

LIST OF CERTIFIED CFVS OFFERED FOR SALE IN MY97

[As of April 30, 1997]

Manufacturer	Certification number	Models	Type	Standard	Fuel
Light Duty					
IMPCO Tech	IMPCO–LDCNGT–97–01	Sierra C Pickup	LDT	LEV	CNG.
Chrysler	CHRYSLER–LDCLT–97–01–00	Caravan(2WD), Voyager(2WD)	LDCLT	ILEV+ULEV	CNG.
	CHRYS–ZEV–97–01	Caravan(2WD), Voyager(2WD)	LDT	ZEV	Electricity.
Ford	FORD–LDCNGV–97–01	Crown Victoria	LDV	ILEV+ULEV	CNG.
	FORD–LDCNGT–97–01	F250(2WD)	LDT	ILEV+ULEV	CNG.
	FORD–LDCNGT–97–02	E250(2WD), E350(2WD)	LDT	ILEV+ULEV	CNG.
General Motors	GM–ZEV–97–01	EV1	LDV	ILEV+ZEV	Electricity.
	GN–ZEV–LDT–97–01	S10 Pickup	LDT	ILEV+ZEV	Electricity.
Honda	HN–ZEV–97–01	EV Plus	LDV	ILEV+ZEV	Electricity.

Manufacturer	Certification number	Models	Standard	Fuel
Heavy Duty				
Cummins	CUMMINS–NGE (MHDD)–97–18	B5.9–195G	LEV	CNG.
	CUMMINS–NGE (MHDD)–97–19	B5.9–195F	LEV	CNG.
	CUMMINS–NGE (MHDD)–97–22	C8.3–250G	LEV	CNG.
	CUMMINS–NGE (MHDE)–97–01	B5.9–195G	ULEV	CNG.
Detroit Diesel	DDC–NGE (LHDDE)–97–01	Series 30G	LEV	CNG.

SIP Revisions

In light of this action, states with adopted CFFP SIPs may revise their SIPs to provide for a model year 1999 start date for the CFFP purchase requirements. Fleet operators may still earn credits for early purchase of CFVs that meet all applicable requirements, including the requirement that fleet operators operate their CFVs on clean alternative fuels when in the covered nonattainment area. The EPA believes this action will provide states and fleet owners the necessary flexibility in those areas that are unable to meet the CFF purchase requirements cited in the CAAA.

Administrative Requirements

A. Administrative Designation

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

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

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

(3) Materially alter the budget impact of entitlement, 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, EPA believes that this final action is not a significant regulatory action and therefore not subject to OMB review. Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. This action simply revises regulations governing the requirements states' CFFP SIP submissions must meet. It serves to delay states' required implementation of CFFP purchase requirements. Therefore, it has been determined that this action does not constitute a ''major'' regulation.

B. Reporting and Recordkeeping Requirement

There are no information requirements in this direct final rule which require the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility

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 will not have significant economic impact on a substantial number of small entities. This is based on the fact that this action does not impose any new requirements, but simply delays the applicable start date of the CFFP purchase requirements that must be included in certain state's SIPs, pursuant to the CAA. Thus, the impact created by the proposed action does not increase the preexisting burden of the existing rules which this proposal seeks to amend.

D. Submission to Congress

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

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the rules being adopted in this action would impose any mandate at all as defined in section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this rule is not estimated to impose costs in excess of $100 million. EPA has determined that today's action simply delays the purchase requirements under state CFFPs and does not impose additional costs or regulatory burdens. In fact, the one-year delay of implementation of the purchase requirements is expected to reduce costs of compliance and ease regulatory burdens.

List of Subjects in 40 CFR Part 88

Environmental protection, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: April 3, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 88 is amended as follows:

PART 88—[AMENDED]

1. The authority citation for part 88 continues to read as follows:

Authority: 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589, 7601(a).

2. Section 88.308.94 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 88.308.94 Programmatic requirements for clean-fuel fleet vehicles.

* * * * *

(b) *Program start date.* The SIP revision shall provide that the clean fuel vehicle purchase requirements begin to apply no later than model year 1999.

[FR Doc. 98–10151 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–5999–8]

Amendment of the Provisions To Eliminate and Phase-Out Mixing Zones for Bioaccumulative Chemicals of Concern and Amendment to Procedure 8.D. of Appendix F (Pollutant Minimization Program) for the Final Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; partial amendments.

SUMMARY: As a result of the decision in *American Iron and Steel Institute, et al.* v. *EPA* (*AISI*), 115 F.3d 979 (D.C. Cir. 1997), EPA today is amending the final Water Quality Guidance for the Great Lake System (Guidance) (40 CFR part 132) by removing the provisions to eliminate and phase-out mixing zones for bioaccumulative chemicals of concern (BCCs). Also in response to the AISI decision, EPA is today amending the Guidance by revising Procedure 8.D. of Appendix F to remove language in the Pollutant Minimization Program (PMP) provisions that might imply authorization for imposing water quality-based effluent limits (WQBELs) on internal waste streams or for requiring specific control measures to meet WQBELs.

EFFECTIVE DATE: April 23, 1998.

ADDRESSES: The public docket for this and earlier rulemakings concerning the Water Quality Guidance for the Great Lakes System, including the proposal, public comments in response to the proposal, other major supporting documents, and the index to the docket are available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 by appointment only. Appointments may be made by calling Mary Jackson-Willis (telephone 312–886–3717).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460 (202–260–0312).

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Potentially Affected Entities

Citizens concerned with water quality in the Great Lakes System may be interested in this rulemaking. Also, entities potentially affected by today's action are those discharging pollutants to waters of the United States in the Great Lakes System. Categories and entities which may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging to waters in the Great Lakes System as defined in 40 CFR 132.2.
Municipalities	Publicly-owned treatment works discharging to waters of the Great Lakes System as defined in 40 CFR 132.2.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this final rule, you should carefully examine the definition of ''Great Lakes System'' in 40 CFR 132.2 and examine 40 CFR 132.2 which describes the part 132 regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Today's Rule

The final Guidance included ambient water quality criteria setting maximum ambient concentrations for pollutants to be met in all waters of the Great Lakes Basin and implementation procedures used to develop WQBELs for facilities discharging these pollutants. States and Tribes were required to adopt regulations consistent with EPA's Guidance criteria and implementation procedures by March 23, 1997. Once the criteria and implementation procedures take effect, permits for discharges of the pollutants they cover must include WQBELs needed to attain the criteria if the discharge has or may have the reasonable potential to cause or contribute to an exceedance of the water quality standard.

On June 6, 1997, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision upholding, with three minor exceptions, the Great Lakes Water Quality Guidance which EPA promulgated on March 23, 1995. *American Iron and Steel Institute, et al.* v. *EPA* (*AISI*), 115 F.3d 979 (D.C. Cir. 1997). The Court vacated three provisions of the Guidance. The Court vacated the criteria for polychlorinated biphenlys (PCBs), and the provisions of the Guidance ''insofar as it would eliminate mixing zones for bioaccumulative chemicals of concern (BCCs) and impose water quality-based

effluent limitations (WQBELs) upon internal facility waste streams.'' 115 F.3d at 985. On October 9, 1997, EPA published a notice revoking the PCB human health criteria pursuant to the Court's decision (62 FR 52922). Today's notice addresses the other two provisions of the Guidance vacated by the Court.

First, EPA is today removing the mixing zone elimination and phase-out provision in the Guidance. Procedure 3.C. of the Guidance contained the provision to eliminate mixing zones for BCCs for new discharges and to phase them out over the next 10 years for existing discharges. The Court vacated this provision from the Guidance stating that the Agency had failed to show that the provision was justified.

Second, EPA is amending Procedure 8.D. of Appendix F in response to the *AISI* decision. Procedure 8.D. establishes requirements for a ''Pollutant Minimization Program,'' which is required anytime a permit includes a WQBEL below the level of quantification (i.e., level of pollutant that can be reliably quantified by the specified method). In the *AISI* decision, the Court vacated Procedure 8.D. insofar as it authorized internal WQBELs, 115 F.3d at 979, 996. The Court expressed concern that internal WQBELs would deprive a permittee of the ability to choose an end-of-pipe control system to meet the water quality based effluent limits rather than controls on internal waste streams. *Id*. Although EPA explained in the Supplementary Information Document to the Great Lakes Water Quality Guidance (SID) that it had no intent to impose specific control measures on permittees through the PMP provision, it is revising the Procedure 8.D. language to allay concerns about possible misinterpretation of the language as authorizing imposition of internal WQBELs or specific control measures.

1. Mixing Zone Elimination and Phase-Out Provisions

One of the implementation procedures EPA promulgated in the Guidance was Procedure 3.C. of Appendix F, mixing zones for BCCs. Under this procedure, no mixing zones were to be granted for new dischargers of BCCs after March 23, 1997. Mixing zones for existing dischargers of BCCs were, moreover, to have been phased out by March 23, 2007. Various industries and trade associations challenged these mixing zone provisions for BCCs. They alleged that the elimination of mixing zones for BCCs would not significantly reduce pollutant loadings to the Great Lakes but would inflict costs upon industry that are excessive in relation to the degree of pollution reduction achieved, even if that reduction were significant.

In the *AISI* litigation, EPA explained to the Court the significance of removing BCCs from the Great Lakes Basin because of the closed nature of the system and its unique environmental characteristics. While the Court acknowledged the possibility of environmental benefit of the mixing zone provisions, the Court found that EPA failed to show that the provisions were justified in light of the costs. The Court therefore vacated the provisions. 115 F.3d. at 997.

Pursuant to the Court's decision, EPA is today amending the Guidance by removing Procedure C.3. In the interim, pursuant to independent State or Tribal authority, Great Lakes States and Tribes may adopt a mixing zone elimination and phase-out provision. EPA intends to propose reinstating this provision in the near future and continues to support eliminating mixing zones for BCCs within the Great Lakes Basin wherever it is technically and economically feasible to do so.

2. Pollutant Minimization Program (PMP) Revisions

Procedure 8 of Appendix F of the Guidance addresses situations where WQBELs are below the level of quantification of the specified analytical method (i.e., the level that can be reliably quantified). A WQBEL of this nature must be included in the permit as calculated and is the enforceable limit. However, because compliance with the limit cannot be measured end-of-pipe, Procedure 8 includes special provisions to help ensure that the WQBEL is being met, including the development and implementation by the permittee of a Pollutant Minimization Program (PMP), Procedure 8.D. Procedure 8.D. called for, in part, internal monitoring, a survey of all potential sources of the pollutant of concern to the waste stream, a control strategy, implementation of cost-effective control measures consistent with the control strategy, and reporting on, among other things, all actions taken to reduce or eliminate the identified sources of the pollutant. In the SID, EPA explained that:

> ''In procedure 8, EPA does not go so far as to set in-plant effluent limitations, but rather simply provides for internal monitoring and adoption of control strategies with a goal of maintaining all sources of the pollutant to the wastewater collection system below the WQBEL. The WQBEL itself continues to apply only at the end of the pipe, after treatment.'' SID at 425.

EPA further explained that ''the 'PMP' makes no attempt to dictate the treatment or source reduction strategies that a permittee could or should implement.'' SID at 426.

Industry litigants challenged Procedure 8 as impermissibly establishing internal WQBELs and dictating how they complied with end-of-pipe limits, i.e., through source reduction measures. In *AISI*, the Court found that, although the CWA clearly allows for monitoring of internal waste streams to evaluate compliance with end-of-pipe limits and establishing end-of-pipe WQBELs that effectively force changes to internal equipment or processes, it does not allow imposition of WQBELs for internal sources. Accordingly, the Court vacated Procedure 8.D. ''insofar as it would impose the point-source WQBEL upon a facility's internal waste streams.'' 115 F.3d at 996. The Court did not specify what language in Procedure 8.D., if any, needed to be changed.

Although EPA has never interpreted Procedure 8.D. to authorize imposition of internal WQBELs or to dictate control strategies, EPA is today amending the language in Procedure 8.D. to address the Court's concerns and eliminate any ambiguity about how EPA intends Procedure 8.D. to be interpreted. Today's amendments cover the two related concerns raised by the Court: First, that WQBELs not be imposed on internal waste streams; and second, that permittees retain the ability to choose how they will comply with permit limits. Eliminating the references to internal waste stream goals in the introduction to 8.D. and in paragraph 8.D.3. addresses the first concern. To address the second concern, EPA is amending language that might imply either that permitting authorities establish control measures in the PMP (introduction to 8.D.) or that permittees are restricted in determining how they will meet their end-of-pipe WQBELs (references to pollutant sources in paragraphs 8.D.4 and 8.D.5.c).

Today's revisions to Procedure 8.D. do not change the Agency's intent with respect to implementation of the pollutant minimization programs; it continues to be that such programs will assist in ensuring that the WQBELs are met at the end of the pipe. The permittee must inventory all sources of the pollutant to the waste stream, but in developing and implementing a control strategy, the permittee may choose any appropriate control measure(s) that it expects will reduce pollutant levels so

as to meet the WQBEL. States and Tribes may evaluate the adequacy of the permittee's control strategy to achieve the stated goal, but nothing in Procedure 8.D. authorizes a permitting authority to dictate specific control measures. EPA strongly encourages permittees to consider source reduction approaches, such as process changes and product substitution, when determining how to obtain necessary reductions because these measures are often more cost-effective than treatment alternatives. A permittee may, of course, choose instead to install wastewater treatment or institute other control measures to reduce the level of the pollutant in its discharge.

C. Consequences of Today's Action

As a result of today's action, States and Tribes need not adopt or submit to EPA for review a procedure to eliminate or phase-out mixing zones for BCCs for new and existing discharges to waters within the Great Lakes Basin. States and Tribes may adopt the mixing zone elimination and phase-out provisions pursuant to independent State or Tribal authority. The Agency continues to support eliminating mixing zones for BCCs within the Great Lakes Basin wherever it is technically and economically feasible to do so.

States which have language in their regulations or other implementation documents that parallels the language in the original Procedure 8.D. would be considered consistent with 40 CFR part 132. However, to minimize confusion about how a State interprets its provision, EPA encourages States to issue interpretations of their PMP procedures to specify whether they interpret those procedures consistent with EPA's interpretation of Procedure 8.D. and today's revisions or whether they intend to require internal WQBELs or to categorically require specific control measures (e.g., source reduction as a water quality-based requirement) pursuant to independent State authority as provided for in section 510 of the CWA.

II. "Good Cause" Under the Administrative Procedure Act

EPA has determined that it has "good cause" under section 553(b)(3) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3), to promulgate this final rule without prior opportunity for notice and comment. EPA finds it "unnecessary" to provide an opportunity to comment on the strictly legal issue of the impact of the *AISI* decision on the provisions to eliminate and phase-out mixing zones for BCCs in the March 1995 Guidance or changes to language in Procedure 8.D. to conform to the Court's decision. Today's rule merely implements the decision of the Court.

EPA also believes the public interest is best served by reacting to the Court's decision without further delay. For this reason, EPA has also determined that it has "good cause" under 5 U.S.C. 553(d) to make the rule effective upon publication.

III. Executive Order 12866

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action" and is therefore not subject to OMB review.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), whenever a Federal agency promulgates a final rule after being required to publish a general notice of proposed rulemaking under section 553 of the Administrative Procedures Act (APA), the agency generally must prepare a final regulatory flexibility analysis describing the economic impact of the regulatory action on small entities. EPA has not prepared a final regulatory flexibility analysis for this action because the Agency was not required to publish a general notice of proposed rulemaking for this rule.

As explained above, section 553 of the APA provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary and contrary to the public interest, an agency may first issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without notice and opportunity for comment for the reasons spelled out above. In these circumstances, the RFA does not require preparation of a final regulatory flexibility analysis. Today's final rule establishes no requirements applicable to small entities.

VI. 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 UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of 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 provision 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.

The requirements in section 202 and 205 apply to general notices of proposed rulemaking and any final rule for which a general notice of proposed rulemaking was published. For reasons explained previously, a notice of proposed

rulemaking was not published in this proceeding. Therefore, sections 202 and 205 do not apply to EPA's action here.

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 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. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, today's rule withdrawals provisions and therefore, does not contain any regulatory requirements. Thus this rule is not subject to the requirements of section 203 of UMRA.

VII. Executive Order 12875

For the same reasons as stated above in section VI., EPA has determined this final rule does not impose federal mandates on State, local or Tribal governments. Therefore this rule is not subject to the provisions E.O. 12875.

Nonetheless, in compliance with Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA has extensively involved Great Lakes State, Tribal and local governments in the development of the 1995 Guidance. The rulemaking which promulgated the Guidance in 1995 was subject to Executive Order 12875. The process used to develop the Guidance marked the first time that EPA had developed a major rulemaking effort in the water program through a regional public forum. The public process which lasted over a seven year period and involved Great Lakes States, EPA, and other Federal agencies in open dialogue with citizens, Tribal and local governments, and industry in the Great Lakes Basin is described further in the preamble to the final Guidance. *See* 56 FR 15383–15384 (March 23, 1995).

As described above, this action by EPA merely conforms the regulations to the Court order in *AISI* and therefore, does not create any federal mandates.

VIII. Paperwork Reduction Act

This action includes no information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) Therefore, no Information Collection Request is required to be prepared or submitted to OMB for approval.

IX. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office and Management and Budget, an explanation of the reasons for not using such standards.

This final rule does not prescribe any technical standards, so we have determined that the NTTAA requirements are not applicable.

List of Subjects in 40 CFR Part 132

Environmental protection, Administrative practice and procedure, Great Lakes, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 14, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble Title 40, Chapter I of the Code of Federal Regulations is to be amended as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

1. The authority citation for part 132 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Procedure 3 of Appendix F to part 132 is amended by removing Procedure 3.C.

3. Procedure 8 of Appendix F to part 132 is amended by revising in the introductory text of 8.D. the second sentence and the third sentence; by revising paragraph 8.D.3; by revising paragraph 8.D.4; and by revising paragraph 8.D.5.c. to read as follows:

Procedure 8: Water Quality-based Effluent Limitations Below the Quantification Level

* * * * *

D. Pollutant Minimization Program. * * * The goal of the pollutant minimization program shall be to maintain the effluent at or below the WQBEL. In addition, States and Tribes may consider cost-effectiveness when evaluating the requirements of a PMP. * * *

1. * * *

2. * * *

3. Submittal of a control strategy designed to proceed toward the goal of maintaining the effluent below the WQBEL;

4. Implementation of appropriate, cost-effective control measures consistent with the control strategy; and

5. * * *

a. * * *

b. * * *

c. A summary of all action undertaken pursuant to the control strategy.

6. * * *

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[FR Doc. 98–10717 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 417, 424, and 482

[HCFA–3706–F]

RIN 0938–AE99

Medicare Program; Scope of Medicare Benefits and Application of the Outpatient Mental Health Treatment Limitation to Clinical Psychologist and Clinical Social Worker Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule addresses requirements for Medicare coverage of services furnished by a clinical psychologist or as an incident to the services of a clinical psychologist and for services furnished by a clinical social worker. The requirements are based on section 6113 of the Omnibus Budget Reconciliation Act of 1989, section 4157 of the Omnibus Budget Reconciliation Act of 1990, and section 147(b) of the Social Security Act Amendments of 1994 (SSA '94). This rule also addresses the outpatient mental health treatment limitation as it applies to clinical psychologist and clinical social worker services.

This final rule also conforms our regulations to section 104 of the Social Security Act Amendments of 1994. Section 104 provides that a Medicare patient in a Medicare-participating hospital who is receiving qualified psychologist services may be under the care of a clinical psychologist with respect to those services, to the extent permitted under State law.

In addition, this final rule requires that clinical psychologists and clinical

social workers use appropriate diagnostic coding when submitting Medicare Part B claims.

EFFECTIVE DATE: This final rule has been classified as a major rule subject to congressional review. The effective date is June 22, 1998. If, however, at the conclusion of the congressional review process the effective date has been changed, the Health Care Financing Administration will publish a document in the **Federal Register** to establish the actual effective date or to issue a notice of termination of the final rule action.

FOR FURTHER INFORMATION CONTACT: Regina Walker-Wren, (410) 786–9160.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clinical Psychologist Services

Before section 6113 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Pub. L. 101–239, became effective, Medicare Part B paid for the services of clinical psychologists (CPs) if they were furnished as an incident to the services of a physician or if the services were furnished in certain settings. Section 6113(a) of OBRA '89 revised section 1861(ii) of the Social Security Act (the Act), which defined ''qualified psychologist services,'' to expand Part B coverage of CP services to services performed in all settings. The services, however, must be those that the psychologist is legally authorized to perform under State law and that would otherwise be covered if furnished by a physician or as an incident to a physician's services. This, in effect, allows payment to be made directly to a CP for qualified psychologist services furnished by the CP or incidental to the CP's services (except for services furnished to hospital patients). The provision was effective for services furnished on or after July 1, 1990. Section 1833(p) of the Act (now designated as section 1842(b)(18)(A) of the Act), which requires that payment for qualified psychologist services be made only on an assignment-related basis, was unchanged by the OBRA '89 amendments.

Section 6113(d) of OBRA '89 amended section 1833(d)(1) of the Act to eliminate a then-existing dollar limitation on payment for outpatient mental health treatment. It, however, retained a 62½ percent limitation that had been established by earlier legislation. (Note that section 1833(d)(1) has been redesignated as section 1833(c) by the Medicare Catastrophic Coverage Repeal Act of 1989, Pub. L. 101–234.) Section 1833(c) applies to expenses for mental health treatment services incurred on or after January 1, 1990.

Section 6113(c) of OBRA '89 requires the Secretary, while taking into consideration concerns for patient confidentiality, to develop criteria regarding direct payment to CPs under which the CPs must agree to consult with a patient's attending physician.

As a further development, section 4157(a) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Pub. L. 101–508, amended section 1861(b) of the Act, which defines ''inpatient hospital services,'' by revising paragraphs (3) and (4) to exclude, effective January 1, 1991, CP services furnished to a hospital inpatient from the definition. In addition, section 4157(c) of OBRA '90 amended section 1862(a) of the Act, which concerns exclusions from coverage, by revising paragraph (14) to permit direct billing by CPs for qualified psychologist services if furnished to hospital patients.

On December 29, 1993, we published a proposed rule, at 58 FR 68829, concerning Medicare coverage and payment of CP, other psychologist, and clinical social worker services. That proposed rule contains additional information on the legislative background of CP services.

Subsequent to the publication of the December 1993 proposed rule, Congress enacted the Social Security Act Amendments of 1994 (SSA '94), Pub. L. 103–432. Section 104 of SSA '94 amended section 1861(e)(4) of the Act. Prior to SSA '94, section 1861(e)(4) provided that each Medicare patient in a participating hospital be under the care of a physician. This provision was incorporated into our regulations at § 482.12(c). Section 482.12(c) allows a practitioner to assume responsibility for a patient's care only if the practitioner is included in the definition of ''physicians'' at section 1861(r) of the Act. That definition includes doctors of medicine and osteopathy (including psychiatrists) and other practitioners, but does not include CPs.

As amended by section 104 of SSA '94, section 1861(e)(4) of the Act now provides that a hospital patient receiving qualified psychologist services may be under the care of a CP with respect to services furnished by the CP, to the extent permitted under State law.

B. Diagnostic Psychological Tests

Before enactment of the qualified psychologist services benefit (that is, the CP benefit authorized under section 1861(ii) of the Act), we authorized, under section 1861(s)(3) of the Act, Medicare coverage for diagnostic psychological testing services performed by a qualified psychologist practicing independently of an institution, agency, or physician's office. In order to have his or her diagnostic services covered under this provision, the psychologist had to meet certain qualifications and the diagnostic services had to have been ordered by a physician. These services were covered as ''other diagnostic tests,'' and Medicare paid for them on a reasonable charge basis.

C. Clinical Social Worker Services

Before the enactment of OBRA '89, services of a clinical social worker (CSW) were payable by Medicare Part B when furnished in various settings, such as a risk-based health maintenance organization (HMO); as part of hospital outpatient services under sections 1861(s)(2)(B), 1861(s)(2)(C), and 1861(ff)(2)(C) of the Act; and as an incident to the services of a physician under section 1861(s)(2)(A) of the Act. (The applicable HMO statutory provision is contained at section 1861(s)(2)(H)(ii) of the Act, which includes these services in the list of ''medical and other health services.'')

Section 6113(b) of OBRA '89 amended section 1861(s)(2) of the Act to include CSW services in the definition of ''medical and other health services'' generally covered under Part B of Medicare at section 1861(s)(2)(N) of the Act. It also amended section 1861(hh), which defines a CSW, to define ''clinical social worker services'' as services performed by a legally authorized CSW for the diagnosis and treatment of mental illnesses (other than services furnished to an inpatient of a hospital and other than services furnished to an inpatient of a skilled nursing facility (SNF) that the facility is required to provide as a requirement for participation) and that would be covered if furnished by a physician or as an incident to a physician's professional service. This provision is effective for services furnished on or after July 1, 1990.

Section 6113(b)(3) of OBRA '89 amended section 1833(p) (now section 1842(b)(18)(A)) of the Act to specify that Part B payment for CSW services (as defined in section 1861(hh)(2) of the Act) is made only on an assignment-related basis.

Readers who desire additional information regarding the legislative background for CSW services are referred to the above-cited December 29, 1993, proposed rule. Note, however, that, subsequent to the publication of the December 1993 proposed rule, section 147(b) of SSA '94 amended the consultation requirement at section 6113(c) of OBRA '89 (discussed above with regard to CPs) to include CSWs.

Therefore, effective January 1, 1995, CSWs have been required by law, as a condition of payment for their professional services, to consult with their patients' primary care or attending physician.

D. Payment in Certain Facilities

In accordance with section 1876(a)(6) of the Act, payment for services furnished to an enrollee of a risk-based HMO or competitive medical plan (CMP) can only be made to the HMO or CMP. Thus, a CP or CSW who furnishes services in these settings may not bill Medicare directly for these services. Payment will continue to be made through the risk-based HMO or CMP under the appropriate payment methodology.

It should be noted, however, that the scope of services requirement for both cost and risk-based HMOs or CMPs is changed with the addition of CP and CSW services to the list of ''medical and other health services'' defined under section 1861(s) of the Act. The scope of services requirement for both cost and risk-based HMOs and CMPs is set forth in existing § 417.440(b) and includes all Part A and Part B services that are available to Medicare beneficiaries in the HMO's or CMP's geographic area. Therefore, both cost and risk contracting HMOs and CMPs must now furnish CP and CSW services as Medicare-covered services. Note, however, that under section 1861(hh) of the Act, there is no coverage under Part B for services and supplies incident to a CSW's services. Coverage, however, is provided, under section 1861(s)(2)(H)(ii) of the Act, for services and supplies furnished as an incident to a CSW's services if furnished in a risk-based HMO or CMP. Thus, services and supplies incident to a CSW's services are covered by Medicare only when furnished by risk-based HMOs and CMPs.

Comprehensive outpatient rehabilitation facilities (CORFs) could bill for CP services furnished through December 31, 1990. However, effective January 1, 1991, a separate claim must be submitted under Part B for services of a CP in a CORF furnished to patients of the facility. This is because, as of January 1, 1991, services of CPs are not included in the scope of CORF services described under section 1861(cc)(1)(D) of the Act. In that section, the law states that CORF services do not include any item or service that is not included under section 1861(b) of the Act if furnished to an inpatient of a hospital. As noted above, section 1861(b), which contains the statutory definition of ''inpatient hospital services,'' as amended by section 4157(a) of OBRA '90, provides that inpatient hospital services do not include qualified psychologist services. As a result, a separate claim must be submitted under Part B for CP services to hospital inpatients. The same policy applies to CORFs under section 1861(cc)(1) of the Act, as noted, to SNFs under section 1861(h)(7) of the Act, and to home health agencies under the language following paragraph (m)(7) of section 1861 of the Act.

Note also that, in accordance with section 1881(b) of the Act, § 405.2163(c), which governs services required for outpatient maintenance dialysis patients furnished in end stage renal disease facilities, includes the services of social workers. Payment for social worker services is included in the composite rate payment made to the dialysis facility. Therefore, when a CSW furnishes social services as required under § 405.2163(c), these services are billed by the end stage renal disease facility, and these services are paid for by Medicare as part of the composite rate. The composite rate, a payment rate provided for under section 1881(b) of the Act, is a comprehensive, all inclusive, prospective payment for all of the items and services required for outpatient maintenance dialysis.

Section 1861(aa)(3) and (4) of the Act includes the services of CPs and CSWs in the services of a Federally qualified health center. Section 1861(aa)(1)(B) of the Act includes the services of CPs and CSWs, and services and supplies furnished as an incident to those services, as rural health clinic services. Coverage for these services is addressed in §§ 405.2446, 405.2450, and 405.2452. We plan to address provisions related to these services in a separate rulemaking document.

II. Provisions of the Proposed Rule

As stated earlier, on December 29, 1993, we published a proposed rule that addressed the provisions of section 6113 of OBRA '89 and section 4157 of OBRA '90. Our proposal is summarized below.

A. Clinical Psychologist Services

1. Inclusion as ''Medical and Other Health Services''

We proposed to revise § 410.10, ''Medical and other health services: Included services,'' to include, in the list of medical and other health services covered under Part B, the diagnostic and therapeutic services furnished by a CP and services and supplies furnished as an incident to a CP's services.

2. Covered Services

We proposed, in a new § 410.71, that Medicare Part B cover (subject to the 62½ percent limitation for certain outpatient mental health treatment services) services that are furnished by a CP who meets certain requirements (discussed in section III, ''Analysis of and Response to Comments,'' of this preamble). The services must be those that are within the scope of the CP's State license and must be services that would be covered if furnished by a physician or as an incident to a physician's services. With regard to this provision, we proposed the following:

- The outpatient mental health treatment services of CPs and services and supplies furnished as an incident to those services are subject to the 62½ percent payment limitation set forth in proposed § 410.155.
- Payment for the services of CPs and incident-to services furnished to hospital inpatients and outpatients through December 31, 1990, is made to the hospital.
- Effective January 1, 1991, CPs may bill Medicare Part B directly for their services to hospital patients.
- When applying for a provider number and annually thereafter, CPs who bill Medicare Part B directly (including CPs who furnish services to hospital patients and bill Medicare Part B directly for the services) must submit an attestation statement agreeing to consult with the beneficiary's attending or primary care physician in accordance with accepted professional ethical norms, taking into consideration patient confidentiality.
- The CP must agree to inform the beneficiary, prior to a consultation, that it is desirable to consult with the beneficiary's primary care or attending physician to consider any medical conditions that may be contributing to the beneficiary's condition. We also proposed, in § 410.71(e)(2)(iii), that if the beneficiary assents, the CP must agree to consult with the physician within 1 week of obtaining the beneficiary's consent. We specifically requested public comment on this latter proposal.
- The annual attestation contains an agreement to include a notation in the beneficiary's medical records to the effect that he or she was notified of the desirability of a consultation between the CP and the beneficiary's primary care or attending physician, and the patient's response to the notification. We specifically requested public comment on this matter.
- In the attestation statement the CP agrees that, if he or she is unable to reach the physician after at least four attempts, he or she will notify the physician in writing about the provision of care to the beneficiary. We

specifically invited comments concerning this matter as well.

We also proposed that the definition of CP that appears in the HMO rules at § 417.416(d)(2) be revised to cross-refer to the qualifications we would set forth at § 410.71.

3. Incidental Services

We proposed, in § 410.71(a)(2), that Medicare Part B would cover services and supplies furnished as an incident to a CP's services if the incidental services and supplies would be covered if furnished by a physician or as an incident to a physician's services.

We also proposed that, in order for services and supplies furnished as an incident to the services of the CP to be covered by Medicare, they must meet the longstanding Medicare requirements that are applicable to services furnished as an incident to the professional services of a physician. That is, services must be—

- The type that are commonly furnished in a physician's or CP's office and are either furnished without charge or are included in the CP's bill;
- An integral, although incidental, part of professional services performed by the CP;
- Performed under the direct supervision of the CP (that is, the CP must be physically present and immediately available); and
- Performed by an employee of either the CP or the legal entity that employs the supervising CP under the common law control test of section 210(j) of the Act (42 U.S.C. 410(j)), as more fully set forth in 20 CFR 404.1007.

4. Consultation

We proposed, in § 410.71(c), that consultation between the CP and the beneficiary's primary care or attending physician would not be a separately-billable service for Medicare payment purposes. We also proposed that the primary care or attending physician also would not be permitted to bill Medicare for this consultation.

5. Payment on an Assignment-Related Basis

We proposed to revise § 410.150, ''To whom payment is made,'' to specify that payment is made directly to the CP on an assignment-related basis for CP services furnished by him or her and for services and supplies furnished as an incident to his or her services. We pointed out that the assignment requirement would not preclude a CP from furnishing his or her services as an incident to the services of another health care practitioner if these services meet all of the incident-to requirements. In such a case, the practitioner may bill Medicare for the incident-to services. In this case, payment would be made by Medicare to the practitioner.

6. Limitation on Mental Health Treatment Services

We proposed to revise § 410.152(a)(1)(iv), which concerns amounts of payment, to remove the annual dollar limitation on covered mental health treatment services as a factor in determining incurred expenses. (Incurred expenses are Part B covered expenses incurred by an individual during his or her coverage period.)

7. Payment Amount

We proposed to revise § 410.152, ''Amounts of payment,'' to specify that Medicare Part B pays, subject to the mental health treatment limitation of § 410.155(c), 80 percent of the lesser of the actual charge or the fee schedule amount for CP services.

8. Definition of ''Mental Health Treatment''

We proposed to add a definition of ''mental health treatment'' to paragraph (a) of § 410.155, ''Mental health treatment limitation.'' We proposed to define ''mental health treatment'' as ''therapy for the treatment of a mental, psychoneurotic, or personality disorder.'' We also proposed to specify a distinction between ''treatment'' and ''diagnosis,'' as discussed below.

We proposed to revise § 410.155(b) to include examples of services that are subject to, or excluded from, the application of the limitation.

- We proposed that the limitation does not apply to mental health treatment furnished to hospital inpatients, brief office visits to a physician for the purpose of monitoring or changing drug prescriptions used in the mental health treatment, partial hospitalization services that are not directly provided by a physician, and diagnostic services that are performed to establish a diagnosis.
- We proposed that the limitation will apply not only to mental health treatment furnished by physicians and CORFs but also to mental health treatment furnished as an incident to the services of a physician and to the mental health services of other health care practitioners whether the services are furnished directly by the practitioners or as an incident to their services. Thus, for example, the limitation would apply to the services of CPs, services furnished as an incident to the services of CPs, and to the services of CSWs.

With respect to diagnostic psychological testing and other diagnostic services, we proposed that services performed in order to establish a patient's diagnosis are not subject to the limitation, because those services do not represent *treatment* of a mental disorder. We stated that the limitation would apply to testing that is part of treatment (for example, when it is used to evaluate a patient's progress during treatment). Only diagnostic services used to establish a diagnosis for a patient's mental illness would be excluded from the limitation.

We proposed to revise § 410.155(c) of the regulations to remove the dollar limitation.

We also proposed to revise the heading of § 410.155, from ''Psychiatric services limitations: Expenses incurred for physician services and CORF services'' to ''Mental health treatment limitation.'' Further, we proposed to update the example, in existing § 410.155(d), of how the limitation is applied.

As a technical revision, we proposed to remove the reference to ''medical services for the diagnosis and treatment of tuberculosis'' from the definition of ''hospital'' in § 410.155(a). Section 2335 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) repealed the special conditions and requirements associated with coverage of treatment of tuberculosis patients and eliminated the special provider category of tuberculosis hospitals.

9. Basis for Payment

We proposed to revise § 424.55(b)(1), which concerns accepting assignment, to reflect that, in accepting assignment, a supplier (which includes a CP) agrees to accept, as the full charge for the service, the charge approved by the carrier as the basis for determining the Medicare Part B payment. We proposed to revise paragraph (b)(2)(i) of this section, which currently reads: ''To collect nothing for those services for which Medicare pays 100 percent of the reasonable charge.'' We proposed to change ''reasonable charge'' to ''approved amount'' to reflect that, based on recent statutory changes, there are also fee schedules and other basis for payment, in addition to reasonable charge.

We proposed to revise paragraph (b)(2)(ii) of § 424.55. This paragraph currently limits the amount that the supplier may collect from the beneficiary or other source to only the amount of any unmet deductible, plus 20 percent of the difference between the reasonable charge and the unmet deductible for those services for which

Medicare pays 80 percent of that difference. We proposed to revise this to state that, for those services for which Medicare pays less than 100 percent of the approved amount, the supplier may collect only the difference between the Medicare-approved amount and the Medicare Part B payment (that is, the amount of any reduction in incurred expenses under § 410.155(c) and any applicable deductible and coinsurance amount). This change would recognize that a supplier may collect, from the beneficiary or other source, the 37½ percent differential that results from the mental health treatment limitation.

B. Diagnostic Psychological Tests

Diagnostic psychological testing services performed by an independent psychologist, other than a CP, practicing independently of an institution, agency, or physician's office are currently covered as other diagnostic tests under section 1861(s)(3) of the Act. We stated our intent to continue to cover this type of testing. We, however, invited public comment on methods to employ that would control the potential for excessive use of psychological testing.

In addition, we stated that we intend to address the coverage requirements for the psychological tests benefit in a separate rulemaking in the near future and that, at that time, we will invite public comment about the professional qualifications that should be required for the persons who perform these tests. We stated our intent, until the rule establishing these qualifications is effective, to continue to cover this type of testing if furnished by any psychologist who is licensed or certified to practice psychology in the State or jurisdiction where he or she is furnishing services or, if the jurisdiction does not issue licenses, if provided by any practicing psychologist.

C. Clinical Social Worker Services

1. We proposed to revise § 410.10, ''Medical and other health services: Included services,'' to include the services of CSWs in the list of medical and other health services covered under Part B.

2. We proposed, in a new § 410.73(a), to define a CSW as an individual who—

- Possesses a master's or doctor's degree in social work;
- After obtaining the degree, has performed at least 2 years of supervised clinical social work; and
- Either is licensed or certified as a CSW by the State in which the services are performed or, in the case of an individual in a State that does not provide for licensure or certification, has completed at least 2 years or 3,000 hours of post master's degree supervised clinical social work practice under the supervision of a master's degree level social worker in an appropriate setting such as a hospital, SNF, or clinic.

3. We proposed, in a new § 410.73(b), to specify that Medicare Part B pays for services performed by a CSW for the diagnosis and treatment of mental illness that the CSW is legally authorized to perform if the services would be covered if furnished by a physician or as an incident to a physician's professional services.

4. We proposed to specify, in a new § 410.73(c)(1), that payment for CSW services furnished to hospital inpatients and outpatients is made to the hospital (not to the CSW).

We proposed to specify, in a new § 410.73(c)(2), that payment for CSW services furnished to inpatients of an SNF, if the SNF is required to provide such services as a requirement for participation, is made to the SNF. Under the statute, however, any coverable CSW services furnished in an SNF that the SNF is not required to furnish as a requirement for participation could be billed by the CSWs directly under Part B. Thus, we specifically invited public comment and suggestions on how we can clearly identify or differentiate the level of services that would clearly qualify under the statute as CSW services performed in SNFs from those services that are required by the SNF requirements for participation.

As noted above, the conditions of coverage for end stage renal disease facilities require that social worker services be made available to dialysis patients. Therefore, we proposed to specify, in a new § 410.73(c)(3), that payment for social services furnished to dialysis patients that are required by the conditions for coverage for end stage renal disease facilities is made to the facility. We specifically invited public comment, however, regarding whether any CSW services to dialysis patients can be distinguished from the required facility services.

5. We proposed, in a new § 410.73(d), to hold those CSWs who bill Medicare Part B directly to the same consultation requirements as we would CPs. Accordingly, the CSW, when applying for a Medicare provider number and annually thereafter, would be required to submit to the carrier an attestation statement agreeing to consult with the beneficiary's attending or primary care physician in accordance with professional ethical norms, taking into consideration patient confidentiality. We would require that the attestation statement contain the same information we proposed to require for the attestation statement of CPs.

We also proposed to specify, in a new § 410.73(c)(5), that a CSW or attending or primary care physician may not bill Medicare or the beneficiary for the consultation that would be required by this rule.

6. We proposed to revise § 410.150, which explains to whom payment is made, to specify that payment may be made directly to the CSW, on an assignment-related basis, for services he or she furnished.

7. We proposed to revise §§ 410.152, ''Amounts of payment,'' and 410.155(b), ''Services subject to limitation,'' regarding application of the mental health treatment limitation. The provisions of proposed §§ 410.152 and 410.155(b), discussed in sections II.A.7. and II.A.8. of this preamble, respectively, would also apply to services of CSWs.

8. We proposed to further revise § 410.152 by adding a new paragraph (m), which would specify that Medicare Part B pays, subject to the mental health treatment limitation of § 410.155(c), 80 percent of the lesser of the actual charge for the therapeutic services of a CSW or 75 percent of the fee schedule amount for CP services.

9. We proposed to amend § 417.416, ''Qualifying condition: Furnishing of services,'' to specify that an HMO or CMP may permit the covered services of a CSW to be furnished without physician supervision. We also proposed that services incident to the professional services of a CSW are not covered by Medicare if furnished in a cost-based HMO or CMP.

10. The proposed revision to § 424.55, ''Payment to the supplier,'' discussed in section II.A.9. of this preamble, would also apply to CSWs.

D. CPs and CSWs Diagnostic Coding

We proposed that, beginning with the effective date of the final rule, CPs and CSWs would be required to use only ICD–9–CM diagnostic coding when submitting claims to our carriers.

III. Analysis of and Response to Comments

In response to the December 1993 proposed rule, we received approximately 740 public comments. Commenters included national, State, and local professional associations; State and local governmental agencies; psychologists, psychiatrists, CSWs, and other individuals.

The concerns expressed by the commenters focused predominately on the proposed definition of ''clinical psychologist,'' the attestation statement,

and the consultation requirements. There were also other issues addressed in the public comments, such as, which medical coding system CPs or physicians should use to report services, how to distinguish the professional services of CSWs from the social services that social workers are required to furnish to patients in SNFs that house 120 or more beds, psychological testing, and the grandfathering of master's level psychologists who were licensed by their respective States at the time licensure laws first became effective.

A summary of the comments and our responses are presented below.

A. The ''Clinical Psychologist'' Definition (§ 410.71)

The proposed CP definition is basically comprised of three requirements: the educational degree, State licensure, and clinical experience. For purposes of addressing public comments on the proposed definition of ''clinical psychologist,'' however, we believe it is helpful to analyze the various components of the definition. These are as follows:

- The individual must hold a doctoral degree in psychology.
- The doctoral degree in psychology must be from an accredited program.
- The psychology program must prepare the candidate to practice clinical psychology by providing appropriate clinical psychology training.
- The individual must be licensed or certified at the independent practice level of clinical psychology by the State in which he or she practices.
- The individual must possess 2 years of supervised clinical experience, at least one of which is postdoctoral degree experience.
- The 2 years of supervised clinical experience must have been supervised by a psychologist qualified at the doctorate level.

1. The Individual Must Hold a Doctoral Degree in Psychology

Comment: The majority of the comments we received on the CP definition supported maintaining the standard that requires a *doctoral* degree in psychology. On the other hand, many commenters objected to maintaining that standard. These latter commenters believed that the standard should be replaced with a standard that would enable psychologists with master's degrees to qualify as CPs. It was suggested by a few of these commenters, however, that these master's level psychologists be paid at the same rate as social workers with master's degrees who are also authorized to bill the Medicare program directly for professional diagnostic and treatment services.

Also, these commenters contend that in some States there is a shortage of psychologists with doctoral degrees, particularly in the rural areas. They further assert that, while psychologists with doctoral degrees are not very accessible to the elderly population in rural areas, there are psychologists in these areas who have a master's degree in psychology and are licensed by the State at the independent practice level to furnish diagnostic and treatment services. These commenters have urged us to defer to State Psychology Boards to determine who is eligible to furnish psychological services under the Medicare program, since professional licensure has always been controlled by the State.

Response: The statute, at section 1861(ii) of the Act gives the Secretary the authority to define the term ''clinical psychologist'' for the purpose of covering, under the Medicare Part B program, the professional diagnostic and treatment services of CPs and services and supplies furnished as an incident to their professional services.

Previously, we had established a definition of CP in regulations at § 417.416(d)(2). This definition was issued in final regulations in 1985 and has been used for purposes of coverage of CP services in HMOs and CMPs. Application of this definition in the community mental health center setting was addressed through instructions issued in September 1986; for purposes of the expanded CP benefit, instructions were issued in August 1990.

As we stated in the proposed rule, while this CP definition in its entirety may have been appropriate for psychologists furnishing services in limited settings such as HMOs, CMPs, and community mental health centers, its use for purposes of the expanded benefit caused extensive concern among CPs. While we believe that there are provisions of the definition that remain appropriate even under the expanded benefit, we believe other provisions of the definition require some modification.

Under the expanded CP benefit, CPs are authorized to perform services that would otherwise be furnished by a *physician*, as well as accept responsibility for services furnished by others incident to their professional services. We believe that it is prudent for these practitioners to have a level of education that is close to that which physicians receive if they are going to perform in this capacity. Even though a few States may license psychologists with master's degrees at the independent practice level to furnish both diagnostic and treatment services, we want to ensure that only those practitioners with the highest level of education, knowledge, and experience furnish services to Medicare beneficiaries.

Additionally, we believe that the requirement for a doctoral degree is the standard for psychologists who are qualified to furnish services and supervise the services of others, as evidenced by the industry and by other Federal programs. Information from the Association of State and Provincial Psychology Boards indicates that 32 States and the District of Columbia do not license or certify psychologists below the doctorate level, and most of the 18 States that do license or certify individuals at the masters level require supervision of the individual's services by a doctorate level psychologist. Over 90 percent of psychologists licensed or certified for independent clinical practice do have doctoral degrees.

We have concerns about the suggestion that the Medicare program allow psychologists with master's degrees who are licensed by the State at the independent practice level of psychology to qualify as CPs, but pay these psychologists at the same rate that the program pays CSWs for their professional diagnostic and treatment services. Although the Medicare program makes direct payment to independently practicing CSWs for their professional diagnostic and treatment services, the CSW benefit is a more restricted benefit than the CP benefit. For example, CSWs may not bill directly for services they furnish hospital inpatients and outpatients or for services in SNFs that participate in Medicare. Additionally, the program does not authorize direct payment to CSWs for services furnished incident to their professional services, except in certain limited situations.

Furthermore, the law provides direction on how the program must pay for the services of CPs as well as CSWs based on criteria that are specific to each of these categories of practitioners. Accordingly, we do not have the discretion to pay doctoral level psychologists at one rate and master's level psychologists at another—just as we do not have the discretion to pay master's level social workers at one rate and doctoral level social workers at another. Practitioners who meet the criteria for CPs and CSWs, respectively, will be paid at the established rate for that benefit.

The following may help to relieve the concerns expressed about the shortage

of psychologists with doctoral degrees in rural areas. Section 1861(aa)(1)(B) of the Act states that the term ''rural health clinic services'' includes services furnished by a CP (as defined by the Secretary). Therefore, in developing a notice of proposed rulemaking that will address Medicare coverage of services provided by rural health clinics, we must develop a definition of CP that is appropriate for practitioners who are employed by those entities. Under the rural health clinic benefit, the CP definition will take into account the shortage of psychologists with doctoral degrees in rural areas, particularly those designated as health professional shortage areas. We will not, however, discuss the requirements for CPs who are employed by rural health clinics in this final rule. Instead, the provisions of the definition for purposes of the rural health clinic benefit will be proposed in a separate notice of proposed rulemaking.

Comment: Many professional organizations and psychologists commended us for proposing a more comprehensive definition of a CP by removing the previous requirement that an individual must hold a doctoral degree from a program in *clinical psychology*. They stated that our efforts to develop an improved definition will help to provide Medicare beneficiaries with access to basic mental health care. These commenters, in most cases, indicated whether their local carriers have been interpreting the CP definition on a case-by-case basis (while awaiting a final rule) to include practitioners who have clinical experience, even though their doctoral degrees are from another program in psychology.

On the other hand, many commenters from professional associations and organizations stated that the existing requirement that an individual must hold a doctoral degree from a program in *clinical psychology* should be restored and that the proposed definition, which does not specify that the doctoral degree must be from a program in clinical psychology, is inappropriate. These commenters questioned how we could ensure that other doctoral level psychologists who have graduated from programs such as neuropsychology or school, developmental, educational, comparative, experimental, and industrial psychology have the appropriate education and clinical training and experience to treat Medicare patients. These commenters believed that removal of the existing requirement for a doctoral degree from a program in *clinical psychology* could present a danger to the medically vulnerable Medicare population.

Some commenters stated that, for purposes of determining who qualifies as a CP under the Medicare program, we should recognize those psychologists who are listed as health service providers in the National Register of Health Service Providers in Psychology, and they pointed out the following. The National Register is a way of identifying many clinicians who graduate with degrees from programs that do not specify the word ''psychology'' in their title, but are clearly programs in psychology. The Civilian Health and Medical Program of the Uniformed Services, which is another Federally funded and managed program, references the National Register as a mechanism for identifying CPs. Also, some States have added a certification to the psychology license that designates psychologists trained and experienced in the provision of clinical services as health service providers.

Response: We realize that there are many psychologists who, although their doctoral degree is labeled other than ''clinical psychology,'' graduated from psychology programs that provided them with the appropriate knowledge, training, and experience in clinical psychology. We are very concerned that we not indirectly deny beneficiaries access to the care of qualified psychologist services solely because the degree that a practitioner has earned is labeled something other than ''clinical psychology.'' Based on our carriers' experience in interpreting the CP definition on a case-by-case basis, we do not agree with those commenters who believe that removal of the existing requirement for a doctoral degree from a program in ''clinical psychology'' presents a danger to the Medicare population.

We believe that the National Register is a mechanism that can be instrumental in identifying psychologists who are qualified to furnish qualified psychologist services. We do not believe, however, that it should be used by carriers as the sole criterion to determine who is qualified to furnish psychologist services under the Medicare program because listing is optional and requires payment of a fee by the practitioner. Also, the register lists nonphysician practitioners who have received some clinical training and experience from programs that are not designated as *psychology* programs.

While we have made allowances for the types of psychology programs that can qualify a practitioner under Medicare's CP benefit, we require that the individual's doctoral degree at least be from a program that is designated as a *psychology* program. The CP benefit was created as a discrete benefit for *psychologists*, and not nonphysician practitioners who may receive some clinical training as part of their doctoral degree programs. We believe that Congress would have to create a separate benefit to recognize practitioners whose degrees are in a field other than psychology.

Therefore, in this final rule, we specify that an individual who seeks qualification as a CP must hold a doctoral degree in psychology.

2. The Doctoral Degree in Psychology Must Be From an Accredited Program

Comment: Many commenters stated that the requirement, under our CP definition, for institutional accreditation should be restored. In fact, many physicians opposed the proposed revisions to the CP definition because they believed the revisions are inappropriate in that they would remove the requirement that the doctoral degree program be from an educational institution that is accredited by an agency recognized by the Commission on Recognition of Postsecondary Accreditation (previously known as the Council on Postsecondary Accreditation). They believed that to ensure the quality of the psychology doctoral program these programs must be housed in accredited institutions of higher learning and be university-based. Additionally, they stated that merely requiring that a doctoral degree in psychology be from an accredited program is too open-ended because it does not specify who must perform the accreditation function. They maintain that our proposed requirement potentially dilutes the quality of psychologists who are eligible to treat Medicare patients.

Many psychologists and professional associations in California commented that the accreditation requirement in the original and the proposed CP definition would pose a serious problem for about one-fourth of the psychologists in California. The affected psychologists would be those whose doctoral degrees in psychology are either from schools that are not *regionally accredited* by the Commission on Recognition of Postsecondary Accreditation or are from psychology programs that are not accredited. These commenters stated that approximately one-fourth of the licenses granted by the Board of Psychology in California, for the period beginning January 1990 through 1991, were to psychologists who are graduates of State *approved* doctoral programs in psychology. The commenters further

stated that many of the institutions that house State approved psychology programs were specifically developed to train psychologists in clinical applications of health care. (The State of California regulates these institutions and their programs through the Council for Private Postsecondary and Vocational Education.) These commenters suggested that, in order to avoid inadvertently eliminating otherwise qualified professionals from participating in the Medicare program because of a semantic problem, we amend our proposed definition to require that a CP hold a doctoral degree in psychology from an accredited or State approved program.

Response: We have thoroughly examined the academic accreditation or approval requirements imposed by the various States for licensure or certification of psychologists. The wide degree of variation in the specifics of State requirements makes creation of a uniform Federal standard infeasible. We have concluded that reliance on State licensure or certification requirements provides adequate assurance that an individual's doctoral degree was obtained from a program that met appropriate academic standards.

3. The Individual Must be Licensed or Certified at the Independent Practice Level of Clinical Psychology by the State in Which He or She Practices

Comment: We received very many comments pertaining to the above requirement, which is included in the proposed CP definition. We were informed that 48 States generically license psychologists at the independent practice level of *psychology*, not *clinical* psychology and that the States, in the vast majority of cases, do not employ concepts of what constitutes ''clinical psychology.'' On the other hand, we received many comments that the addition of the word ''clinical'' to this requirement regarding State licensure and certification at the independent practice level actually strengthened the requirement overall.

Response: We have learned from the commenters, and as a result of our own investigation, that State licensure or certification laws are broadly based and, in combination with regulatory requirements for licensing or certifying psychologists, limit the scope of psychologists' activities to those for which they have received appropriate education, training, and experience. Additionally, the licensing law of every State either incorporates an ethics code or a State board's disciplinary code that makes it illegal for a psychologist to practice in an area for which he or she has not received training. Accordingly, to the extent that a psychologist, regardless of the type of doctorate possessed, were to provide services for which he or she had not received appropriate education and training, that psychologist would be practicing outside the scope or his or her competence and would be subject to both legal and ethical sanctions.

By inserting the word, ''clinical'' into this requirement under the proposed CP definition, we would exclude all of the otherwise-qualified psychologists in 48 states from participating under the Medicare program. Therefore, in this final rule we amend this requirement to specify that an individual who seeks qualification as a CP under Medicare must be licensed or certified at the independent practice level of psychology by the State in which he or she practices.

4. The Psychology Program Must Prepare the Candidate to Practice Clinical Psychology by Providing Appropriate Clinical Psychology Training

Comment: Several commenters believed that, to guard against erroneous interpretations, we need to further clarify the term ''clinical psychology training.'' They stated that, as written, this section uses the terms ''clinical psychology'' and ''clinical psychology training'' to describe a ''clinical psychologist.'' The commenters believe that the fact that no further explanation of these terms is provided could create considerable, but unnecessary, ambiguity in the definition. Therefore, these commenters have suggested a provision that they believe clarifies that the term ''clinical psychology training'' means education and practical experience that prepares the psychologist to provide diagnostic, assessment, preventive, and therapeutic services directly to individuals. It was suggested that this sentence be added to the end of this particular requirement under the CP definition.

Response: We believe that this suggestion clarifies the intent about the emphasis on the term ''clinical psychology.'' We wanted to stress that psychologists who furnish services under this benefit must have the education and experience to furnish diagnostic testing and assessment services and preventive or therapeutic intervention services directly to individuals whose mental growth, adjustment, or functioning is impaired or at risk of impairment. Accordingly, we believe that the focus should be on the actual observation and treatment of patients by the psychologist much more so than on services or work that is theoretical or experimental. In addition, we believe that the key element is the scope of practice authorized by State licensure or certification. Therefore, we are clarifying in this final rule that the individual must be licensed to furnish diagnostic, assessment, preventive, and therapeutic services directly to individuals.

5. The Individual Must Possess 2 Years of Supervised Clinical Experience, at Least 1 Year of Which is Postdoctoral Degree Experience

Comment: Many commenters stated that the above requirement should specify a minimum total number of hours for the required supervised clinical experience. These commenters stated that some States, for example, Florida, Kentucky, and Washington, require a specific number of hours, with Florida requiring 2 years or 4,000 hours of supervised experience. These commenters believed that establishment of a requirement for 2 years/4,000 hours of supervised experience for CPs would put in place a mechanism that would serve to protect the Medicare population.

A few commenters, however, stated that it is possible that the requirement under the proposed CP definition would eliminate doctoral level psychologists who lack a postdoctoral year of supervised clinical experience because they were licensed as a psychologist at the master's level and received their doctoral degree later in their career.

Response: All States have licensure/certification requirements for supervised experience, but they vary in terms of specific details. Therefore, adoption of a uniform Federal standard is not feasible. We have concluded that reliance on State licensure or certification requirements provides adequate assurance that an individual has completed appropriate supervised clinical experience.

6. The 2 Years of Supervised Clinical Experience Must Have Been Supervised by a Psychologist Qualified at the Doctoral Level

Comment: Many commenters expressed concern that the above requirement could inadvertently exclude a number of qualified psychologists from participating under the Medicare program. They explained that some highly qualified, doctorally trained psychologists who have been in practice for a long time received their clinical supervision from licensed master's level psychologists in States where licensed master's level supervision was, and continues to be,

acceptable to State licensing boards. Therefore, these commenters suggested language that reads, ''a CP must possess 2 years of supervised clinical experience, at least one of which is postdoctoral degree experience, and the supervision as provided by a *licensed psychologist*.'' We also received a suggestion that we recognize supervision that was provided by a physician.

Many commenters also stated that our proposed requirement would place an onerous task on Medicare carriers because it requires them to determine who provided the supervision of the psychologist's clinical experience.

On the other hand, many other commenters stated that the requirement pertaining to who supervises the clinical experience should be strengthened. These commenters stated that we should require that the clinical experience be supervised by a CP who has a doctorate degree in *clinical* psychology. Their rationale for strengthening this requirement is that if someone is going to learn about clinical practice from a supervisor, that supervisor is a superior teacher if he or she is licensed in what he or she is teaching/supervising.

Response: By relying on State licensure or certification (see previous response) this level of detail need not be addressed by a Federal standard.

7. Grandfathering Master's Level Psychologists

Comment: Many commenters expressed concern about whether this final rule will grandfather those psychologists who were grandfathered under their State's original licensing laws. They were concerned that the proposed CP definition would restrain the practice of some psychologists who have been practicing for at least 20 years prior to the implementation of the CP benefit. According to some comments we received on the grandfathering issue, the criteria that some States used to determine who was qualified for grandfathering was based on whether the individuals could demonstrate that they had an established practice in psychology for a number of years followed by a successful performance on the national licensing examination. The commenters stated that, while few independently practicing master's level psychologists remain in practice today, those who are still practicing would be excluded under the proposed CP definition from participating in the Medicare program. These commenters requested us to accept, for the purpose of qualifying psychologists under Medicare, certification as a health service provider for master's level psychologists who were grandfathered and have been practicing since State licensure laws went into effect and who are listed in the National Register of Health Service Providers in Psychology.

Response: The State licensing boards that adopted grandfathering clauses used criteria that varied from State to State to determine who qualified. Also, there was no one time period for purposes of grandfathering because all State licensing boards did not implement licensing laws for the psychology profession concurrently. Thus, there has been no uniformly recognized standard for grandfathering. Moreover, as discussed at length in our earlier response regarding the requirement for a doctoral degree, we do not believe it is appropriate to recognize as a CP any practitioner who lacks a doctorate. The few remaining masters level psychologists who have been grandfathered to practice in their individual States have not been recognized as CPs under our current instructions in the Medicare Carriers Manual. Therefore, continuing their exclusion from Medicare should not disrupt their practices and will have negligible impact on the overall availability of services to beneficiaries.

Comment: We also received several comments appealing to us to grandfather into the final rule those psychologists that, before publication of the final rule, carriers had determined were qualified as CPs. (On an interim basis, carriers were granted the discretion to interpret, on a case-by-case basis, the CP definition to include psychologists with doctoral degrees in psychology programs that were labeled other than ''clinical psychology'' provided they met all the other definitional requirements. Conversely, carriers had the discretion to adhere strictly to the requirement which stipulates that a CP must have a doctoral degree from a program in clinical psychology. During this interim measure, many psychologists who would have otherwise been excluded from coverage were granted provider numbers by carriers to participate in the Medicare program as CPs.) These commenters would like to ensure that coverage of these psychologists' services is not discontinued as a result of the provisions of the final rule.

Response: We do not believe that it is necessary to specify in this final rule that those psychologists who carriers qualified as CPs prior to the promulgation of this final rule must be grandfathered under the final CP definition. We believe that the decisions carriers have made about qualifying individuals as CPs, using the discretion that we granted them in the interim (which was to choose to issue provider numbers to psychologists with doctoral degrees from psychology programs labeled other than ''clinical psychology'' provided the individual had the appropriate knowledge, training, and experience in clinical psychology) will not conflict with the CP definition under this rule and will not require a reversal of their decisions.

8. Retraining of Psychologists

Comment: Many commenters strongly asserted that we should not establish standards for retraining psychologists to qualify for coverage under Medicare, as this could intrude or undermine State licensure and scope of practice authorities as well as accredited educational institutional training programs. They believed that we should limit Medicare coverage to CPs who qualify based on the current requirements. These commenters stated that there is no congressional mandate for us to establish new education and training criteria in order to cover nonqualified psychologists under Medicare. In fact, these commenters challenged us about our mission by questioning whether we plan to become a psychology training and payment agency. Lastly, they characterized our proposal to cover the services of psychologists who retrain as ''ridiculous'' and a wasteful expenditure of taxpayer's funds.

Conversely, we received as many or even more comments stating that the opportunity for professional retraining by psychologists is of great value to society, because it encourages and facilitates the unique contributions that can be made by psychologists with broadly diversified backgrounds. These commenters stated that they very much appreciate our acknowledgment that appropriate retraining should enable a psychologist to qualify for Medicare coverage purposes.

The latter commenters informed us, however, that the psychology profession refers to retraining as ''respecialization.'' They clarified that, under the respecialization process, psychologists receive a certificate, not a second doctoral degree as we stated in the preamble to the proposed rule. Also, in response to our request (under this particular proposal) for standards for retraining programs that prepare candidates to practice clinical psychology, these commenters have referred us to the professional, official standards in place that were established by the American Psychological

Association's Committee on Accreditation.

Response: We have concluded that there is no need to create a special provision to address this situation. This issue is generally rendered moot by our decisions not to specify a degree in ''clinical'' psychology but to rely on State licensure or certification. Individuals who have respecialized can qualify if they meet our criteria.

9. Summary

In summary, as a result of our consideration of public comments, proposed § 410.71(e)(1) is designated as § 410.71(d) and is revised to specify that a CP is an individual who—

(1) Holds a doctoral degree in psychology; and

(2) Is licensed or certified, on the basis of the doctoral degree in psychology, by the State in which he or she practices, at the independent practice level of psychology to furnish diagnostic, assessment, preventive, and therapeutic services directly to individuals.

B. Diagnostic Psychological Tests

We stated in the proposed rule that we will continue to cover diagnostic psychological tests under section 1861(s)(3) of the Act as a discrete benefit under the Medicare program. We intend to continue to cover these tests when furnished by any psychologist who is licensed or certified to practice psychology in the State or jurisdiction where he or she is furnishing services or, if the jurisdiction does not issue licenses, if provided by any practicing psychologist.

We explained in the proposed rule that we plan to do a separate rulemaking that will address the qualifications for persons who perform diagnostic psychological tests and that, at that time, we will invite public comments on this issue. In the meantime, however, we invited public comment on methods to employ that will control the potential for excessive use of psychological testing. We received a number of suggestions. We thank the respondents, and we will consider their comments as we develop the separate rulemaking.

C. Services Furnished as an Incident to CP Services (§ 410.71(a)(2))

Comment: We received comments from a professional association stating that the requirement under the ''incident to'' benefit that calls for the provision of services under the direct supervision of the CP (that is, the CP must be physically present in the office suite and immediately available) hampers the ability of the CP to provide necessary mental health services in an effective and efficient manner. This association believed that all ''incident to'' services should be performed under the direct supervision of the CP; it did not believe, however, that direct supervision requires the physical presence of the CP. The association claimed that mental health services are different from many health services that pertain exclusively to physical health. Therefore, according to the association, the CP's presence is not appropriate in this arena because mental health services are unlikely to create a risk that would necessitate the CP's immediate physical presence. This association believed that a more reasonable standard would require that the CP be readily available by telephone for consultation, if necessary, as is the customary practice in the profession. It believed that this would provide complete protection to the patient without impeding the ability of the psychologist to perform other services.

On the other hand, we received comments from a State psychological association that maintained the requirement that the CP be immediately present and available is appropriate. It stated, however, that the reference to the ''office suite'' is dated and no longer justified. The association recommended that the reference be removed because it seems to preclude services to patients in skilled nursing facilities or in settings other than an office.

Lastly, regarding the direct supervision requirement under the ''incident to'' benefit, one psychologist commented that the requirement is not clear about whether the CP should be in the building during the time of services.

Response: The statute limits coverage to services that would be covered if furnished as an incident to a physician's services. Therefore, we are using the same standard for ''incident to'' that applies to physicians, including mental health services that are furnished as an incident to a physician's service. That standard, as currently reflected in section 2050.1.B of the Medicare Carriers Manual (HCFA Pub. 14–3), states that ''supervision in the office setting does not mean that the physician must be present in the same room with his or her aide. However, the physician must be present in the office suite and immediately available to provide assistance and direction throughout the time the aide is performing services.'' We did not mean to imply, however, that ''incident to'' services must always be furnished in the office suite, and this final rule revises proposed § 410.71(a)(2)(iv) to clarify this point. As an example, a CP could directly supervise a service performed outside the office suite (such as in an SNF) if the CP is in the room with the aide while the aide performs the service. This also parallels the physician standard as expressed in section 2050.IB, which indicates that the requirement for direct supervision of a service performed in an institution is not satisfied merely by the physician being available by phone or being present somewhere in the institution.

Comment: One psychologist asked which services furnished by CPs in the hospital setting remain bundled and which services are unbundled. (''Bundled'' is a term used to indicate that payment for the service is included in the payment made to the hospital.) He was particularly interested in whether services furnished as an incident to the professional services of a CP are bundled into the payment that hospitals receive for their services.

Response: Coverage and payment for the direct professional services of a CP are unbundled by law from hospital services. Therefore, a CP (or the hospital on behalf of the CP) must bill the carrier for the direct professional services furnished to hospital patients. The payment that is made to hospitals for ''hospital services'' no longer includes payment for the professional services of CPs. However, coverage of services furnished in the hospital setting as an incident to the professional services of CPs remains bundled.

D. The Outpatient Mental Health Treatment Limitation (§ 410.155)

Comment: We received numerous comments on various issues pertaining to the limitation from a major professional association stating that we should use different terminology regarding the limitation when discussing how it applies to the services of physicians. First, the association suggested that when referring to the services of physicians, we use the term ''psychiatric medical services,'' instead of the term ''mental health treatment services.'' It believed that the term ''mental health treatment'' is appropriate only for psychologists. In addition, this association recommended that we consider revising the phrase, ''mental, psychoneurotic, and personality disorders'', and that, instead, we use the current language contained in the American Psychiatric Association's Diagnostic and Statistical Manual.

Second, this association pointed out that the listing of services that are exempt from the limitation is inaccurate and incomplete because it does not contain the diagnosis and medical

management of patients with Alzheimer's Disease or other related disorders. It stated that, for years, section 2472.4 of the Medicare Carriers Manual has listed these services among those excluded from the application of the limitation. Also, it believed that the appropriate interpretation of the statutory exclusion for monitoring or changing drug prescriptions used in the treatment of a *mental illness or mental disorder* should include the decision as to whether to prescribe such a drug. Thus, the association stated that the exclusion should read, ''brief office visits for the purpose of prescribing, monitoring, or changing drug prescriptions used in the treatment of a mental illness or mental disorder.''

Third, this association stated its belief that the limitation should apply to partial hospitalization services furnished by CPs, as it pertains to partial hospitalization services furnished by physicians.

Fourth, this association commented that the example under paragraph (d) of this section is incorrect. It believed that the $100 deductible should apply against the approved amount—$750 first; then the remaining $650 should be subject to the 62.5 percent limitation. Additionally, it suggested that we provide examples under this paragraph to illustrate single assigned and unassigned claims for both inpatient and outpatient services.

We received several other comments from psychologists on the limitation expressing that the limitation should be eliminated, that it should *never* apply to psychological testing, and that the limitation on treatment services requires patients to make higher copayments than many of them can afford, therefore forcing these patients to seek inpatient mental health care as a more affordable alternative.

Response: With regard to the association's first comment, we believe that no purpose would be served under the Medicare program by accepting, as suggested, the artificial distinction in terminology when discussing the services of physicians versus the services of CPs and CSWs. However, we are not defining the phrase ''mental health treatment,'' but rather adhering to the statutory language regarding expenses in connection with the treatment of a mental, psychoneurotic, or personality disorder. Clearly physicians, psychologists, and other practitioners all may furnish that treatment.

We agree that medical management for patients diagnosed with Alzheimer's disease or related conditions is not subject to the limitation and have added this exception to the list. Psychotherapy for these conditions, however, is subject to the limitation. This reflects current policy as stated in section 2472.4 of the Medicare Carriers Manual.

With regard to revising the wording that pertains to brief office visits for monitoring or changing drug prescriptions, the initial decision as to whether to prescribe a drug is beyond the scope of this exception as authorized by the statute. Consequently we have not made the suggested change.

Regarding the concern about whether the limitation applies to ''partial hospitalization services furnished by CPs,'' the situation does not exist so the concern is moot. As specified in § 410.43(b), CP services are separately covered and are not paid as partial hospitalization services. Thus, CP services are subject to the limitation when they are furnished to patients of a partial hospitalization program.

We cannot accept the suggestion to eliminate the outpatient mental health treatment limitation. It is not within our administrative authority to eliminate the statutory limitation; elimination of this limitation would require a change in the law. Neither are we in a position to specify that the limitation should never apply to psychological testing. In fact, we understand that testing frequently is performed in order to evaluate a patient's progress. Clearly in those cases the testing is part of treatment and, thus, is subject to the limitation.

We disagree with the comment that the example under paragraph (d) is incorrect. The example is correct. The Act specifies, at section 1833(c), that the limitation must be applied first in order to determine the amount of expenses to which the deductible is applied. We have, however, expanded the examples to illustrate how the limitation applies to single assigned and unassigned claims for both inpatient and outpatient services. We have also made revisions to the examples to make them easier to understand.

E. The Consultation Requirement, CPs and CSWs (§§ 410.71(e)(2) and 410.73(d))

Comment: We received a great many comments from psychologists, social workers, and professional organizations representing these nonphysician practitioners that supported the general attestation/consultation requirement. However, these commenters overwhelmingly opposed the specific proposed requirements under the general requirement for an attestation/consultation.

One of their concerns addressed the proposed requirement that would require either the CP or CSW to make at least four attempts to consult directly with the primary care or attending physician prior to resorting to written notification. The commenters believed that this proposal exceeds what Congress envisioned in terms of a consultation requirement, and that it imposes an unreasonable, unnecessary, and unjustifiable burden on practitioners who participate in the Medicare program. They stated that their review of the OBRA 89 legislative history reveals that Congress envisioned *either* written *or* direct consultation, with no expressed preference for one over the other, and with no requirement that more than one attempt at direct consultation take place. Also, they made a position for enabling CPs or CSWs to use their professional judgement about whether and when to consult a patient's physician based on the needs of the patient, not the needs of the reimbursement system. They suggested that the system's needs must never be elevated above the patient's needs. Moreover, they suggested that *either* one successful direct attempt to consult by telephone or written notification is appropriate, sufficient, and consistent with congressional intent. However, we received many comments that were contrary to the position taken above, in that they supported the proposed requirement for written notification to the patient's primary care or attending physician if the CP or CSW failed after four attempts to telephone the physician.

Response: We agree with the suggestion that there needs to be changes or exceptions made to the proposed provisions of the consultation requirement. In view of this, we have reconsidered our approach about the method used by a CP or CSW to establish a consultation with a patient's primary care or attending physician. If the goal is that, if a patient consents, a consultation occur in a timely manner, it really does not matter whether the CP's or CSW's approach is by telephone or in writing. Our initial preference for telephone calls was that a telephone call solicits a more immediate response (provided that the physician is available) than sending a letter by mail to the physician and awaiting a response.

We realize that requiring four phone calls by the CP or CSW to the patient's primary care or attending physician could be burdensome. Accordingly, in this final rule we require that if the beneficiary assents to a CP or CSW consultation with his or her primary care or attending physician, the CP or CSW must attempt to consult the

physician within a reasonable time after receiving the beneficiary's consent to the consultation. If attempts to consult directly with the physician are not successful, the CP or CSW must notify the physician, within a reasonable time, that he or she is furnishing services to the beneficiary. We believe that this effort represents a sincere attempt on behalf of the practitioner to comply with the consultation requirement regardless of whether the physician responds to the request. Unless the primary care or attending physician referred the beneficiary to the CP or CSW, the practitioner must document in the patient's medical record the date the patient consented or declined consent to consultation, the date of consultation, or if attempts to consult did not succeed, the date and manner of notification to the physician.

Comment: Many commenters stated that the requirement that consultation occur within 1 week after obtaining the beneficiary's consent is unnecessarily burdensome and does not give consideration to patients who visit their practitioners less often than weekly. These commenters suggested that, instead, we require a consultation within the first month of treatment, with documented notification in writing. Other commenters suggested that we maintain our proposed requirement for a consultation within 1 week of the patient's consent and add that it must take place by the time treatment is initiated.

Response: As we revisited this issue, we concluded that it is not necessary to specify that the attempt at consultation occur within 1 week of the patient's consent. Our focus for the consultation requirement is on whether CPs or CSWs are aware of their patient's medical condition and any medications that they may be taking that could interfere with treatment of their patient. Therefore, this final rule requires that the attempt(s) at consultation be made within a reasonable time after receiving the patient's's consent.

Comment: The above group of commenters also stated that CPs and CSWs should be required to sign the attestation statement only once—when requesting a provider number under the Medicare program. The commenters believed that CPs and CSWs should not be required to make the same attestation statement annually thereafter and that having the original consultation attestation statement on file should be sufficient to document adherence to the consultation requirement. They believed that a requirement such as the one that was proposed, results in unnecessary paperwork, delays in services, and an undue burden on both the practitioner and the carrier. Therefore, they urged us to abolish the stipulation that requires a CP or CSW to resubmit an attestation statement on an annual basis.

Response: Initially, we viewed the proposed annual resubmission of the attestation statement as a way to remind CPs and CSWs both of the significance of the consultation requirement and that the requirement is a condition of payment for their services. We agree, however, that an annual attestation may be an onerous task for carriers and for CPs and CSWs who participate under Medicare. Thus, in reexamining this issue with a goal to reduce paperwork and information collection burden, we have concluded that a less burdensome approach is for us to accept the CP's or CSW's signature on the certification statement that is part of the provider/supplier enrollment application as an indication of his or her agreement to the consultation requirement. In signing that statement, the applicant certifies to, among other things, the following: ''I am familiar with and agree to abide by the Medicare laws and regulations that apply to my provider type, including the Conditions of Participation.'' Therefore, in this final rule, we require that the attestation occur only at the time the CP or CSW requests a provider number. Thus, there is no burden on CPs and CSWs who already have a provider number.

Comment: Several commenters believed that some exceptions to a mandatory consultation would be appropriate. First, they stated that the proposed rules do not take into account the situation in which a patient is a hospital inpatient or in a skilled nursing facility and is ordered or referred to the CP or CSW by his or her primary care or attending physician. The commenters pointed out that, in these cases, the patient's physician is aware of the mental health intervention and treatment and that communication in these settings takes place via orders, consultation notes, and progress notes that the physician reads. The commenters suggested that, under these circumstances, a consultation is unwarranted and, therefore, exceptions be made to the consultation requirement and the rules simply require a notation in the patient's chart regarding the consultation. Conversely, others commented that the consultation requirement should apply to patients in all settings and that the contact should be with the patient's primary and specialist physicians who are treating the patient.

Response: We disagree with the suggestion that we establish an exception to the consultation requirement for services that CPs or CSWs furnish to patients in the hospital and skilled nursing facility settings or that an exception to this requirement be made based on the site of services. However, we see no reason to require CPs or CSWs to initiate consultation in cases in which it is the patient's primary care or attending physician who actually refers the patient to the CP or CSW. For CPs or CSWs who receive a patient based on a physician's referral, we believe it is sufficient to require the practitioners to make a note to that effect on the patient's chart, including the referring physician's name. This final rule revises our proposed requirement accordingly. (Note also that this final rule designates proposed § 410.71(e)(2) as § 410.71(e).)

Comment: Many commenters expressed a concern about patients who do not wish the CP or CSW to consult with their primary care or attending physician. These commenters contend that patients who do not desire such a consultation should have the right to withhold consent. In addition, these commenters believed that a request for a consultation with a beneficiary's physician could violate that person's rights because it makes public to the physician that the person is seeking mental health services. Accordingly, these commenters have urged us to include a specific provision under the attestation statement to address situations wherein a patient refuses consent to a consultation between his or her CP or CSW and their primary care or attending physician.

Response: We believe emphatically that Medicare beneficiaries must have the right to refuse consent to a consultation between their practitioner and their primary care or attending physician. No beneficiary should ever be coerced to consent to such a consultation. In this final rule, at § 410.71(e)(3). We require that, if a beneficiary does not consent to the consultation, the date the beneficiary declined consent to the consultation be documented in the beneficiary's medical record.

Comment: Some commenters expressed concern about situations in which physicians do not respond to the request for a consultation because it is not a billable service. The commenters maintain that often physicians are not available for a consultation and are not eager to return a phone call or respond to a letter if they cannot bill the Medicare program for their efforts to participate in a consultation with their patient's CP or CSW. Therefore, the

commenters suggest that we allow for monetary compensation to the participants of the consultation, or make some allowance in the final rule for a notation in patient's records, of a good faith attempt by the CP or CSW to consult with the patient's primary care or attending physician. Other commenters maintain that CPs and CSWs should not be permitted to bill for the required consultation.

Response: We maintain that the consultation between the CP or CSW and the patient's primary care or attending physician is not a billable service for any of the professionals involved. In addition, as stated in the proposed rule, the House Ways and Means Committee report that accompanied OBRA '89 (H.R. Report No. 247, 101st Cong., 1st Sess. 1015) indicated that the Committee intended that the consultation not be a billable service. Accordingly, neither a CP, CSW, or physician can bill the Medicare program or the beneficiary for the consultation. Also, we have made allowances to provisions of the consultation requirement that will accommodate CPs and CSWs in situations in which they make a good faith attempt to consult with their patient's primary care or attending physician even though that effort is not reciprocated.

Comment: Finally, numerous commenters urged us to direct our carriers to conduct regular reviews to determine compliance with the consultation requirement and to ensure appropriate treatment is being provided by CPs and CSWs.

Response: We do not believe it is necessary to hold CPs and CSWs to a higher standard of review than is required for other health care professionals. For example, we do not believe it is necessary to require CPs to routinely submit documentation supporting their communication, or attempts to communicate, with the attending physician nor would we expect our carriers to conduct regular reviews of CPs and CSWs absent an indication that inappropriate treatment is being furnished. Carriers may request documentation and conduct reviews of CPs and CSWs, as they may for any other health professional, to determine that the services furnished are medically necessary.

F. Diagnostic Coding Used by CPs and CSWs (§ 410.155(a))

Comment: Many commenters suggested that diagnosis codes from the fourth edition of the American Psychiatric Association's, Diagnostic and Statistical Manual—Mental Disorders (DSM–IV) should be recognized in addition to, or instead of, diagnosis codes from ICD–9–CM. They pointed out that the DSM–IV code numbers are fully compatible with ICD–9–CM codes. On the other hand, several other commenters asserted that only ICD–9–CM diagnosis codes should be used when submitting claims.

Response: After reviewing the DSM–IV codes as published in May 1994 and comparing them to the 1997 version of ICD–9–CM codes, we have concluded that this is a distinction without a difference. With only two minor exceptions, which appear to be inadvertent errors, the numerical codes under both systems now are identical. Therefore, the Medicare claims processing system will accept diagnosis code numbers derived from DSM–IV (except for the two discrepancies noted below) because they are indistinguishable from ICD–9–CM code numbers. One discrepancy is that ICD–9–CM code 305.1 has an additional zero shown in the fifth position in DSM–IV. The other discrepancy is that DSM–IV lists code 312.8 but the 1997 version of ICD–9–CM requires an additional digit (1, 2, or 9) in the fifth position.

We had proposed, in § 410.155(a), to continue defining a ''mental, psychoneurotic, or personality disorder'' which is subject to the outpatient mental health treatment limitation as the specific psychiatric conditions described in the American Psychiatric Association's Diagnostic and Statistical Manual—Mental Disorders. Those conditions are represented in the code range 290 through 319. Since DSM–IV and ICD–9–CM code numbers are now compatible, we agree that it is appropriate to recognize a definition that is consistent with both coding systems.

Because the American Psychiatric Associations's Manual is updated periodically and ICD–9–CM is updated annually, it seems desirable to avoid specifying any particular edition of either coding system. Therefore, this final rule removes the definition of ''mental, psychoneurotic, or personality disorder'' from § 410.155(a), and, instead, specifies in § 410.155(b) that ''mental, psychoneurotic, or personality disorder'' means any condition identified by a diagnosis code within the range of 290 through 319. This should contribute to the ease of understanding and operational simplicity, as well as avoid the need to update the regulation merely due to periodic code revisions within the overall range.

In addition, we are removing proposed § 410.71(d) because that paragraph made distinctions, based on date of service, as to who may bill for CP services furnished to hospital inpatients. That distinction is no longer necessary.

In the preamble of the December 1993 proposed rule we stated our intent to require CPs and CSWs to use ICD–9–CM coding when submitting Medicare claims. However, as an oversight, we failed to state how we would revise our regulations to set forth this requirement. This final rule revises § 424.32(a)(2) to add that claims for CP services or CSW services must include appropriate diagnostic coding using ICD–9–CM. Since the numerical codes under both ICD–9–CM and DSM–IV are identical, this should not create a burden for the submitters of claims.

G. The Clinical Social Worker Definition (§ 410.73(a))

Comment: We received several comments informing us that, while all States provide for some form of licensure or certification, not all States use the term ''clinical social worker'' to refer to master's or doctorate level social workers who have been licensed by the State. For example, in Kentucky the highest level of State licensure is called ''Independent Practice (Clinical).'' Accordingly, no person may hold himself or herself out to the public as a CSW in Kentucky unless he or she has been certified for independent practice by the Kentucky State Board of Examiners. The commenters asked whether a Board certified person in Kentucky would be recognized under Medicare as a CSW entitled to provide services under the program if the individual is not literally licensed as a CSW.

We were similarly informed that, in New York the title awarded by the State to individuals who meet the CSW qualifications is ''Certified Social Worker.'' It was suggested, therefore, that the easiest way to address the lack of uniformity of titles for social workers would be to amend one of the requirements under the CSW qualifications to read that the individual is either licensed or certified as a CSW (or at the highest level of practice provided by State law).

Response: We understand this concern, but the proposed definition was based on explicit language in the Federal statute. Therefore, we will continue to provide, as one way of meeting the definition, licensure or certification specifically as a CSW. However, under the authority of section 1861(hh)(1)(C)(ii)(II) of the Act, this final rule provides an alternative route to Medicare qualification. That is, this

final rule revises proposed § 410.73(a)(3) to provide, in the case of an individual in a State that does not provide for licensure or certification *as a clinical social worker*, that the individual meets the definition of ''clinical social worker'' if the individual—

- Is licensed or certified at the highest level of practice provided by the laws of the State in which the services are performed; and
- Has completed at least 2 years or 3,000 hours of post master's degree supervised clinical social work practice under the supervision of a master's degree level social worker in an appropriate setting, such as a hospital, SNF, or clinic.

Thus, individuals in States such as Kentucky or New York can qualify as CSWs.

H. Definition of CSW Services (§§ 410.73(b) and (c)(2))

In the December 1993 proposed rule, we discussed the difficulty we encountered in addressing the statutory definition of CSW services that excludes services furnished to SNF inpatients that an SNF is required to provide as a requirement for participation. We invited public comment and suggestions on the question of whether it is possible to identify any CSW services (that is, services that would be covered if furnished by a CSW to other than hospital or SNF inpatients) that an SNF is not required to provide.

Although, we asked specifically for comments on the SNF social services versus CSW services issue, we also received comments about the statutory coverage exclusion of CSW services to hospital inpatients.

Comment: One professional association commented, on behalf of social workers, that the proposed rule places an unnecessary emphasis on the site of services, rather than the availability of CSW services to Medicare beneficiaries. This association contends that section 1861(hh)(2) of the Act provides the specificity to avoid the confusion between social services and CSW services by limiting direct payment under the Part B outpatient mental health benefit to the diagnosis and treatment of mental illnesses as performed by CSWs who meet the qualifications of section 1861(hh)(1).

Additionally, this association asserted that the diagnosis and treatment of mental illnesses is not analogous to the broad range of tasks expected of an SNF's social services staff and neither is it analogous to the overall requirement that the SNF provide medically related social services to attain or to maintain the highest practicable physical, mental, or psychosocial well-being of each resident. It also asserted that, if this analogy were true, the need for clarification would extend far beyond the issue of reimbursement for CSW services in SNFs; the issue would become whether payment, under Part B, would be allowed for the diagnosis and treatment of mental illnesses of SNF residents by any mental health professional recognized by the statute, including CPs and psychiatrists.

Therefore, this association stated that, when submitting Medicare Part B claims, CSW services may be easily distinguished from the social services requirement of SNFs by the use of the ICD–9–CM coding system to describe the diagnosed mental illnesses and mental disorders, with the therapeutic services furnished reported using the appropriate CPT psychiatry codes. (CPT stands for [Physicians'] Current Procedural Terminology, 4th Edition, 1993 (copyrighted by the American Medical Association).) The association stated its belief that some functions of the SNF social services staff could be described by the E/M (evaluation/management) CPT codes, rather than the CPT psychiatry codes.

One commenter expressed the opinion that the qualifications required of a social worker who is hired by an SNF to furnish social services are far less than those of a CSW. A national federation representing CSWs commented that the social work services that SNFs are required to provide without additional charge to the patient include psychosocial assessment and treatment planning, linkage with other professional and community services, and supportive counseling; they do not include the formal diagnosis and treatment of mental or emotional disorders. Therefore, they have recommended that, whenever CSWs independently diagnose or treat a mental or emotional disorder, these services be paid separate and apart from the payment to the facility. This federation also suggested that separately paid services can be easily distinguished from social services by reference to the appropriate Medicare procedure codes; namely, 90801 for diagnosis and 90841 through 90853 for treatment.

One medical center recommended that social services that are required under the SNF requirements for participation include: psychosocial assessment, discharge planning, general casework services, case consultation, community contacts, patient correspondence, and patient referral. In contrast, CSW services that would be covered when furnished to SNF patients would include: individual therapy (treatment of adjustment disorders, personality disorders, psychoneurosis, and complicated grief/illness reactions), crisis intervention, family therapy, and group therapy.

Lastly, one professional association commented that it recognized our difficulty in distinguishing the SNF required social services from CSW services when furnished in an SNF setting. This association suggested that we consider using information contained in the Pre-Admission Screening and Annual Resident Review instrument or the annual resident assessment instrument to assist in documenting variances between these services.

Response: The emphasis on site of service is directly due to the distinctions that the statute makes on that basis. We must reiterate that the definition of CSW services in 1861(hh)(2) excludes services furnished to an inpatient of an SNF which the facility is required to provide as a requirement for participation.

We agree with the general consensus that medically related social services for SNF residents, identified in section 1819(b)(4)(A)(ii) of the Act and at 42 CFR 483.15(g), should not be covered as CSW services. These services involve assisting residents in maintaining or improving their ability to manage their everyday physical, mental, and psychosocial needs. They include discharge planning, counseling, assessment, and care planning. These services generally do not require performance by a CSW.

However, the commenters did not acknowledge that section 1819(b)(4)(A)(i) requires an SNF also to provide specialized rehabilitative services in order to fulfill the resident's plan of care. These services include mental health rehabilitative services for mental illness, as detailed in § 483.45. Our guidance to surveyors describes the intent of this requirement in the following terms: ''Specialized rehabilitative services are considered a facility service and are, thus, included within the scope of facility services.'' These services are described in the guidelines as including (among other services) individual, group, and family psychotherapy.

Individual and group psychotherapy comprise nearly all the services for which Medicare pays CSWs, in covered settings. As noted, these services are among the specialized mental health rehabilitative services that SNFs are required to provide. While data indicates that very few CSWs furnish services to SNF inpatients, that does not

diminish the fact that the few services they do furnish in SNFs are services that SNFs are required to provide.

The procedure codes used on Part B Medicare claims include CPT codes as a subset of the HCFA Common Procedure Coding System (HCPCS). No meaningful distinction regarding services furnished by CSWs to SNF inpatients can be made based on the use of HCPCS psychiatry procedure codes, because the same codes are used to report CSW services in various settings.

We cannot accept the suggestion that CSWs should be paid separate and apart from payment to the SNF for independently diagnosing or treating mental disorders of SNF patients, nor can we accept the suggestion that psychotherapy services furnished by CSWs to patients who have diagnosis codes indicating mental illness should be covered as CSW services rather than viewed as services that SNFs are required to provide. SNFs are explicitly required to provide not only medically related social services, but also mental health rehabilitative services for mental illness, as detailed in § 483.45.

We could not determine how information in the Pre-Admission Screening and Annual Resident Review instrument, or in the annual resident assessment instrument, could be used to distinguish any services that SNFs are not required to provide.

With respect to the concern regarding the distinction between services furnished to SNF inpatients by CSWs and similar services furnished by CPs and physicians, we must point out that this distinction is based on the statutory parallels between hospital and SNF services. Section 1861(b) of the Act excludes the services of physicians and CPs from coverage as inpatient hospital services, yet 1862(a)(14) of the Act compels a hospital to include CSW services in its billing. Section 1861(h) of the Act defines extended care services (the inpatient services for which SNFs are paid under Part A) as excluding any service that would not be included under 1861(b) if furnished to an inpatient of a hospital. Thus, the services of physicians and CPs are likewise excluded from coverage as SNF services, while the services of CSWs can be included.

The statute uses the identical term, ''medical social services,'' in defining both inpatient hospital services and extended care services. For hospitals, this term implicitly includes the full range of services furnished by CSWs. There is no basis for concluding that the term has a different meaning for SNFs.

Although physicians and CPs can be paid directly for services they furnish to SNF inpatients, CSWs are subject to a statutory restriction. The fact that a physician or CP can be paid directly for certain services does not lead to a conclusion that a CSW should be paid directly for similar services despite the CSW benefit restriction. An SNF cannot include physician or CP services as facility services, but it can include services performed by a CSW in its facility services.

After thoroughly examining this issue and the suggestions received, we are unable to identify any specific service performed by CSWs for SNF inpatients that SNFs are not required to provide. Consequently, we conclude that CSW services exclude all services furnished to SNF inpatients.

Comment: A major professional association commented that it is aware that medical social services are required services in hospitals and that medical social services are bundled into the hospital's payment rate. However, neither the Medicare statute nor regulations define the medical social services requirement nor the qualifications of professionals who may provide these services in the hospital. Accordingly, this association is concerned about the bundling issue as it relates to the Medicare Part B outpatient benefit for CSW services, particularly in psychiatric hospital outpatient departments. Therefore, the association asked that, if the diagnosis and treatment of mental illnesses and mental disorders provided by CSWs are indeed factored into the hospital's overall payment rate, how are CSW services currently mandated in outpatient hospital settings and what are the quality assurance mechanisms that ensure CSW services are made available to Medicare beneficiaries in hospital outpatient departments.

Response: In regard to the question about whether CSW services are currently mandated in the hospital outpatient setting, there is no mandate specifically for CSW services in this setting. However, the quality assurance conditions of participation for hospitals (which apply to both the inpatient and outpatient setting) under § 482.21(b) require the hospital to have an ongoing plan, consistent with available community and hospital resources, to provide, or make available, social work, psychological, and educational services to meet the medically related needs of its patients. The hospital must also have an effective, ongoing discharge planning program that facilitates the provision of followup care. Furthermore, the hospital must take and document appropriate remedial action to address deficiencies found through the quality assurance program, as well as document the outcome of the remedial action taken.

In addition to meeting the same quality assurance conditions of participation as general hospitals, psychiatric hospitals must meet the conditions at § 482.62 that pertain to the special staff requirements for psychiatric hospitals. Section 482.62(f) requires psychiatric hospitals to have on staff a director of social services who monitors and evaluates the quality and appropriateness of the social services furnished. The services must be furnished in accordance with accepted standards of practice and established policies and procedures.

The director of the social work department or services must have a master's degree from an accredited school of social work or must be qualified by education and experience in the social services needs of the mentally ill. If the director does not hold a master's degree in social work, at least one staff member must have this qualification. Additionally, the social service staff responsibilities must include, but are not limited to, participation in discharge planning, arranging for follow-up care, and developing mechanisms for exchange of appropriate information with sources outside the hospital. Conceivably, a CSW could serve as a social services staff director or staff member of a psychiatric hospital.

Comment: Another commenter suggested that the coverage exclusion of CSW services furnished to hospital inpatients under the Part B CSW benefit not pertain to nonparticipating hospitals. As rationale, the commenter stated that, since nonparticipating hospitals receive no Part A payment, there would be no risk of duplicate payment by both the intermediary and the carrier. Therefore, the commenter concluded that Medicare should make payment under Medicare Part B to nonparticipating hospitals for CSW services.

Response: We agree that, because ''bundling'' is not an issue for nonparticipating hospitals, there is no risk of duplicate payment in the case of services furnished in nonparticipating hospitals. However, we disagree with the conclusion the commenter reached concerning to whom payment should be made. Because the services of a CSW furnished to a patient in a nonparticipating hospital are covered, under section 1861(s)(2)(N) of the Act, as ''medical and other health services'' payment for these services is made directly to the CSW. This final rule clarifies that CSW services do not

include services furnished to inpatients of a Medicare participating hospital.

I. CSW Services Furnished in End Stage Renal Disease facilities (§ 410.73(c)(3))

As stated earlier, payment for social worker services is included in the composite rate payment made to the dialysis facility. Therefore, CSWs cannot bill directly for those services. We invited public comment, however, on whether any CSW services to dialysis patients can be distinguished from the required facility services.

Comment: A national federation representing CSWs commented that CSW services furnished in ESRD facilities should be treated the same way they are treated when furnished in SNFs. That is, whenever CSWs independently diagnose or treat a mental or emotional disorder, these services should be paid separately and apart from the composite rate paid to the ESRD facility. The federation recommended that CSW services be distinguished from ESRD required social worker services by reference to the appropriate Medicare procedure codes; namely, 90801 for diagnosis and 90841 through 90853 for treatment.

Similarly, another commenter recommended that the same guidelines and payment be established for CSW services under Part B to dialysis patients as those established for CSW services to SNF patients. Many dialysis patients, especially newly diagnosed or unstable patients, require and benefit from individualized CSW services. This commenter believed that the composite rate currently paid to dialysis facilities does not come close to covering these specialized services and therapy for treatment of a mental, psychoneurotic, or personality disorder.

Response: After examining the issue of CSW services to SNF inpatients, it is apparent that the issue of CSW services for patients of dialysis facilities differs significantly. The statutory site-based restrictions on CSW services apply only to inpatient settings—inpatient hospital and inpatient SNF. Inpatient facilities are expected to meet all of their patient's needs (including both social services and specialized rehabilitative services). In contrast, the statutory definition of CSW services does not restrict CSW professional services in other settings, such as dialysis facilities.

Dialysis facilities are expected to meet solely dialysis-related needs. Dialysis facilities are required, at § 405.2163(c), merely to provide ''social services'' that are directed at supporting and maximizing the social functioning and adjustment of the patient. Under these dialysis facility required social services, a qualified social worker (who need not be a CSW) is responsible for conducting psychosocial evaluations, participating in team review of patient progress and recommending changes in treatment based on the patient's current psychosocial needs, providing casework and groupwork services to patients and their families in dealing with the special problems associated with ESRD, and identifying community social agencies and other resources and assisting patients and families to use them. A dialysis facility, however, is not required to provide the full scope of services comparable to the specialized rehabilitative services for mental illness that section 1819(b)(4)(A)(i) of the Act requires an SNF to provide.

Accordingly, it would not be appropriate to require that all services that a CSW might furnish to a dialysis patient be bundled into the composite rate. Therefore, it is appropriate for a CSW to bill the Part B carrier separately for only those individualized professional mental health diagnostic and treatment services furnished to dialysis facility patients that are not included in the composite rate. This retains the current policy; CSWs have been permitted to bill the carrier directly for their individual professional mental health diagnostic and treatment services that do not reflect services that are included in the ESRD composite rate. However, carriers will deny any claims for services that reflect the dialysis-related social services that dialysis facilities are required to provide under § 405.2163(c). Thus, there will be no change in coverage for CSW services furnished to patients in dialysis facilities.

J. Regulatory Impact Analysis

We received comments concerning the regulatory impact analysis. We present and respond to those comments in section VI. of this document.

IV. Provisions of the Final Rule

The proposed rule is adopted, with the changes listed below. Many of these changes are discussed in section III of this preamble. If the change is not discussed in section III, the reason for the change is given below.

Changes to Proposed § 410.71

We revise the example in paragraph (a)(2)(iv).

We delete proposed paragraph (d) since the provision is dated.

In paragraph (e)(1), now designated as paragraph (d), we revise the requirements for qualification as a CP.

We designate proposed paragraph (e)(2) as paragraph (e) and revise the consultation requirements.

Changes to Proposed § 410.73

We revise paragraph (a)(3) to provide that, in the case of an individual in a State that does not provide for licensure or certification *as a clinical social worker*, an individual may meet the licensure/certification requirement if he or she is licensed or certified ''at the highest level of practice provided by the laws of the State in which the services are performed''.

We restructure proposed paragraphs (b) and (c)(1) through (c)(3) to combine their contents into a new paragraph (b) and the contents of paragraph (c)(4) and (c)(5) into a new paragraph (d). We believe the new paragraphs set forth the provisions in a clearer manner.

We designate proposed paragraph (d) as paragraph (c) and, rather than set forth the consultation requirements in detail, we cross refer to the requirements set forth in § 410.71(f).

Changes to Proposed § 410.152

The changes we proposed to make to paragraphs (a)(2) and (b) are not made. Further, paragraphs (k) through (m) are not added. These proposed provisions, which concern payment, are addressed for clinical psychologists in the final CP fee schedule rule published on October 31, 1997 (62 FR 59260). That rule also addresses, indirectly, payment provisions for clinical social workers since they are paid at 75 percent of the CP fee schedule.

Changes to Proposed § 410.155

We are not making the proposed changes to paragraph (a), ''Definitions.'' That is, we are not adding a definition of ''mental health treatment.'' In addition, we are removing the definition of ''hospital.'' We do not believe it is necessary to define these terms since they do not have a meaning that is different from the meaning either given in the Medicare statute or as used elsewhere in our regulations. Also, as discussed earlier, we now define ''mental, psychoneurotic, or personality disorder'' in paragraph (b). Therefore, existing § 410.155(a) is removed in its entirety.

Proposed paragraph (b) is revised to improve its readability. In addition, we add that medical management, as opposed to psychotherapy, furnished to a patient diagnosed with Alzheimer's disease or a related disorder, is not subject to the mental health treatment limitation.

Proposed paragraph (c) is revised to improve its readability, and it is designated as new paragraph (a).

The examples in proposed paragraph (d) are revised to add greater clarity, and the paragraph is designated as paragraph (c).

Revision of Existing § 424.32(a)

We revise existing § 424.32(a) to specify that claims for CP services or CSW services must contain appropriate diagnostic coding using ICD–9–CM.

Conforming Change

This final rule revises paragraph (c), ''Standard: Care of patients,'' of § 482.12, ''Conditions of participation: Governing Body'' to specify that a Medicare patient in a Medicare-participating hospital who is receiving qualified psychologist services may be under the care of a CP with respect to those services, to the extent permitted under State law. This revision is made to conform our regulations to section 104 of the Social Security Act Amendments of 1994, described in section I.A.1 of this preamble.

Other Changes

We have also made several editorial changes to improve the readability of the regulations. These changes do not affect the substance of the provisions.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the proposed information collection requirements discussed below.

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

As indicated earlier in this preamble, § 410.71(e) references the education, training, and experience requirements necessary to participate in the Medicare program as a clinical psychologist. The specific information necessary to determine compliance with the requirements referenced in § 410.71(e) are captured on the Provider/Supplier Enrollment Application (HCFA–855), which is currently approved under OMB approval number 0938–0685 with an expiration date of May 31, 1998.

We estimate that the completion of form HCFA–855 will impose a one-time burden of approximately 90 minutes.

Again, we welcome comments on all aspects of the above material. Organizations and individuals that wish to submit comments on the information and recordkeeping requirements captured on the HCFA–855 as they relate to § 410.71(e) should direct them to the following address: Health Care Financing Administration, Office of Information Systems, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850.

VI. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, we consider all psychologists, social workers, and hospitals to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operation of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with sections 1861(s)(2)(M) and 1861(ii) of the Act, this rule allows payment to be made directly to a CP for qualified psychologist services furnished by the CP or (except for services furnished to hospital patients) as an incident to the CP's services. Further, under the authority of section 1861(ii), which looks to the Secretary to define ''clinical psychologist,'' this rule specifies that a CP is an individual who—

(1) Holds a doctoral degree in psychology, and

(2) Is licensed or certified, on the basis of the doctoral degree in psychology, by the State in which he or she practices, at the independent practice level of psychology to furnish diagnostic, assessment, preventive, and therapeutic services directly to individuals.

In accordance with sections 1861(s)(2)(N) and 1861(hh) of the Act, this rule allows payment to be made directly to a CSW for the services he or she furnishes, except for services furnished to an inpatient of a Medicare-participating hospital and certain services furnished to an inpatient of a Medicare-participating SNF or ESRD facility. Also, based on the definition of ''clinical social worker'' at section 1861(hh) of the Act, this rule establishes in regulations the qualifications a CSW must meet under Medicare.

In accordance with section 6113 of OBRA '89, as amended by SSA '94, this rule requires that CPs and CSWs agree to consult with the beneficiary's attending or primary care physician, if the beneficiary consents to the consultation, and establishes criteria regarding the consultation.

In accordance with section 1833(c) of the Act, this rule revises our regulations to eliminate the dollar limitation on payment for outpatient mental health treatment but retains the 62½ percent limitation.

This rule also requires that CPs and CSWs use ICD–9-CM coding when submitting Medicare Part B claims.

Lastly, this rule conforms our regulations to section 1861(e)(4) of the Act by providing that a Medicare patient in a Medicare-participating hospital who is receiving qualified psychologist services may be under the care of a CP with respect to those services, to the extent permitted under State law.

As stated in the December 1993 proposed rule, it has been a long-

standing requirement that, in order for his or her services to be covered under Medicare, the CP possess a doctoral degree from a program in clinical psychology. The literal wording of this requirement would exclude many qualified practitioners of psychology whose doctoral degrees are not labeled ''clinical psychology'' but who have analogous training and practical experience that qualifies them to practice clinical psychology.

However, as we discussed in the regulatory impact analysis section of the December 1993 proposed rule, in the absence of final regulations defining the criteria a CP must meet for Medicare purposes, the Medicare carriers have had the authority to determine whether a particular doctorate-level psychologist qualified to have services covered by Medicare. In using this authority, the carriers decided if the educational background and experience of a particular psychologist qualified him or her as a CP. In the proposed rule, we estimated that two-thirds of the carriers had recognized psychologists based on the education and experience factors that we proposed and we took that factor, along with others, into consideration in our estimate of Medicare expenditures for CP and CSW services during fiscal years 1994 through 1997.

We received two comments on the regulatory impact analysis contained in the proposed rule. The comments came from major associations; one represents psychiatrists and the other represents psychologists.

Comment: Although the impact analysis did not state how many psychologists we estimated might be added to the Medicare program because of our proposed definition, one commenter suggested that we may have underestimated the increase. (The commenter did not provide any data in this regard.) The commenter maintained that two different estimates should have been included, one with the proposed definition and one based upon the previously existing definition.

This same commenter disagreed with HCFA's statement that the anticipated increase in expenditures would be due primarily to an increase in the number of users rather than an increase in the average charge per service or the average number of services per beneficiary. The commenter cited a 1993 article that concluded that therapist supply creates demand rather than vice versa. (Behavioral HealthCare Tomorrow, November/December 1993, prepaid plan. 26–32). The commenter believed that we need to reevaluate the potential for significant cost increases because of increasing the number of CPs.

Additionally, this commenter was concerned that, in the impact analysis, we maintained that, because of the availability of the services of CPS and CSWs, these professionals would substitute for the services of psychiatrists and, thus, there would be an offsetting effect in terms of program outlays. The commenter stated that we offered no support for this assertion. Moreover, the commenter contended that while these nonphysician practitioners may furnish services within their limited training and ability, they do not substitute for the services of psychiatrists.

Response: In the proposed rule, we advised the public of our estimate of the budgetary effect of the legislative changes that removed the site of service restrictions, added coverage for additional providers, and eliminated the annual dollar limitation. Recent data indicate that, rather than underestimating, we greatly overestimated the effect of the changes. For example, we estimated that, as a result of these legislative changes concerning Medicare expenditures for CP and CSW services would increase by $260 million in fiscal year (FY) 1994, by $320 million in FY 1995, and by $390 million in FY 1996. Available data now indicate that the actual increases were far less, only $50 million in FY 1994, $60 million in FY 1995, and $30 million in FY 1996.

In the proposed rule, we stated that we believed that the increase in expenditures would be due *primarily* to an increase in the number of users rather than an increase in the average charge per service or the average number of services per beneficiary. More recent data indicates that, after factoring out the increase in population, there also has been a small increase in the total number of allowed services.

We also stated, in the proposed rule, that we expected that, because of the increased availability of CPs and CSWs, the services of these professionals would substitute for some of the services previously furnished by psychiatrists, thus, having an offsetting effect in terms of total program outlays. However, we also noted our expectation that the services of CSWs would be in addition to those of psychiatrists and CPs, rather than a substitute for them. While it does appear that the volume of some psychotherapy services performed by psychiatrists has decreased relative to the historic trend line, the volume of many other services performed by psychiatrists (services that require physician performance) has been gradually increasing relative to the overall increases in total physician services. Recent data show that, between 1992 and 1995, allowed services for CSWs, CPs, and psychiatrists continued to increase, and that, while the rate of growth in CP and CSW services showed a slight downward trend, there was a slight increase in the rate of growth in psychiatrist services.

Comment: Another commenter recommended that, in analyzing the budgetary effect of these changes, we keep in mind that mental health treatment intervention reduces overall health care costs and conserves valuable health care resources. The commenter stated that an accurate and complete analysis of the budgetary effect of the changes should include an analysis of the anticipated offset to overall health care costs that is likely to occur.

Response: With regard to the effect of early mental health treatment intervention on overall health care costs, we believe that because no data exist to separately identify the effect of this factor in comparison to the concurrent effects of the many other variables that affect overall health care costs, the budgetary analysis suggested by the commenter is not possible.

In addition to the above comments, we received comments related to payment issues (for example, the effect of the lack of a CP fee schedule on Medicare expenditures). Because payment for CP and CSW services was addressed in a proposed rule on the CP fee schedule on June 18, 1997 (62 FR 33158), and we addressed comments on this issue in the final fee schedule on October 31, 1997 (62 FR 59260), we are not addressing these comments in this document.

In general, this final rule merely conforms our regulations to statutory provisions and, in addition, relies on State licensure requirements when determining CP qualifications. Therefore, we believe it will have a negligible economic impact on CP, CSW, and other practitioners. Therefore, we are not preparing analyses for the RFA, and the Secretary certifies that this rule will not result in a significant economic impact on a substantial number of small entities.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

VII. Waiver of Proposed Rulemaking

As required by the Administrative Procedure Act, we generally provide notice and opportunity for comments on regulations unless we can find good

cause for waiving the notice-and-comment procedure as impracticable, unnecessary, or contrary to the public interest. This final rule revises paragraph (c), ''Standard: Care of patients,'' of § 482.12, ''Conditions of participation: Governing Body'' to specify that a Medicare patient in a Medicare-participating hospital who is receiving qualified psychologist services may be under the care of a CP with respect to those services, to the extent permitted under State law. This revision is made to conform our regulations to section 1861(e)(4) of the Act. The language of section 1861(e)(4) is so specific that it leaves no room for alternative interpretations. Accordingly, we find good cause to waive the notice-and-comment procedure with regard to this change to our regulations as unnecessary.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Medical and Other Health Services

2. In § 410.10, the introductory text is republished, and new paragraphs (v) and (w) are added to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in this subpart, ''medical and other health services'' includes the following services:

* * * * *

(v) Clinical psychologist services and services and supplies furnished as an incident to the services of a clinical psychologist, as provided in § 410.71.

(w) Clinical social worker services, as provided in § 410.73.

3. New §§ 410.71 and 410.73 are added to read as follows:

§ 410.71 Clinical psychologist services and services and supplies incident to clinical psychologist services.

(a) *Included services.* (1) Medicare Part B covers services furnished by a clinical psychologist, who meets the requirements specified in paragraph (d) of this section, that are within the scope of his or her State license, if the services would be covered if furnished by a physician or as an incident to a physician's services.

(2) Medicare Part B covers services and supplies furnished as an incident to the services of a clinical psychologist if the following requirements are met:

(i) The services and supplies would be covered if furnished by a physician or as an incident to a physician's services.

(ii) The services or supplies are of the type that are commonly furnished in a physician's or clinical psychologist's office and are either furnished without charge or are included in the physician's or clinical psychologist's bill.

(iii) The services are an integral, although incidental, part of the professional services performed by the clinical psychologist.

(iv) The services are performed under the direct supervision of the clinical psychologist. For example, when services are performed in the clinical psychologist's office, the clinical psychologist must be present in the office suite and immediately available to provide assistance and direction throughout the time the service is being performed.

(v) The individual performing the service must be an employee of either the clinical psychologist or the legal entity that employs the supervising clinical psychologist, under the common law control test of the Act as more fully set forth in 20 CFR 404.1007.

(b) *Application of mental health treatment limitation.* The treatment services of a clinical psychologist and services and supplies furnished as an incident to those services are subject to the limitation on payment for outpatient mental health treatment services set forth in § 410.155.

(c) *Payment for consultations.* A clinical psychologist or an attending or primary care physician may not bill Medicare or the beneficiary for the consultation that is required under paragraph (e) of this section.

(d) *Qualifications.* For purposes of this subpart, a clinical psychologist is an individual who—

(1) Holds a doctoral degree in psychology; and

(2) Is licensed or certified, on the basis of the doctoral degree in psychology, by the State in which he or she practices, at the independent practice level of psychology to furnish diagnostic, assessment, preventive, and therapeutic services directly to individuals.

(e) *Agreement to consult.* A clinical psychologist who bills Medicare Part B must agree to meet the requirements of paragraphs (e)(1) through (e)(3) of this section. The clinical psychologist's signature on a Medicare provider/supplier enrollment form indicates his or her agreement.

(1) Unless the beneficiary's primary care or attending physician has referred the beneficiary to the clinical psychologist, to inform the beneficiary that it is desirable for the clinical psychologist to consult with the beneficiary's attending or primary care physician (if the beneficiary has such a physician) to consider any conditions contributing to the beneficiary's symptoms.

(2) If the beneficiary assents to the consultation, in accordance with accepted professional ethical norms and taking into consideration patient confidentiality—

(i) To attempt, within a reasonable time after receiving the consent, to consult with the physician; and

(ii) If attempts to consult directly with the physician are not successful, to notify the physician, within a reasonable time, that he or she is furnishing services to the beneficiary.

(3) Unless the primary care or attending physician referred the beneficiary to the clinical psychologist, to document, in the beneficiary's medical record, the date the patient consented or declined consent to consultation, the date of consultation, or, if attempts to consult did not succeed, the date and manner of notification to the physician.

§ 410.73 Clinical social worker services.

(a) *Definition: clinical social worker.* For purposes of this part, a clinical

social worker is defined as an individual who—

(1) Possesses a master's or doctor's degree in social work;

(2) After obtaining the degree, has performed at least 2 years of supervised clinical social work; and

(3) Either is licensed or certified as a clinical social worker by the State in which the services are performed or, in the case of an individual in a State that does not provide for licensure or certification as a clinical social worker—

(i) Is licensed or certified at the highest level of practice provided by the laws of the State in which the services are performed; and

(ii) Has completed at least 2 years or 3,000 hours of post master's degree supervised clinical social work practice under the supervision of a master's degree level social worker in an appropriate setting such as a hospital, SNF, or clinic.

(b) *Covered clinical social worker services.* Medicare Part B covers clinical social worker services.

(1) *Definition.* ''Clinical social worker services'' means, except as specified in paragraph (b)(2) of this section, the services of a clinical social worker furnished for the diagnosis and treatment of mental illness that the clinical social worker is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which the services are performed. The services must be of a type that would be covered if they were furnished by a physician or as an incident to a physician's professional service and must meet the requirements of this section.

(2) *Exception.* The following services are not clinical social worker services for purposes of billing Medicare Part B:

(i) Services furnished by a clinical social worker to an inpatient of a Medicare-participating hospital.

(ii) Services furnished by a clinical social worker to an inpatient of a Medicare-participating SNF.

(iii) Services furnished by a clinical social worker to a patient in a Medicare-participating dialysis facility if the services are those required by the conditions for coverage for ESRD facilities under § 405.2163 of this chapter.

(c) *Agreement to consult.* A clinical social worker must comply with the consultation requirements set forth at § 410.71(f) (reading ''clinical psychologist'' as ''clinical social worker'').

(d) *Prohibited billing.* (1) A clinical social worker may not bill Medicare for the services specified in paragraph (b)(2) of this section.

(2) A clinical social worker or an attending or primary care physician may not bill Medicare or the beneficiary for the consultation that is required under paragraph (c) of this section.

Subpart E—Payment of SMI Benefits

4. In § 410.150, the introductory text of paragraph (b) is republished, new paragraphs (b)(14) through (b)(16) are added and reserved, and new paragraphs (b)(17) and (b)(18) are added to read as follows:

§ 410.150 To whom payment is made.

* * * * *

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of this section, Medicare Part B pays as follows:

* * * * *

(14) [Reserved.]

(15) [Reserved.]

(16) [Reserved.]

(17) To a clinical psychologist on the individual's behalf for clinical psychologist services and for services and supplies furnished as an incident to his or her services.

(18) To a clinical social worker on the individual's behalf for clinical social worker services.

5. In § 410.152, paragraph (a)(1) introductory text is republished, and paragraph (a)(1)(iv) is revised to read as follows:

§ 410.152 Amount of payment.

(a) *General provisions*—(1) *Exclusion from incurred expenses.* As used in this section, ''incurred expenses'' are expenses incurred by an individual, during his or her coverage period, for covered Part B services, excluding the following:

* * * * *

(iv) Expenses in excess of the outpatient mental health treatment limitation described in § 410.155.

* * * * *

6. Section 410.155 is revised to read as follows:

§ 410.155 Outpatient mental health treatment limitation.

(a) *Limitation.* Only 62½ percent of the expenses incurred for services subject to the limit as specified in paragraph (b) of this section are considered incurred expenses under Medicare Part B when determining the amount of payment and deductible under §§ 410.152 and 410.160, respectively.

(b) *Application of the limitation*—(1) *Services subject to the limitation.* Except as specified in paragraph (b)(2) of this section, the following services are subject to the limitation if they are furnished in connection with the treatment of a mental, psychoneurotic, or personality disorder (that is, any condition identified by a diagnosis code within the range of 290 through 319) and are furnished to an individual who is not an inpatient of a hospital:

(i) Services furnished by physicians and other practitioners, whether furnished directly or as an incident to those practitioners' services.

(ii) Services provided by a CORF.

(2) *Services not subject to the limitation.* Services not subject to the limitation include the following:

(i) Services furnished to a hospital inpatient.

(ii) Brief office visits for the sole purpose of monitoring or changing drug prescriptions used in the treatment of mental, psychoneurotic, or personality disorders.

(iii) Partial hospitalization services not directly provided by a physician.

(iv) Diagnostic services, such as psychological testing, that are performed to establish a diagnosis.

(v) Medical management, as opposed to psychotherapy, furnished to a patient diagnosed with Alzheimer's disease or a related disorder.

(c) *Examples.* (1) A clinical psychologist submitted a claim for $200 for outpatient treatment of a beneficiary's mental disorder. The Medicare approved amount was $180. Since clinical psychologists must accept assignment, the beneficiary is not liable for the $20 in excess charges. The beneficiary previously satisfied the $100 annual Part B deductible. The limitation reduces the amount of incurred expenses to 62½ percent of the approved amount. After subtracting any unmet deductible, Medicare pays 80 percent of the remaining incurred expenses. Medicare payment and beneficiary liability are computed as follows:

1. Actual charges	$200.00
2. Medicare approved amount	180.00
3. Medicare incurred expenses (0.625 × line 2)	112.50
4. Unmet deductible	0.00
5. Remainder after subtracting deductible (line 3 minus line 4)	112.50
6. Medicare payment (0.80 × line 5)	90.00
7. Beneficiary liability (line 2 minus line 6)	90.00

(2) A clinical social worker submitted a claim for $135 for outpatient treatment of a beneficiary's mental disorder. The Medicare approved amount was $120. Since clinical social workers must

accept assignment, the beneficiary is not liable for the $15 in excess charges. The beneficiary previously satisfied $70 of the $100 annual Part B deductible, leaving $30 unmet.

1. Actual charges	$135.00
2. Medicare approved amount	120.00
3. Medicare incurred expenses (0.625 × line 2)	75.00
4. Unmet deductible	30.00
5. Remainder after subtracting deductible (line 3 minus line 4)	45.00
6. Medicare payment (0.80 × line 5)	36.00
7. Beneficiary liability (line 2 minus line 6)	84.00

(3) A physician who did not accept assignment submitted a claim for $780 for services in connection with the treatment of a mental disorder that did not require inpatient hospitalization. The Medicare approved amount was $750. Because the physician did not accept assignment, the beneficiary is liable for the $30 in excess charges. The beneficiary had not satisfied any of the $100 Part B annual deductible.

1. Actual charges	$780.00
2. Medicare approved amount	750.00
3. Medicare incurred expenses (0.625 × line 2)	468.75
4. Unmet deductible	100.00
5. Remainder after subtracting deductible (line 3 minus line 4)	368.75
6. Medicare payment (0.80 × line 5)	295.00
7. Beneficiary liability (line 1 minus line 6)	485.00

(4) A beneficiary's only Part B expenses during 1995 were for a physician's services in connection with the treatment of a mental disorder that initially required inpatient hospitalization. The remaining services were furnished on an outpatient basis. The beneficiary had not satisfied any of the $100 annual Part B deductible in 1995. The physician, who accepted assignment, submitted a claim for $780. The Medicare-approved amount was $750. The beneficiary incurred $350 of the approved amount while a hospital inpatient and incurred the remaining $400 of the approved amount for outpatient services. Only $400 of the approved amount is subject to the 62½ percent limitation because the statutory limitation does not apply to services furnished to hospital inpatients.

1. Actual charges	$780.00
2. Medicare approved amount	$750.00
2A. Inpatient portion	$350
2B. Outpatient portion	$400
3. Medicare incurred expenses	$600.00
3A. Inpatient portion	$350
3B. Outpatient portion (0.625 × line 2B)	$250
4. Unmet deductible	$100.00
5. Remainder after subtracting deductible (line 3 minus line 4)	$500.00
6. Medicare payment (0.80 × line 5)	$400.00
7. Beneficiary liability (line 2 minus line 6)	$350.00

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9), and 31 U.S.C. 9701.

2. In § 417.416, the introductory text of paragraph (d) is republished; paragraph (d)(2) is revised; and a new paragraph (d)(3) is added to read as follows:

§ 417.416 Qualifying condition: Furnishing of services.

* * * * *

(d) *Exceptions to physician supervision requirement.* The following services may be furnished without the direct personal supervision of a physician:

* * * * *

(2) When furnished by an HMO or CMP, services of clinical psychologists who meet the qualifications specified in § 410.71(d) of this chapter, and the services and supplies incident to their professional services.

(3) When an HMO or CMP contracts on—

(i) A risk basis, the services of a clinical social worker (as defined at § 410.73 of this chapter) and the services and supplies incident to their professional services; or

(ii) A cost basis, the services of a clinical social worker (as defined in § 410.73 of this chapter). Services incident to the professional services of a clinical social worker furnished by an HMO or CMP contracting on a cost basis are not covered by Medicare and payment will not be made for these services.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 424.32, paragraph (a) introductory text is republished, and paragraph (a)(2) is revised to read as follows:

§ 424.32 Basic requirements for all claims.

(a) A claim must meet the following requirements:

(1) * * *

(2) A claim for physician services, clinical psychologist services, or clinical social worker services must include appropriate diagnostic coding for those services using ICD–9–CM.

* * * * *

3. In § 424.55, paragraph (b) introductory text is republished, and paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 424.55 Payment to the supplier.

* * * * *

(b) In accepting assignment, the supplier agrees to the following:

(1) To accept, as full charge for the service, the amount approved by the carrier as the basis for determining the Medicare Part B payment (the reasonable charge or the lesser of the fee schedule amount and the actual charge).

(2) To limit charges to the beneficiary or any other source as follows:

(i) To collect nothing for those services for which Medicare pays 100 percent of the Medicare approved amount.

(ii) To collect only the difference between the Medicare approved amount and the Medicare Part B payment (for example, the amount of any reduction in incurred expenses under § 410.155(c), any applicable deductible amount, and any applicable coinsurance amount) for services for which Medicare pays less than 100 percent of the approved amount.

* * * * *

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 482.12, paragraph (c) introductory text and (c)(1) introductory text are republished; the period at the end of paragraph (c)(1)(v) is removed and ''; and'' is added in its place; paragraph (c)(1)(vi) is added; paragraph (c)(4) introductory text is republished; and paragraph (c)(4)(ii) is revised to read as follows:

§ 482.12 Conditions of participation: Governing body.

* * * * *

(c) *Standard: Care of patients.* In accordance with hospital policy, the

governing body must ensure that the following requirements are met:

(1) Every Medicare patient is under the care of:

* * * * *

(vi) A clinical psychologist as defined in § 410.71 of this chapter, but only with respect to clinical psychologist services as defined in § 410.71 of this chapter and only to the extent permitted by State law.

* * * * *

(4) A doctor of medicine or osteopathy is responsible for the care of each Medicare patient with respect to any medical or psychiatric problem that—

(i) * * *

(ii) Is not specifically within the scope of practice of a doctor of dental surgery, dental medicine, podiatric medicine, or optometry; a chiropractor; or clinical psychologist, as that scope is—

(A) Defined by the medical staff;

(B) Permitted by State law; and

(C) Limited, under paragraph (c)(1)(v) of this section, with respect to chiropractors.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774 Medicare—Supplementary Medical Insurance)

Dated: December 2, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: December 11, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 98–10591 Filed 4–22–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 73

[ET Docket 97–206; FCC 98–36]

Technical Requirements To Enable Blocking of Video Programming Based on Program Ratings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Report and Order* (''R&O''), the Commission is amending the rules to require that television receivers with picture screens 33 cm (13 inches) or greater be equipped with technological features to allow parents to block the display of violent, sexual, or other programming they believe is harmful to their children. These features are commonly referred to as ''v-chip'' technology. This action is in response to the Parental Choice in Television Programming requirements. These rules are intended to give parents the ability to block video programming that they do not want their children to watch.

DATES: This regulation is effective May 26, 1998. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Office of the Federal Register as of May 26, 1998.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* ET Docket 97–206, FCC 98–36, adopted March 12, 1998 and released March 13, 1998. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of the Report and Order

1. In section 551(a)(9) of the Telecommunications Act of 1996 (''1996 Act''), Congress determined that parents should be provided ''with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children * * *.'' Section 551(c) directs the Commission to adopt rules requiring that any ''apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally) * * * be equipped with a feature designed to enable viewers to block display of all programs with a common rating * * *.'' Section 551(d) states that the Commission must ''require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval * * *.'' That provision also instructs the Commission to oversee ''the adoption of standards by industry for blocking technology,'' and to ensure that blocking capability continues to be available to consumers as technology advances.

2. The *Notice of Proposed Rule Making* (''Notice'') in this proceeding, 62 FR 52677, October 9, 1997, began the process of fulfilling the requirements of section 551. In the *Notice* the Commission proposed to rely on industry standard EIA–608 to provide the methodology for television receivers to decode rating information transmitted on line 21 of the vertical blanking interval (''VBI''). A total of 26 parties filed comments, and 13 parties filed replies to comments in response to the *Notice*.

3. Comments received in response to the *Notice* were uniform in support of the Commission's proposal to adopt EIA–608 and EIA–744 as the transmission standards for program rating information. No commenters suggested other transmission standards that the Commission should consider. The Commission continues to believe that EIA–608 provides an appropriate means of transmitting program rating information on line 21. Therefore, the Commission is amending its rules to require that all television receivers with picture screens 33 cm (13 inches) or larger, measured diagonally, shipped in interstate commerce or manufactured in the United States, receive program ratings transmitted pursuant to industry standards EIA–608 and EIA–744 and block both the video and the associated audio on the main and second audio program (SAP) channels, based on a rating level specified by the user of the television receiver. By adopting EIA–608 and EIA–744 we are fulfilling our mandate under section 551(d) to oversee the adoption of standards by industry for blocking technology. The Commission is incorporating EIA–608 and EIA–744 into its rules by reference. To incorporate EIA–608–B by reference we will publish notice of the change in the **Federal Register** and amend the CFR.

4. The Commission is requiring that television manufacturers include blocking technology on at least half of their new product models with a picture screen 33 cm (13 inches) or greater in size by July 1, 1999. The remainder of the models would be required to contain blocking technology by January 1, 2000.

Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (''RFA''),[1] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the ''*Notice of Proposed Rule Making*

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. 104–121, 110 Stat 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA).

(Notice)''.[2] The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this Report and Order conforms to the RFA.[3]

A. Need for and Objective of the Rules

6. The rules adopted in this *Report and Order* are intended to give parents the ability to block video programming that they do not want their children to watch. This action is taken in response to the Parental Choice in Television Programming requirements contained in sections 551 (c) , (d), and (e) of the Telecommunications Act of 1996 (the ''1996 Act'').[4] As described in the present *Notice*, Congress determined that parents should be provided ''with timely information about the nature of upcoming video programming and with the technological tools that allow them to block violent, sexual, or other programming that they believe harmful to children.'' Section 551(c) of the 1996 Act directs the Commission to adopt rules requiring that any ''apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally) * * * be equipped with a feature designed to enable viewers to block display of all programs with a common rating.'' Section 551(d) states that the Commission must ''require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval.'' That provision also instructs the Commission to oversee ''the adoption of standards by industry for blocking technology,'' and to ensure that blocking capability continues to be available to consumers as technology advances.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. No comments were filed in direct response to the IRFA. Commenters, including possible small entity commenters, wrote general comments regarding the deadlines for compliance with the blocking technology rules.[5]

C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

8. This action requires television manufacturers to include program blocking technology in television receivers that have a display size of 33 cm (13 inches) or larger. Personal computers that have a display size of 33 cm (13 inches) or larger and include the ability to receive NTSC or DTV TV signals (i.e., television broadcasting) are also subject to the requirement to include program blocking technology. The requirements do not apply to computers receiving video transmissions over the Internet or via computer networks.

9. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business'' ''small organization,'' and ''small governmental jurisdictions.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[6] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[7]

10. The Commission has not developed a definition of small entities applicable to V-chip technology. Therefore, the Commission will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA's regulations, television equipment manufacturers must have 750 or fewer employees in order to qualify as a small business concern.[8] Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[9] The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are manufacturers of television equipment. However, we believe that many of the companies that manufacture television equipment may qualify as small entities.

11. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.[10] Census Bureau data indicates that there are 716 firms that manufacture electronic computers. Of those, 659 have fewer than 500 employees and qualify as small entities.[11] The remaining 57 firms have 500 or more employees; however, we were unable to determine how many of those have 1,000 or fewer employees and therefore also qualify as small entities under the SBA definition.

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

12. The Commission's rules require television receivers to be verified for compliance with applicable FCC technical requirements. See 47 CFR 15.101, 15.117, and 2.951, *et seq.* Documentation concerning the verification must be kept by the manufacturer or importer. The rules adopted in this proceeding require that television receivers comply with industry-developed standards for blocking display of video programming based on program ratings. However, verification testing regarding program blocking is not necessary because compliance with the industry-developed standards, and the associated Commission rules, can be determined easily during the television receiver design process. The Commission may, of course, ask manufacturers and importers to document upon occasion how a particular television receiver complies with the program blocking requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

13. In the *Notice* we invited comment regarding the existence of such alternate blocking technologies and whether it would be appropriate to permit them at this time in lieu of ratings-based blocking technology. In order to evaluate possible alternative blocking technologies, we solicited information regarding the cost of any alternative blocking technology as well as the cost of implementing ratings-based technology pursuant to EIA–608.

14. EIA–608 has provided television programmers, closed-captioning service

[2] *See* ET Docket 97–206, 12 FCC Rcd 15573 (1997), Appendix A.

[3] *See* 5 U.S.C. 604.

[4] Pub. L. 104–104, 111 Stat. 56 (1996).

[5] *See* FRFA Section E, *infra*, ''Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.''

[6] *See* 5 U.S.C. 601(3).

[7] 15 U.S.C. 632.

[8] 13 CFR 121.201, (SIC) Code 3663.

[9] U.S. Department of Commerce, *1992 Census of Transportation, Communications, and Utilities*, SIC Code 3663 (issued May 1995).

[10] 13 CFR 121.201. (SIC) Code 3571.

[11] U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3571. (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

providers and television receiver manufacturers with a standard method for transmitting and using data information transmitted on line 21. It ensures compatibility between the various uses of this information and minimizes the need for government regulation in this area. In the *Notice* we recognized the broad acceptance of EIA–608 for transmission of data on line 21. Accordingly, we proposed to amend our rules to require that most television receivers receive program ratings information transmitted pursuant to EIA–608 and block video programming based on a ratings level specified by the user. To accomplish this, we proposed to incorporate the appropriate provisions of EIA–608 into our regulations. We invited comment on whether other technical standards for blocking technology were being developed or have been developed, and whether they should be used instead of or in addition to EIA–608.

15. Commenters were uniform in their support of our proposal to adopt EIA–608 as the transmission standard for program ratings information. No commenters suggested other transmission standards that the Commission should consider. We continue to believe that EIA–608 provides an appropriate means of transmitting program ratings information on line 21. Therefore, we are amending our rules to require that all television receivers with picture screens 33 cm (13 inches) or larger, measured diagonally, shipped in interstate commerce or manufactured in the United States, receive program ratings transmitted pursuant to industry standard EIA–608 and block both the video and the associated audio on the main and second audio program (SAP) channels, based on a ratings level specified by the user of the television receiver. We are also incorporating the relevant parts of EIA–608 into our rules, along with EIA–744 which contains a proposed amendment to EIA–608 that will include pertinent information on transmission of program ratings information.

16. In the *Notice* we also proposed to require television manufacturers to include blocking technology on at least half of their product models with a picture screen 33 cm (13 inches) or greater in size by July 1, 1998. The remainder of the models would be required to contain blocking technology by July 1, 1999. While all commenters agree that program blocking technology should be made available to the public as soon as possible, television manufacturers contend that the deadlines proposed by the Commission are impossible to meet.

17. CEMA states that the design cycle for a television receiver model takes approximately 18–24 months. According to CEMA, ''The cycle generally begins in January, and leads to product introduction the summer of the following year in time for the holiday buying season.'' Other commenters state that this production cycle can not be compressed without creating the possibility of releasing an inferior product to the market. Additionally, CEMA, Philips, and Thomson also state that the Commission must release final rules in both this proceeding and CS Docket 97–55 before the production cycle may begin for v-chip equipped televisions. They request that the Commission delay the implementation deadline for at least one year subsequent to the release of rules in these proceedings.

18. After reviewing all of the comments filed in this proceeding, we conclude that it is appropriate to delay our implementation deadlines. Manufacturers were consistent in describing typical design and production schedules for TV receivers. We believe that our rules should conform with these schedules and provide a smooth transition for product introduction. We realize that, given these schedules, manufacturers are well into the production phase of sets that will be released in July 1998. Therefore, it would be infeasible to demand that these sets contain blocking technology. Furthermore, it would be detrimental to consumer confidence if forced compression of manufacturer design schedules resulted in the release of an unsatisfactory product. Accordingly, we are revising the implementation schedule proposed in the *Notice* to require that television manufacturers include blocking technology on at least half of their new product models with a picture screen 33 cm (13 inches) or greater in size by July 1, 1999. The remainder of the models would be required to contain blocking technology by January 1, 2000.

Report to Congress

The Commission will send a copy of the Report and Order, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1966, *see* 5 U.S.C. 801(a)(1)(A). A copy of the Report and Order and this FRFA (or summary thereof) will also be published in the **Federal Register**, *see* 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 15

Communications equipment, Computer technology, Incorporation by reference.

47 CFR Part 73

Communications equipment, Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble part 15 and 73 of title 47 of the Code of Federal Regulations, are amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

2. A new § 15.120 is added to read as follows:

§ 15.120 Program blocking technology requirements for television receivers.

(a) Effective July 1, 1999, manufacturers of television broadcast receivers as defined in section 15.3(w) of this chapter, including personal computer systems meeting that definition, must ensure that one-half of their product models with picture screens 33 cm (13 in) or larger in diameter shipped in interstate commerce or manufactured in the United States comply with the provisions of paragraphs (c), (d), and (e) of this section.

Note: This paragraph places no restrictions on the shipping or sale of television receivers that were manufactured before July 1999.

(b) Effective January 1, 2000, all TV broadcast receivers as defined in section 15.3(w) of this chapter, including personal computer systems meeting that definition, with picture screens 33 cm (13 in) or larger in diameter shipped in interstate commerce or manufactured in the United States shall comply with the provisions of paragraphs (c), (d), and (e) of this section.

(c) Transmission format.

(1) Analog television program rating information shall be transmitted on line 21 of field 2 of the vertical blanking interval of television signals, in accordance with § 73.682(a)(22) of this chapter.

(2) [Reserved]

(d) Operation.

(1) Analog television receivers will receive program ratings transmitted

pursuant to industry standard EIA–744 ''Transport of Content Advisory Information Using Extended Data Service (XDS)'', October 1997, Electronics Industries Association and EIA–608 ''Recommended Practice for Line 21 Data Service'', September 1994, Electronics Industries Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Blocking of programming shall occur when a program rating is received that meets the pre-determined user requirements. Copies of EIA–744 and EIA–608 may be obtained from: Global Engineering Documents, 15 Inverness Way East, Englewood, Co 80112–5704. Copies of EIA–744 and EIA–608 may be inspected during normal business hours at the following locations: Federal Communications Commission, 2000 M Street, NW, Technical Information Center (Suite 230), Washington, DC, or the Office of the Federal Register, 800 North Capitol Street, NW, suite 700 Washington, DC.

(2) Digital television receivers shall react in a similar manner as analog televisions when programmed to block specific rating categories.

(e) All television receivers as described in paragraph (a) of this section shall block programming as follows:

(1) *Channel Blocking.* Channel Blocking should occur as soon as a program rating packet with the appropriate Content Advisory or MPAA rating level is received. Program blocking is described as a receiver performing all of the following:

- Muting the program audio.
- Rendering the video black or otherwise indecipherable.
- Eliminating program-related captions.

(2) *Default State.* The default state of a receiver (i.e., as provided to the consumer) should not block unrated programs. However, it is permissible to include features that allow the user to reprogram the receiver to block programs that are not rated.

(3) *Picture-In-Picture (PIP).* If a receiver has the ability to decode program-related rating information for the Picture-In-Picture (PIP) video signal, then it should block the PIP channel in the same manner as the main channel. If the receiver does not have the ability to decode PIP program-related rating information, then it should block or otherwise disable the PIP if the viewer has enabled program blocking.

(4) *Selection of Ratings.* Each television receiver, in accordance with user input, shall block programming based on the age based ratings, the content based ratings, or a combination of the two.

(i) If the user chooses to block programming according to its age based rating level, the receiver must have the ability to automatically block programs with a more restrictive age based rating. For example, if all shows with an age-based rating of TV–PG have been selected for blocking, the user should be able to automatically block programs with the more restrictive ratings of TV–14 and TV–MA.

(ii) If the user chooses to block programming according to a combination of age based and content based ratings the receiver must have the ability to automatically block programming with a more restrictive age rating but a similar content rating. For example, if all shows rated TV–PG–V have been selected for blocking, the user should be able to block automatically shows with the more restrictive ratings of TV–14–V and TV–MA–V.

(iii) The user should have the capability of overriding the automatic blocking described in paragraphs (e)(4)(i) and (4)(ii) of this section.

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.

2. Section 73.682 is amended by revising paragraphs (a)(22)(i) and (a)(24)(iii)(A) to read as follows:

§ 73.682 TV transmission standards.

(a) * * *

(22)(i) Line 21, in each field, may be used for the transmission of a program-related data signal which, when decoded, provides a visual depiction of information simultaneously being presented on the aural channel (captions). Line 21, field 2 may be used for transmission of a program-related data signal which, when decoded, identifies a rating level associated with the current program. Such data signals shall conform to the format described in figure 17 of § 73.699 of this chapter, and may be transmitted during all periods of regular operation. On a space available basis, line 21 field 2 may also be used for text-mode data and extended data service information.

Note: The signals on Fields 1 and 2 shall be distinct data streams, for example, to supply captions in different languages or at different reading levels.

* * * * *

(24) * * *

(iii) * * *

(A) The use of such signals shall not result in significant degradation to any portion of the visual, aural, or program-related data signals of the television broadcast station;

* * * * *

[FR Doc. 98–10742 Filed 4–22–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–118A; Amendment 192–83]

RIN 2137–AC55

Excess Flow Valve—Customer Notification

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the Amendment number of final rule [Docket No. PS–118A; Amdt. 192–82], published in the **Federal Register** on February 3, 1998 (63 FR 5464). In the document heading on page 5464, the ''Amendment 192–82'' is changed to read ''Amendment 192–83''. Also in the same final rule [63 FR 5464: 2/3/98] this document corrects metric units for pressure from ''m'' to ''kPa''.

EFFECTIVE DATES: April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mike M. Israni, telephone (202) 366–4571.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1998, RSPA issued a final rule [63 FR 5464] requiring operators of natural gas distribution systems to provide certain customers with information about excess flow valves (EFV's). In that final rule on page 5471 under § 192.383(b)—Which customers must receive notification, in the first sentence the service line pressure of not less than 68.9 kPa (10 psig) was erroneously labeled ''68.9 m (10 psig)''.

Need for Correction

As published, the final rule contains an error in metric units which may confuse and is in need of clarification.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

PART 192—[AMENDED]

Accordingly, 49 CFR part 192 is corrected by making the following correcting amendment:

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60110, and 60118; 49 CFR 1.53.

§ 192.383 [Amended]

2. In § 192.383(b), in the first sentence, the metric units for the service line pressure are revised from ''68.9 m (10 psig)'' to ''68.9 kPa (10 psig)''.

Issued in Washington, D.C. on April 20, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–10797 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 63, No. 78
Thursday, April 23, 1998

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF96

Codes and Standards: IEEE National Consensus Standard

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing an amendment to its regulations that would incorporate by reference IEEE Std. 603–1991, ''Criteria for Safety Systems for Nuclear Power Generating Stations,'' a national consensus standard for power, instrumentation, and control portions of safety systems in nuclear power plants. This action is necessary to endorse the latest version of this national consensus standard in NRC's regulations.

DATES: Comments on the proposed rule must be received on or before May 26, 1998. Comments received after this date will be considered if it is practical to consider them, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Attention: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays. Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C.

You may also submit comments via the NRC's interactive rulemaking web site through the NRC Home Page (http://www.nrc.gov). From the NRC home page, select ''Rulemaking'' from the tool bar. The interactive rulemaking website can then be accessed by selecting ''New Rulemaking Website.'' This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher at 301–415–5905 (e-mail: cag@nrc.gov).

FOR FURTHER INFORMATION CONTACT: Satish K. Aggarwal, Senior Program Manager, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–6005; Fax 301–415–5074; e-mail:ska@nrc.gov.

SUPPLEMENTARY INFORMATION:

Previous History

On October 17, 1997 (62 FR 53932), NRC published a direct final rule in the **Federal Register** that amended its regulations to incorporate by reference IEEE Std. 603–1991 for power, instrumentation, and control portions of safety systems in nuclear power plants. The direct final rule was withdrawn on December 23, 1997 (62 FR 66977), because the NRC received significant adverse comments in response to the proposed rule that was issued as a companion to the direct final rule on October 17, 1997 (62 FR 53975). The NRC has considered the comments it received, revised the proposed rule, and is reissuing a second proposed rule to give the public another opportunity to comment.

This proposed rule supersedes the October 17, 1997, proposed rule.

Background

10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' § 50.55a (h) requires that the protection systems in nuclear power plants meet the requirements stated in IEEE Std. 279, ''Criteria for Protection Systems for Nuclear Power Generating Stations,'' in effect on the formal docket date of the application. However, IEEE has withdrawn IEEE Std. 279–1971 and it has now been superseded by IEEE Std. 603–1991, ''Criteria for Safety Systems for Nuclear Power Generating Stations.''

In November 1995, the NRC staff issued a draft regulatory guide for public comment, DG–1042, which was a proposed Revision 1 to Regulatory Guide 1.153, ''Criteria for Safety Systems.'' This draft regulatory guide proposed to endorse IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995). There were no adverse comments to DG–1042, and Revision 1 to Regulatory Guide 1.153 was issued in June 1996, endorsing IEEE Std. 603–1991. Because of the absence of adverse public comments to Revision 1 to Regulatory Guide 1.153, the NRC believed that there was general public consensus that IEEE Std. 603–1991 provides acceptable criteria for safety systems in nuclear power plants. For this reason, the NRC published the direct final rule without seeking public comments on the amendment before issuing it. In view of the significant public comments received, the NRC has reconsidered this action (See the discussion under Previous History).

Discussion

This proposed rule would incorporate a national consensus standard, IEEE Std. 603–1991, into NRC regulations to establish minimal functional and design requirements for power, instrumentation, and control portions of safety systems for nuclear power plants. This action would be consistent with the provisions of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, which encourages Federal regulatory agencies to consider adopting industry consensus standards as an alternative to *de novo* agency development of standards affecting an industry. This action would also be consistent with the NRC policy of evaluating the latest versions of national consensus standards in terms of their suitability for endorsement by regulations or regulatory guides.

Currently, 10 CFR 50.55a(h) specifies that ''protection systems'' for plants with construction permits issued after January 1, 1971, must meet the requirements in IEEE Std. 279 in effect on the formal docket date of the application for a construction permit.

IEEE Std. 279–1971 states that a ''protection system'' encompasses all electric and mechanical devices and circuitry (from sensors to actuation device input terminals) involved in generating those signals associated with the protective function. These signals include those that actuate reactor trip and that, in the event of a serious reactor accident, actuate engineered safety features (ESFs), such as containment isolation, core spray, safety injection, pressure reduction, and air cleaning. ''Protective function'' is defined in IEEE Std. 279–1971 as ''the sensing of one or more variables associated with a particular generating station condition, signal processing, and

the initiation and completion of the protective action at values of the variables established in the design bases.''

IEEE Std. 603–1991 uses the term ''safety systems'' rather than ''protection systems.'' A ''safety system'' is defined in IEEE Std. 603–1991 as ''a system that is relied upon to remain functional during and following design basis events to ensure: (i) the integrity of the reactor coolant pressure boundary, (ii) the capability to shut down the reactor and maintain it in a safe shutdown condition, or (iii) the capability to prevent or mitigate the consequences of accidents that could result in potential off-site exposures comparable to the 10 CFR Part 100 guidelines.'' A ''safety function'' is defined in IEEE Std. 603–1991 as ''one of the processes or conditions (for example, emergency negative reactivity insertion, post-accident heat removal, emergency core cooling, post-accident radioactivity removal, and containment isolation) essential to maintain plant parameters within acceptable limits established for a design basis event.''

The NRC recognizes that ''protection systems'' are a subset of ''safety systems.'' Safety system is a broad-based and all-encompassing term, embracing the protection system in addition to other electrical systems. Thus, the term ''protection system'' is not synonymous with the term ''safety system.'' The proposed rule would not change the scope of the systems covered in the final safety analysis report (FSAR) for currently operating nuclear power plants, whether or not they intend to make system-level replacements of protection systems.

This proposed rule would mandate the use of IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995) for safety systems for future nuclear power plants, including final design approvals, design certifications, and combined licenses under 10 CFR Part 52 . Current licensees may continue to meet the requirements stated in the edition or revision of IEEE Std. 279 in effect on the formal date of their application for a construction permit or may, at their option, use IEEE Std. 603–1991, provided they comply with all applicable requirements for making changes to their licensing basis. However, system-level replacements of protection systems and addition of new safety systems in operating nuclear power plants initiated on or after January 1, 1999, would be required to meet the requirements in IEEE Std. 603–1991. A ''system'' is defined as a combination of two or more interrelated components that perform a specific safety function. The protection systems are listed in the plant's FSAR. For example, ''neutron monitoring system'' is a protection system. The upgrade of the average power range monitor (APRM) portion of the neutron monitoring system to add the ability to detect and suppress potential boiling-water reactor (BWR) instabilty may meet IEEE Std. 279 because the modification only replaces the APRM signal processing components, output relays, recirculation flow transmitters, and operator displays. If this modification were to replace the neutron detectors, local power range monitor cards, and associated power supplies, the modification would be considered a complete replacement at a system level and must meet IEEE Std. 603–1991. Similarly, the replacement of the source range monitors and intermediate range monitors in a BWR with wide-range neutron monitors must meet IEEE Std. 603–1991, because it involves the complete replacement of the system, including sensors, preamps, signal processors, output relays, and operator displays. Reuse of a few existing components (e.g., selected cables, raceway, and control room panels where the displays are mounted) as part of the system-level replacement would still place this type of modification in the category of a complete system-level replacement.

IEEE Std. 603–1991 references several industry codes and standards. Unless these referenced standards are specifically incorporated by reference elsewhere in the NRC regulations, they do not represent the Commission's mandatory requirements. If the referenced standard has been endorsed in a regulatory guide, the standard constitutes a method acceptable to the NRC of meeting a regulatory requirement as described in the regulatory guide. If a referenced standard has not been endorsed in a regulatory guide, the licensees and applicants may consider and use the information in the referenced standard in a manner that is consistent with current regulatory practices.

Significant Comments on the Direct Final Rule

The NRC received 28 letters from the public by December 8, 1997, commenting on the content of the direct final rule. Copies of comment letters are available for public inspection and copying for a fee at the NRC's Public Document Room. The major issues raised by the comments and the NRC staff responses to these issues are as follows:

(1) *Referenced Standards.*

Issue. There are approximately 100 ''shalls'' in IEEE Std. 603–1991, which refer to 13 other IEEE standards, 3 ANS/ANSI standards, and 1 ISA standard. This rule would require a full redesign of the plant, if licensees are required to comply with these referenced standards.

Response. Because the NRC did not seek for any of the other standards referenced in IEEE Std. 603–1991 to be approved for incorporation by reference, these standards are not mandatory requirements, even though IEEE Std. 603–1991 invokes the referenced standards by the use of ''shall.'' However, the NRC encourages licensees to adopt these referenced standards voluntarily because these newer consensus standards reflect progress and the current state of technology. If a referenced standard has been endorsed in a regulatory guide, the standard constitutes a method acceptable to the NRC for meeting a regulatory requirement as described in the regulatory guide. In many cases, the regulatory guides endorse a previous version of the IEEE standard. These guides represent the current NRC recommended practices. Licensees may opt to use alternate approaches if they can provide sufficient technical bases.

(2) *Scope: Protection System vs. Safety System.*

Issue. The terms ''protection systems'' and ''safety systems'' are not synonymous.

Response. The NRC staff agrees that protection systems are a subset of safety systems and thus, the terms are not synonymous. The term protection system is defined in IEEE Std. 279–1971 (and in IEEE Std. 603–1991), and the term safety system is defined in IEEE Std. 603–1991. The NRC staff endorses these definitions. The protection system has a limited application; safety system is broad based and all-encompassing, thereby embracing the protection system and other electrical systems. This proposed rule would not change the applicable scope of the systems for operating nuclear power plants.

(3) *Applicability of Rule.*

Issue. The rule does not explicitly state that it does not apply to nuclear power plants with construction permits issued before January 1, 1971.

Response. Nuclear power plants that have not been required to meet IEEE Std. 279–1971, because their construction permit was issued before January 1, 1971, may continue to make modifications or changes to components and subsystems, consistent with their licensing basis and commitments made to the NRC, or may meet the requirements stated in IEEE Std. 603–1991. However, the proposed rule

would mandate the use of IEEE Std. 603–1991 for system-level replacements of protection systems and for the addition of new safety systems.

(4) *Changes: Components vs System Level.*

Issue. The rule would result in a dual licensing basis within a system and would introduce significant confusion, because IEEE Std. 603–1991 was written as a system standard. Replacements of components or subsystems should not be covered by the rule.

Response. The proposed rule would not result in a dual licensing basis within a system, because it would apply only to system-level replacements of protection systems and the addition of new safety systems. Modifications or changes to components and subsystems shall meet the current requirements of IEEE Std. 279, when applicable, but need not meet the requirements of IEEE Std. 603–1991.

Finding of No Environmental Impact: Availability of Environmental Assessment

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR Part 51, that because this proposed rule would not be a major Federal action significantly affecting the quality of the human environment, an environmental impact statement is not required. The NRC has prepared an environmental assessment supporting this finding of no significant environmental impact.

The NRC has sent a copy of the environmental assessment and a copy of the **Federal Register** notice to every State liaison officer and requested their comments on the environmental assessment. The environmental assessment is available for inspection at the NRC Public Document Room, 2120 L Street, NW., Washington, D.C. Also, the NRC has committed itself to complying in all its actions with Presidential Executive Order 12898, ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994). Therefore, the NRC also has determined that there are no disproportionate, high, and adverse impacts on minority and low-income populations. The NRC uses the following working definition of environmental justice: Environmental justice means the fair treatment and meaningful involvement of all people—regardless of race, ethnicity, culture, income, or educational level—with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval No. 3150–0011.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis that shows the proposed amendment does not impose any new requirements or costs on current licensees who do not make changes to protection systems. However, licensees planning or proposing system-level replacements of protection systems will be affected because they will be required to meet the requirements of IEEE Std. 603–1991 for system level replacements. This impact would be minimal. Most changes to protection systems only change a part of the system, and IEEE Std. 279–1971 will continue to apply. The draft regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), the NRC certifies that this rule, if adopted, would not have a significant economic impact on small entities. This rule affects only the operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' stated in the Regulatory Flexibility Act or the small business size standards adopted by the NRC (10 CFR 2.810). Because these companies are dominant in their service areas, this rule does not fall within the purview of the act.

Backfit Analysis

The proposed rule would require applicants and holders of new construction permits, new operating licenses, new final design certifications, and combined licenses to comply with IEEE Std. 603–1991 (including the correction sheet dated January 30, 1995). System-level replacements to protection systems in existing operating plants initiated on or after January 1, 1999, would be required to meet the requirements of IEEE Std. 603–1991. IEEE Std. 279 will continue to apply to those nuclear power plants required to meet IEEE Std. 279 that do not make system-level replacements of protection systems, but the rule permits the licensee the option of meeting IEEE Std. 603–1991.

The backfit rule was not intended to apply to regulatory actions that change expectations of prospective applicants and, therefore, the backfit rule does not apply to the portion of the rule applicable to new construction permits, new operating licenses, new final design approvals, new design certifications, and combined licenses. This proposed rule would not change the licensing basis (i.e., IEEE Std. 279) for plants that do not intend to make any changes to their power and instrumentation and control systems. However, the proposed rule would require future system-level replacements of existing power and instrumentation and control portions of protection systems to comply with the new standard. This would not be considered a backfit, because the changes are voluntarily initiated by the licensee, or separately imposed by the NRC after a separate backfit analysis. This is consistent with past NRC practice and the discussions on backfitting in the Value-Impact Statement prepared for Revision 1 to Regulatory Guide 1.153. A copy of the Value-Impact Statement is available for inspection or copying for a fee in the NRC's Public Document Room at 2120 L Street, NW., Washington, DC, under Task DG–1042.

In summary, the NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule because it does not impose any backfits as defined in 10 CFR 50.109(a)(1) and, therefore, a backfit analysis has not been prepared for this proposed rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

For the reasons stated in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C., the NRC is proposing to adopt the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54 (dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138), Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235), Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.55a, paragraph (h) is revised to read as follows:

§ 50.55a Codes and standards.

* * * * *

(h) Protection and safety systems. (1) IEEE Std. 603–1991, including the correction sheet dated January 30, 1995, which are referenced in paragraphs (h)(2) and (h)(3) of this section, is approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of IEEE Std. 603–1991 may be purchased from the Institute of Electrical and Electronics Engineers Service Center, 445 Hoes Lane, Piscataway, NJ 08855. The standard is also available for inspection at the NRC Library, 11545 Rockville Pike, Rockville, MD; and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C. IEEE Std. 279, which is referenced in paragraph (h)(2) of this section, was approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this standard are also available as indicated for IEEE Std. 603–1991.

(2) Protection systems. For nuclear power plants with construction permits issued after January 1, 1971, but before January 1, 1999, protection systems must meet the requirements stated in either IEEE Std. 279, ''Criteria for Protection Systems for Nuclear Power Generating Stations,'' or in IEEE Std. 603–1991, ''Criteria for Safety Systems for Nuclear Power Generating Stations,'' and the correction sheet dated January 30, 1995. For nuclear power plants with construction permits issued before January 1, 1971, protection systems must meet the requirements stated in IEEE Std. 603–1991 or be consistent with their licensing basis. System-level replacement of protection systems and addition of new safety systems in existing operating nuclear power plants initiated on or after January 1, 1999, must meet the requirements stated in IEEE Std. 603–1991 and the correction sheet dated January 30, 1995.

(3) Safety systems. For construction permits, operating licenses, final design approvals, design certifications, and combined licenses issued on or after January 1, 1999, safety systems must meet the requirements stated in IEEE Std. 603–1991 and the correction sheet dated January 30, 1995.

Dated at Rockville, Maryland, this 17th day of April, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–10842 Filed 4–22–98; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for towers, telephone and telegraph apparatus, electrical measuring and integrating instruments, engines and turbines, storage batteries, cellular handsets and telephones, automobile motor vehicles, motor trucks (except off-highway), fuel, radiotelephones, and fiber optic cable.

SUMMARY: The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for towers, telephone and telegraph apparatus, electrical measuring and integrating instruments, engines and turbines, storage batteries, cellular handsets and telephones, automobile motor vehicles, motor trucks (except off-highway), fuel, radiotelephones, and fiber optic cable. The basis for a waiver of the Nonmanufacturer Rule for these products is that there are no small business manufacturers or processors available to supply these products to the Federal Government. The effect of a waiver would be to allow an otherwise qualified Nonmanufacturer to supply other than the product of a domestic small business manufacturer or processor on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before May 14, 1998.

ADDRESSES: David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street S.W., Washington, DC 20416, Tel: (202) 205–6475.

SUPPLEMENTARY INFORMATION: Public law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual (SIC). The second is the Product and Service Code (PSC) established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request for a waiver of the Nonmanufacturer Rule for Electrical Measuring and Integrating Instruments (SIC 3825 PSC 5805), Storage Batteries (SIC 3691), Fiber Optic Cable (SIC 3357 PSC 6015), Engines and Turbines (SIC 3511,3519 PSC 2835), Automobile Motor Vehicles and Motor Trucks (SIC 3711 PSC 2310 2320), Fuel

(SIC 2911), Towers, Telephone and Telegraph Apparatus (3661 PSC 5805), Cellular Handsets and Telephones (SIC 3663 PSC 5805). and invites the public to comment or provide information on potential small business manufacturers for this product.

In an effort to identify potential small business manufacturers, the SBA has searched the Procurement Marketing and Access Network (PRO-net) and Thomas Register, and the SBA will publish a notice in the Commerce Business Daily. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for this class of products.

Judith A. Roussel,

Associate Administrator for Government Contracting.

[FR Doc. 98–10762 Filed 4–22–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA is proposing to amend its regulations to conform the eligibility criteria for disaster loans to those applicable in SBA's business loan program. Thus, under the proposed rule, a business could not obtain a physical disaster loan if it is engaged in any illegal activity; if it is a government owned entity (other than one owned or controlled by a Native American tribe); or if it engages in products or services of a prurient sexual nature. Under the proposed rule, a business would not be eligible for an economic injury disaster loan if more than one-third of its revenues are from legal gambling operations or from packaging SBA loans; if it is principally engaged in teaching or indoctrinating religion; or is primarily engaged in political or lobbying activities.

DATES: Comments must be submitted on or before May 26, 1998.

ADDRESSES: Comments may be mailed to Bernard Kulik, Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, 202–205–6734.

SUPPLEMENTARY INFORMATION: Under the proposed rule, SBA would amend § 123.201 of its regulations so that an applicant would not be eligible for a physical disaster business loan if it is engaged in any illegal activity; if it is a government owned entity (other than a business owned or controlled by a Native American tribe); or if the business (1) presents live performances of a prurient sexual nature or (2) derives directly or indirectly more than *de minimis* gross revenue from activities of a prurient sexual nature. This proposed rule would codify SBA's existing policy of using the same ineligibility criteria for SBA's disaster and business loan programs. Thus, a business that would not be eligible to receive an SBA guaranteed business loan because it met these criteria, would also not be eligible to obtain a physical disaster loan.

Under this proposed rule amending § 123.301 of SBA's regulations, a business would not be eligible for an economic injury disaster loan if it (1) derived more than one-third of its gross annual revenue from legal gambling activities; (2) earned more than one-third of its gross annual revenue from packaging SBA loans; (3) was principally engaged in teaching, instructing, counselling or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or (4) primarily engaged in political or lobbying activities. These proposed changes would codify SBA's existing policy of using the same ineligibility criteria for its economic injury disaster and business loan program. Thus, if a business is not eligible, because of these criteria, for an SBA guaranteed loan under the business loan program, it would not be eligible for an economic injury disaster loan.

SBA is proposing to correct a typographical error in § 123.202(a) by substituting ''lesser'' for ''greater'' in the first sentence which would then read: ''Disaster business loans, including both physical disaster and economic injury loans to the same borrower, together with its affiliates, cannot exceed the lesser of the uncompensated physical loss and economic injury or $1.5 million.'' This would ensure that an applicant receives disaster assistance for an uncompensated loss or injury without obtaining excessive SBA assistance at lower than market rates.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch 35)

SBA certifies that this proposed rule does not constitute a significant rule within the meaning of Executive Order 12866 and does not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. et seq. It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. This proposed rule codifies current SBA practices and will not affect additional businesses or impose any costs

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch 35, SBA certifies that this proposed rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalog of Federal Domestic Assistance Programs, No. 59.012 and 59.008)

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs-business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 123, chapter I, title 13, Code of Federal Regulations, as follows:

PART 123—DISASTER LOAN ASSISTANCE

1. The authority citation for part 123 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

2. Section 123.201 would be amended by adding paragraphs (d), (e), and (f) to read as follows:

§ 123.201 When am I not eligible to apply for a physical disaster business loan?

* * * * *

(d) You are not eligible if your business is engaged in any illegal activity.

(e) You are not eligible if you are a government owned entity (except for a business owned or controlled by a Native American tribe).

(f) You are not eligible if your business:

(1) Presents live performances of a prurient sexual nature or

(2) Derives directly or indirectly more than de minimis gross revenue through the sale of products or services, or the

presentation of any depictions or displays, of a prurient sexual nature.

3. Section 123.202(a) would be amended by revising the first sentence to read as follows:

§ 123.202 How much can my business borrow with a physical disaster business loan?

(a) Disaster business loans, including both physical disaster and economic injury loans to the same borrower, together with its affiliates, cannot exceed the lesser of the uncompensated physical loss and economic injury or $1.5 million. * * *

4. Section 123.301 would be amended by removing ''gambling'' and ''loan packaging'' in paragraph (a), removing ''or'' at the end of paragraph (c), removing the period and adding ''; or'' at the end of paragraph (d), and adding paragraphs (e), (f), (g), and (h) to read as follows:

§ 123.301 When would my business not be eligible to apply for an economic injury disaster loan?

* * * * *

(e) Deriving more than one-third of gross annual revenue from legal gambling activities;

(f) A loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(g) Principally engaged in teaching, instructing, counselling or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(h) Primarily engaged in political or lobbying activities.

Dated: April 14, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–10757 Filed 4–22–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–102–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. This proposal would require a one-time detailed visual inspection of the forward fuel feed lines in the left- and right-hand engine nacelles for chafing; replacement of damaged parts with serviceable parts; and modification of the supports and improved routing for the high- and low-tension leads of the inboard ignition units. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent chafing on the forward fuel feed lines, which could result in fuel leakage and consequent increased risk of fire in the engine nacelles.

DATES: Comments must be received by May 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–102–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, *Attention:* Rules Docket No. 98–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. The RLD advises that it has received a report of fuel leakage from the right-hand engine nacelle on a Fokker F27 Mark 500RF series airplane. Further investigation revealed that the leak was caused by a small hole in the forward fuel feed line in the engine nacelle. Closer examination showed that the hole was caused by interference between the high-tension leads of the nearby ignition unit and the affected fuel feed line. One lead appeared to be incorrectly supported, resulting in chafing and subsequent damage to the fuel feed line. Such chafing, if not corrected, could result in fuel leakage and consequent increased risk of fire in the engine nacelles.

Explanation of Relevant Service Information

The manufacturer has issued Fokker Service Bulletin F27/28–62, dated September 1, 1997, which describes procedures for a one-time detailed visual inspection of the forward fuel feed lines in the left- and right-hand engine nacelles for chafing; replacement of damaged parts with serviceable parts; and modification of the supports and improved routing for the high- and low-tension leads of the inboard ignition

units. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 1997–094 (A), dated September 30, 1997, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and the Relevant Service Information

Operators should note that, unlike the procedures described in Fokker Service Bulletin F27/28–62, this proposed AD would not permit further flight if interference or damage is detected between the specified forward fuel lines and ignition high-tension leads. The FAA has determined that, because of the safety implications and consequences associated with such interference and damage, any related damage that is found during the inspection must be corrected prior to further flight.

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $2,040, or $60 per airplane.

It would take approximately 4 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. The cost of required parts would be minimal. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $8,160, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 98–NM–102–AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing on the forward fuel feed lines, which could result in fuel leakage and consequent increased risk of fire in the engine nacelles, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time detailed visual inspection of the left- and right-hand engine nacelles for chafing of the forward fuel feed lines by the high- and low-tension leads of the inboard ignition units, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/28–62, dated September 1, 1997. If any chafing is detected, prior to further flight, replace the fuel line with a new fuel line in accordance with Part 1 of the Accomplishment Instructions of the service bulletin.

(b) Within 6 months after the effective date of this AD, modify the supports and reroute the high- and low-tension leads of the inboard ignition units, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/28–62, dated September 1, 1997.

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

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

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

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 1997–094 (A), dated September 30, 1997.

Issued in Renton, Washington, on April 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10755 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–72–AD]

RIN 2120–AA64

Airworthiness Directives; All Models of The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Airplanes Equipped With Wing Lift Struts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 93–10–06, which currently applies to all models of The New Piper Aircraft, Inc. (Piper) airplanes equipped with wing lift struts. AD 93–10–06 requires repetitively inspecting the wing lift struts and wing lift strut forks for cracks or corrosion, and replacing any strut or fork found cracked or corroded. The proposed AD results from reports, questions, and information received from the field on AD 93–10–06, which show a need to clarify and add information that will more fully achieve the safety intent of that AD. This action clarifies certain requirements of AD 93–10–06, eliminates the lift strut fork repetitive inspection requirement on the Piper PA–25 series airplanes, incorporates models inadvertently omitted from AD 93–10–06, and requires fabricating and installing a placard on the lift strut. The actions specified by the proposed AD are intended to prevent in-flight separation of the wing from the airplane caused by corroded wing lift struts or cracked wing lift forks, which could result in loss of control of the airplane.

DATES: Comments must be received on or before July 1, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–72–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

The service bulletins referenced in this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies of the instructions to the Jensen Aircraft STC's may be obtained from Jensen Aircraft, Inc., 9225 County Road 140, Salida, Colorado 81201. Copies of the instructions to the F. Atlee Dodge STC may be obtained from F. Atlee Dodge, Aircraft Services, Inc., P.O. Box 190409, Anchorage, Alaska 99519–0409. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–72–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–72–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 93–10–06, Amendment 39–8586 (58 FR 29965, May 25, 1993), currently requires the following on Piper airplane models equipped with wing lift struts: repetitively inspecting the wing lift struts and wing lift strut forks for cracks or corrosion, and replacing any strut or fork found cracked or corroded. AD 93–10–06 provides the option of installing certain lift struts and forks as terminating action for the repetitive inspection requirement. Accomplishing the actions required by AD 93–10–06 is in accordance with Piper Service Bulletin No. 528D, dated October 19, 1990, or Piper Service Bulletin No. 910A, dated October 10, 1989, as applicable.

AD 93–10–06 resulted from reports of corroded wing lift struts and cracked wing lift strut forks on several Piper airplanes.

Actions Since Issuance of Previous Rule

AD 93–10–06 requires inspecting the wing lift struts in accordance with Piper Service Bulletin (SB) No. 528D, dated October 19, 1990, and Piper SB No. 910A, dated October 10, 1989. These SB's specify these inspections using a Maule ''fabric tester.'' After reviewing data submitted with requests from operators of the affected airplanes for alternative inspection methods, the FAA has determined that an alternative non-destructive inspection method for the wing lift struts is available through the use of ultrasonic equipment. The FAA worked with a research facility to develop ultrasound inspection procedures for the wing lift struts.

The FAA inadvertently mandated the inspections of the lift strut forks on Piper PA–25 series airplanes through AD 93–10–06. Lift strut fork inspections are not necessary for Piper PA–25 series airplanes. In addition, the FAA inadvertently omitted certain models equipped with lift struts. These models (referenced in Piper SB 528D) are equipped with lift strut assemblies of the same type design and therefore should be subjected to the repetitive inspection requirement of AD 93–10–06.

Piper equipped all of the affected airplanes with a ''No Step'' placard on the wing lift struts. The reason for this placard is to assure that no person steps on the wing lift struts and puts excessive pressure on the struts, which could result in fatigue failure. The intent was to include in AD 93–10–06

the requirement of installing this placard or painting the words ''No Step'' on the wing lift struts during any replacement required by that AD. The FAA inadvertently left that requirement out, and will include that provision in this proposed AD.

The FAA has also received numerous calls from owners/operators of the airplanes affected by AD 93–10–06 in which clarification to the AD was requested. The FAA is keeping this information in mind in drafting the proposed AD.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent in-flight separation of the wing from the airplane caused by corroded wing lift struts or cracked wing lift forks.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in Piper airplane models of the same type design that are equipped with wing lift struts, the FAA is proposing an AD that would supersede AD 93–10–06. The proposed AD would retain the requirements of repetitively inspecting the wing lift struts and wing lift strut forks for cracks or corrosion, and replacing any strut or fork found cracked or corroded. This proposed AD would also clarify certain requirements of AD 93–10–06, eliminate the lift strut fork repetitive inspection requirement on the Piper PA–25 series airplanes, incorporate airplane models inadvertently omitted from the applicability of AD 93–10–06, and require installing a placard on the lift strut.

Cost Impact

The FAA estimates that 22,000 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,560,000, or $480 per airplane.

These figures are based only on the cost of the initial inspection and do not account for the costs of any repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator would incur over the life of the airplane. The FAA also has no way of determining how many airplanes have improved design wing lift struts and forks installed. This would eliminate the requirements of the proposed AD, and thus reduce the cost impact of the proposed AD upon the public.

AD 93–10–06 currently requires the same actions as proposed in this document. The only differences between AD 93–10–06 and the proposed AD are the addition of ultrasonic methods as an option for accomplishing the inspections, the elimination of the requirement of inspecting the lift strut forks on Piper PA–25 series airplanes, the addition of certain airplane models equipped with Piper lift strut assemblies, the addition of the requirement of installing the ''No Step'' placard on the wing lift struts, and editorial corrections and additions for clarification purposes.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing

Airworthiness Directive (AD) 93–10–06, Amendment 39–8536 (58 FR 29965, May 25, 1993), and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 96–CE–72–AD; Supersedes AD 93–10–06, Amendment 39–8536.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial numbers
TG–8 (Army TG–8, Navy XLNP–1)	All serial numbers.
E–2 and F–2	All serial numbers.
J3C–40, J3C–50, J3C–50S (Army L–4, L–4B, L–4H, and L–4J), J3C–65 (Navy NE–1 and NE–2), J3C–65S, J3F–50, J3F–50S, J3F–60, J3F–60S, J3F–65, (Army L–4D), J3F–65S, J3L, J3L–S, J3L–65 (Army L–4C), and J3L–65S.	All serial numbers.
J4, J4A, J4A–S, and J4E (Army L–4E)	4–401 through 4–1649.
J5A (Army L–4F), J5A–80, J5B (Army L–4G), J5C, L–14, AE–1, and HE–1	All serial numbers.
PA–11 and PA–11S	11–1 through 11–1678.
PA–12 and PA–12S	12–1 through 12–4036.
PA–14	14–1 through 14–523.
PA–15	15–1 through 15–388.
PA–16 and PA–16S	16–1 through 16–736.
PA–17	17–1 through 17–215.

Models	Serial numbers
PA–18, PA–18S, PA–18 ''105'' (Special), PA–18A, PA–18 ''125'' (Army L–21A), PA–18S ''125'', PA–18AS ''125'', PA–18 ''135'' (Army L–21B), PA–18A ''135'', PA–18S ''135'', PA–18AS ''135'', PA–18 ''150'', PA–18A ''150'', PA–18S ''150'', PA–18AS ''150'', PA–18A (Restricted), PA–18A ''135'' (Restricted), and PA–18A ''150'' (Restricted).	18–1 through 18–8309025, 189001 through 1809032, and 1809034 through 1809040.
PA–19 (Army L–18C), and PA–19S	19–1, 19–2, and 19–3.
PA–20, PA–20S, PA–20 ''115'', PA–20S ''115'', PA–20 ''135'', and PA–20S ''135''	20–1 through 20–1121.
PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, and PA–22S–160.	22–1 through 22–9848.
PA–25, PA–25–235, and PA–25–260	25–1 through 25–8156024.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent in-flight separation of the wing from the airplane caused by corroded wing lift struts or cracked wing lift strut forks, which could result in loss of control of the airplane, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.
Level 4: (A), (B), (C), etc.

Level 2, Level 3, and Level 4 structures are designations of the Level 1 paragraph they immediately follow.

(a) For all affected airplane models, within 1 calendar month after the effective date of this AD or within 24 calendar months after the last inspection accomplished in accordance with AD 93–10–06 (superseded by this action), whichever occurs later, remove the wing lift struts in accordance Piper Service Bulletin (SB) No. 528D, dated October 19, 1990, or Piper SB No. 910A, dated October 10, 1989, as applicable, and accomplish one of the following (the actions in either paragraph (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5); including subparagraphs, of this AD):

(1) Inspect the wing lift struts for corrosion in accordance with the ''INSTRUCTIONS'' section in Part I of either Piper SB No. 528D, dated October 19, 1990, or Piper SB No. 910A, dated October 10, 1989, as applicable.

(i) If no perceptible dents (as defined in the above SB's) are found in the wing lift strut and no corrosion is externally visible, prior to further flight, apply corrosion inhibitor to each strut in accordance with whichever of the above SB's that is applicable. Reinspect the lift struts at intervals not to exceed 24 calendar months provided no perceptible dents or external corrosion is found.

(ii) If a perceptible dent (as defined in the above SB's) is found in the wing lift strut or external corrosion is found, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraphs (a)(3), (a)(4), or (a)(5) of this AD.

(2) Inspect the wing lift struts for corrosion in accordance with the Appendix to this AD. The inspection procedures in this Appendix must be accomplished by a Level 2 inspector certified using the guidelines established by the American Society for Non-destructive Testing, or MIL–STD–410.

(i) If no corrosion is found that is externally visible and all requirements in the Appendix to this AD are met, prior to further flight, apply corrosion inhibitor to each strut in accordance with whichever of the above SB's that is applicable. Reinspect the lift struts at intervals not to exceed 24 calendar months provided no external corrosion is found and all of the requirements included in the Appendix of this AD are met.

(ii) If external corrosion is found or if any of the requirements in the Appendix of this AD are not met, prior to further flight, accomplish one of the installations (and subsequent actions presented in each paragraph) specified in paragraphs (a)(3), (a)(4), or (a)(5) of this AD.

(3) Install original equipment manufacturer (OEM) part number wing struts (or FAA-approved equivalent part numbers) that have been inspected in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD, and are found to be airworthy according to the inspection requirements included in these paragraphs. Thereafter, inspect these wing lift struts at intervals not to exceed 24 calendar months in accordance with the specifications presented in either paragraph (a)(1) or (a)(2) of this AD.

(4) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D and Piper SB No. 910A (or FAA-approved equivalent part numbers) on each wing as specified in the INSTRUCTIONS section in Part II of the above-referenced SB's. These sealed wing lift strut assemblies also include the wing lift strut forks. Installation of these assemblies constitute terminating action for the inspection requirements of both paragraphs (a) and (b) of this AD.

(5) Install F. Atlee Dodge wing lift strut assemblies in accordance with F. Atlee Dodge Installation Instructions No. 3233–I for Modified Piper Wing Lift Struts (Supplemental Type Certificate (STC) SA4635NM), dated February 1, 1991. Thereafter, inspect these wing lift struts at intervals not to exceed 60 calendar months in accordance with the specifications presented in paragraph (a)(1) of this AD.

(b) For all affected airplane models, except for Models PA–25, PA–25–235, and PA–25–260, within the next 100 hours time-in-service (TIS) after the effective date of this AD or within 500 hours TIS after the last inspection accomplished in accordance with AD 93–10–06 (superseded by this action), whichever occurs later, remove the wing lift strut forks, and accomplish one of the following (the actions in either paragraph (b)(1), (b)(2), (b)(3), (b)(4), or (b)(5); including subparagraphs, of this AD):

(1) Inspect the wing lift strut forks using FAA-approved magnetic particle procedures.

(i) If no cracks are found, reinspect at intervals not to exceed 500 hours TIS provided that the replacement requirements of paragraphs (b)(1)(ii)(B) and (b)(1)(ii)(C) of this AD have been met.

(ii) Replace the wing lift strut forks at whichever of the following is applicable:

(A) If cracks are found on any wing lift strut fork: Prior to further flight;

(B) If the airplane is equipped with floats or has been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections: Upon accumulating 1,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS, whichever occurs later; or

(C) If the airplane has not been equipped with floats within the last 2,000 hours TIS and no cracks are found during the above inspections: Upon accumulating 2,000 hours TIS on the wing lift strut forks or within the next 100 hours TIS, whichever occurs later.

(iii) Replacement parts shall be of the same part numbers of the existing part (or FAA-approved equivalent part numbers) and shall be manufactured with rolled threads. Lift strut forks manufactured with machined (cut) threads shall not be utilized.

(iv) The 500-hour TIS interval repetitive inspections are still required when the above replacements are accomplished.

(2) Install new OEM part number wing lift strut forks (or FAA-approved equivalent part numbers). Reinspect and replace these wing lift strut forks at the intervals specified in paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv), including all paragraphs, of this AD.

(3) Install new sealed wing lift strut assemblies, part numbers as specified in Piper SB No. 528D and Piper SB No. 910A (or FAA-approved equivalent part numbers) on each wing as specified in the INSTRUCTIONS section in Part II of the above-referenced SB's.

(i) This installation may have ''already been accomplished'' through the actions specified in paragraph (a)(4) of this AD.

(ii) No repetitive inspections are required after installing these sealed wing lift strut assemblies.

(4) Install Jensen Aircraft wing lift strut fork assemblies as specified in the STC's presented in the paragraphs that follow, as applicable, in accordance with Jensen Aircraft Installation Instructions for Modified Lift Strut Fittings, which incorporates the following pages:

Pages	Revision level	Date
1 and 5	Original .... Issue	July 15, 1983.
2, 4, and 6	Revision ... No. 1	Mar. 30, 1984.
a and 3	Revision ... No. 2	Apr. 20, 1984.

No repetitive inspections are required after installing these Jensen Aircraft wing lift strut fork assemblies; however, repetitive inspections are required as specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD:

(i) For Models PA–12 and PA–12S airplanes: *STC SA1583NM*;

(ii) For Model PA–14 airplanes: *STC SA1584NM*;

(iii) For the Models PA–16 and PA–16S airplanes: *STC SA1590NM*;

(iv) For the Models PA–18, PA–18S, 189001 PA–18 ''105'' (Special), PA–18S ''105'' (Special), PA–18A, PA–18 ''125'' (Army L–21A), PA–18S ''125'', PA–18AS ''125'', PA–18 ''135'' (Army L–21B), PA–18A ''135'', PA–18S ''135'', PA–18S ''135'', PA–18AS ''135'', PA–18 ''150'', PA–18A ''150'', PA–18S ''150'', PA–18AS ''150'', PA–18A (Restricted), PA–18A ''135'' (Restricted), and PA–18A ''150'' (Restricted) airplanes: *STC SA1585NM*;

(v) For the Models PA–20, PA–20S, PA–20 ''115'', PA–20S ''115'', PA–20 ''135'', and PA–20S ''135'' airplanes: *STC SA1586NM*; and

(vi) For the Model PA–22 airplanes: *STC SA1587NM*.

(5) Install F. Atlee Dodge wing lift strut assemblies in accordance with F. Atlee Dodge Installation Instructions No. 3233–I for Modified Piper Wing Lift Struts (STC SA4635NM), dated February 1, 1991.

(i) No repetitive inspections of the wing lift strut forks are required when these assemblies are installed.

(ii) This installation may have ''already been accomplished'' through the actions specified in paragraph (a)(5) of this AD.

(c) If holes are drilled, in either one of the scenarios presented in paragraphs (c)(1) and (c)(2) of this AD, to attach cuffs, door clips, or other hardware, inspect the wing lift struts at intervals not to exceed 24 calendar months using the procedures specified in paragraphs (a)(1) and (a)(2), including all subparagraphs, of this AD:

(1) Wing lift strut assemblies installed in accordance with (a)(4) or (b)(3) of this AD; or

(2) F. Atlee Dodge wing lift strut assemblies installed in accordance with paragraph (a)(5) or (b)(5) of this AD.

(d) For all affected airplane models, within 1 calendar month after the effective date of this AD or within 24 calendar months after the last inspection accomplished in accordance with AD 93–10–06 (superseded by this action), whichever occurs later, and thereafter prior to further flight after the installation of any lift strut assembly, accomplish one of the following:

(1) Install ''NO STEP'' decal, Piper part number (P/N) 80944–02, on each wing lift strut approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft; or

(2) Paint the statement ''NO STEP'' approximately 6 inches from the bottom of the struts in a way that the letters can be read when entering and exiting the aircraft. Use a minimum of 1-inch letters using a color that contrasts with the color of the airplane.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 93–10–06, Amendment 39–8536, are considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(g) The service bulletins referenced in this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies of the instructions to the Jensen Aircraft STC's may be obtained from Jensen Aircraft, 9225 County Road 140, Salida, Colorado 81201. Copies of the instructions to the F. Atlee Dodge STC may be obtained from F. Atlee Dodge, Aircraft Services, Inc., P.O. Box 190409, Anchorage, Alaska 99519–0409. These documents may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(h) This amendment supersedes AD 93–10–06, Amendment 39–8536.

Appendix to Docket No. 96–CE–72–AD—Procedures and Requirements for Ultrasonic Inspection of Piper Wing Lift Struts

Equipment Requirements

1. A portable ultrasonic thickness gauge or flaw detector with echo-to-echo digital thickness readout capable of reading to 0.001 inch and an A-trace waveform display will be needed to accomplish this inspection.

2. An ultrasonic probe with the following specifications will be needed to accomplish this inspection: 10 MHz (or higher), 0.283 inch (or smaller) diameter dual element or delay line transducer designed for thickness gauging. The transducer and ultrasonic system shall be capable of accurately measuring the thickness of AISI 4340 steel down to 0.020 inch. An accuracy of +/−0.002 inch throughout a 0.020 inch to 0.050 inch thickness range while calibrating shall be the criteria for acceptance.

3. Either a precision machined step wedge made of 4340 steel (or similar steel with equivalent sound velocity) or at least three shim samples of same material will be needed to accomplish this inspection. One thickness of the step wedge or shim shall be less than or equal to 0.020 inch, one shall be greater than or equal to 0.050 inch and at least one other step or shim shall be between these two values.

4. Glycerin, light oil, or similar non-water based ultrasonic couplants are recommended in the setup and inspection procedures. Water-based couplants, containing appropriate corrosion inhibitors, may be utilized, provided they are removed from both the reference standards and the test item after the inspection procedure is completed and adequate corrosion prevention steps are then taken to protect these items.

Note: Couplant is defined as ''a substance used between the face of the transducer and test surface to improve transmission of ultrasonic energy across the transducer/strut interface.''

- **Note:** If surface roughness due to paint loss or corrosion is present, the surface should be sanded or polished smooth before testing to assure a consistent and smooth surface for making contact with the transducer. Care shall be taken to remove a minimal amount of structural material. Paint repairs may be necessary after the inspection to prevent further corrosion damage from occurring. Removal of surface irregularities will enhance the accuracy of the inspection technique.

Instrument Setup

1. Set up the ultrasonic equipment for thickness measurements as specified in the instrument's user's manual. Because of the variety of equipment available to perform ultrasonic thickness measurements, some modification to this general setup procedure may be necessary. However, the tolerance requirement of step 13 and the record keeping requirement of step 14, must be satisfied.

2. If battery power will be employed, check to see that the battery has been properly charged. The testing will take approximately two hours. Screen brightness and contrast should be set to match environmental conditions.

3. Verify that the instrument is set for the type of transducer being used, i.e. single or dual element, and that the frequency setting is compatible with the transducer.

4. If a removable delay line is used, remove it and place a drop of couplant between the transducer face and the delay line to assure good transmission of ultrasonic energy. Reassemble the delay line transducer and continue.

5. Program a velocity of 0.231 inch/microsecond into the ultrasonic unit unless an alternative instrument calibration procedure is used to set the sound velocity.

6. Obtain a step wedge or steel shims per item 3 of the **Equipment Requirements.** Place the probe on the thickest sample using couplant. Rotate the transducer slightly back and forth to ''ring'' the transducer to the sample. Adjust the delay and range settings to arrive at an A-trace signal display with the first backwall echo from the steel near the left side of the screen and the second backwall echo near the right of the screen. Note that when a single element transducer is used, the initial pulse and the delay line/steel interface will be off of the screen to the left. Adjust the gain to place the amplitude of the first backwall signal at approximately 80% screen height on the A-trace.

7. ''Ring'' the transducer on the thinnest step or shim using couplant. Select positive half-wave rectified, negative half-wave rectified, or filtered signal display to obtain the cleanest signal. Adjust the pulse voltage, pulse width, and damping to obtain the best signal resolution. These settings can vary from one transducer to another and are also user dependent.

8. Enable the thickness gate, and adjust the gate so that it starts at the first backwall echo and ends at the second backwall echo. (Measuring between the first and second backwall echoes will produce a measurement of the steel thickness that is not affected by the paint layer on the strut). If instability of the gate trigger occurs, adjust the gain, gate level, and/or damping to stabilize the thickness reading.

9. Check the digital display reading and if it does not agree with the known thickness of the thinnest thickness, follow your instrument's calibration recommendations to produce the correct thickness reading. When a single element transducer is used this will usually involve adjusting the fine delay setting.

10. Place the transducer on the thickest step of shim using couplant. Adjust the thickness gate width so that the gate is triggered by the second backwall reflection of the thick section. If the digital display does not agree with the thickest thickness, follow your instruments calibration recommendations to produce the correct thickness reading. A slight adjustment in the velocity may be necessary to get both the thinnest and the thickest reading correct. Document the changed velocity value.

11. Place couplant on an area of the lift strut which is thought to be free of corrosion and ''ring'' the transducer to surface. Minor adjustments to the signal and gate settings may be required to account for coupling improvements resulting from the paint layer. The thickness gate level should be set just high enough so as not to be triggered by irrelevant signal noise. An area on the upper surface of the lift strut above the inspection area would be a good location to complete this step and should produce a thickness reading between 0.034-inch and 0.041-inch.

12. Repeat steps 8, 9, 10, and 11 until both thick and thin shim measurements are within tolerance and the lift strut measurement is reasonable and steady.

13. Verify that the thickness value shown in the digital display is within +/−0.002 inch of the correct value for each of the three or more steps of the setup wedge or shims. Make no further adjustments to the instrument settings.

14. Record the ultrasonic versus actual thickness of all wedge steps or steel shims available as a record of setup.

Inspection Procedure

1. Clean the lower 18 inches of the wing lift struts using a cleaner that will remove all dirt and grease. Dirt and grease will adversely affect the accuracy of the inspection technique. Light sanding or polishing may also be required to reduce surface roughness as noted in the **Equipment Requirements** section.

2. Using a flexible ruler, draw a ¼-inch grid on the surface of the first 11 inches from the lower end of the strut as shown in Piper Service Bulletin No. 528D or 910A, as applicable. This can be done using a soft (#2) pencil and should be done on both faces of the strut. As an alternative to drawing a complete grid, make two rows of marks spaced every ¼ inch across the width of the strut. One row of marks should be about 11 inches from the lower end of the strut, and the second row should be several inches away where the strut starts to narrow. Lay the flexible ruler between respective tick marks of the two rows and use tape or a rubber band to keep the ruler in place. See Figure 1.

3. Apply a generous amount of couplant inside each of the square areas or along the edge of the ruler. Re-application of couplant may be necessary.

4. Place the transducer inside the first square area of the drawn grid or at the first ¼-inch mark on the ruler and ''ring'' the transducer to the strut. When using a dual element transducer, be very careful to record the thickness value with the axis of the transducer elements perpendicular to any curvature in the strut. If this is not done, loss of signal or inaccurate readings can result.

5. Take readings inside each square on the grid or at ¼-inch increments along the ruler and record the results. When taking a thickness reading, rotate the transducer slightly back and forth and experiment with the angle of contact to produce the lowest thickness reading possible. Pay close attention to the A-scan display to assure that the thickness gate is triggering off of maximized backwall echoes.

- **Note:** A reading shall not exceed .041 inch. If a reading exceeds .041 inch, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

6. If the A-trace is unsteady or the thickness reading is clearly wrong, adjust the signal gain and/or gate setting to obtain reasonable and steady readings. If any instrument setting is adjusted, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

7. In areas where obstructions are present, take a data point as close to the correct area as possible.

- **Note:** The strut wall contains a fabrication bead at approximately 40% of the strut chord. The bead may interfere with accurate measurements in that specific location.

8. A measurement of 0.024 inch or less shall require replacement of the strut prior to further flight.

9. If at any time during testing an area is encountered where a valid thickness measurement cannot be obtained due to a loss of signal strength or quality, the area shall be considered suspect. These areas may have a remaining wall thickness of less than 0.020 inch, which is below the range of this setup, or they may have small areas of localized corrosion or pitting present. The latter case will result in a reduction in signal strength due to the sound being scattered from the rough surface and may result in a signal that includes echoes from the pits as well as the backwall. The suspect area(s) shall be tested with a Maule ''Fabric Tester'' as specified in Piper Service Bulletin No. 528D or 910A.

10. Record the lift strut inspection in the aircraft log book.

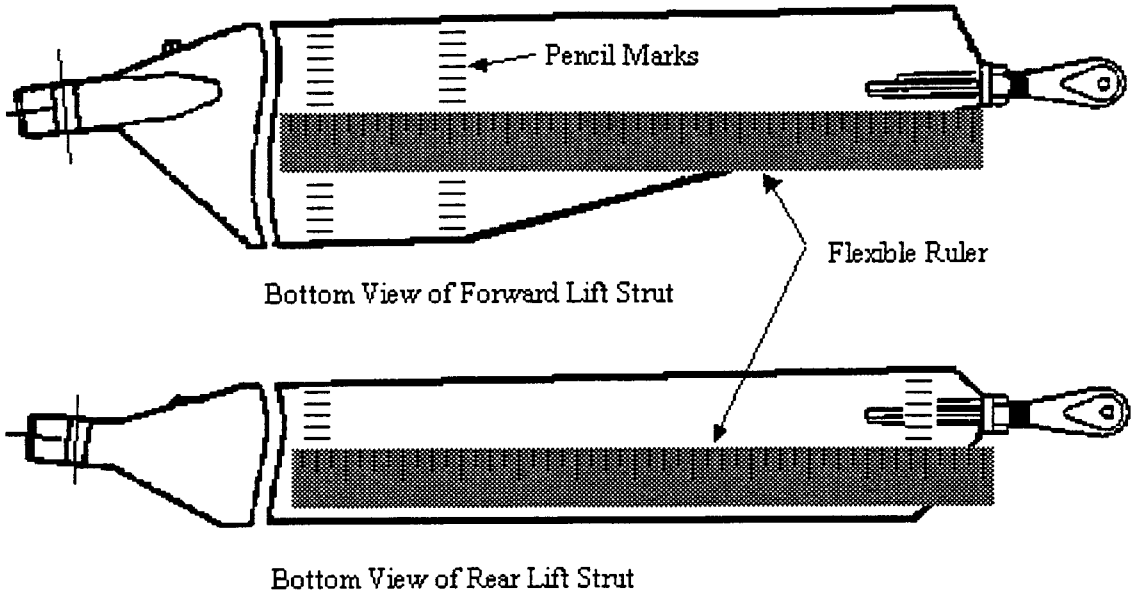

Figure 1

Issued in Kansas City, Missouri, on April 16, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10749 Filed 4–22–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 94P–0043]

Crabmeat; Amendment of Common or Usual Name Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulation for crabmeat by adding the species *Callinectes sapidus* (*C. sapidus*) to those listed in the regulation and to provide that the common or usual name of crabmeat derived from this species is ''Blue crabmeat.'' FDA is further proposing, on its own initiative, to adopt common or usual names for 18 additional crab species. FDA is proposing these names based on ''The Seafood List'' and the information provided in the National Blue Crab Industry Association (NBCIA) petition. This proposal, which is in response to a citizen petition submitted by the NBCIA, is intended to allow crabmeat packers to properly identify their product so that consumers can make informed decisions.

DATES: Written comments by July 7, 1998. See section IV of this document for the proposed effective date of a final rule based on this document.

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

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition (HFS–416), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3160.

SUPPLEMENTARY INFORMATION:

I. Background

A. Crabmeat Labeling

The NBCIA, 1525 Wilson Blvd., suite 500, Arlington, VA 22209, filed a petition on February 15, 1994, to amend the common or usual name regulation for crabmeat (§ 102.50 (21 CFR 102.50)) to provide that the common or usual name of crabmeat derived from the species *C. sapidus* is ''Blue crabmeat.''

Section 102.50 lists the following genera and species of crabs and the associated common or usual name of the meat from these crabs: *Chionoecetes opilio*, *Chionoecetes tanneri*, *Chionoecetes bairdii*, and *Chionoecetes angulatus* as Snow crabmeat; *Erimacrus isenbeckii* as Korean variety crabmeat or Kegani crabmeat; *Lithodes aequispina* as Brown King crabmeat; *Paralithodes brevipes* as King crabmeat or Hanasaki crabmeat; and *Paralithodes camtschaticus* and *Paralithodes platypus* as King crabmeat. (Note: The latter listing is currently incorrect in the Code of Federal Regulations (CFR). The CFR lists the common or usual names of *Paralithodes camtschaticus* as King crabmeat and *Paralithodes Platypus*. This error is being corrected in this document.)

FDA has been dealing with common or usual name issues involving crabmeat since 1954. In the **Federal Register** of April 8, 1954 (19 FR 2013), FDA announced its policy for the appropriate labeling of imported canned crabmeat. FDA later codified this policy and the other common or usual names for crabmeat in § 102.50 when it issued part 102—Common or Usual Names For Nonstandardized Foods (21 CFR part 102) in 1973 (38 FR 6966, March 14, 1973).

Guidance on the appropriate labeling of the crabmeats derived from species that are not listed in § 102.50 is set forth in the agency's Compliance Policy Guides (CPG 7108.04). Under this guidance, products derived from domestic sources that are labeled as ''crabmeat,'' without additional qualification, are generally accepted as being derived from *C. sapidus* (blue crab), historically one of the most common and widely recognized sources of crabmeat in the United States. In labeling other species of crab, the CPG encourages the use of a prefix that

identifies the country where the crab was caught (e.g., ''Taiwan Crabmeat'').

The NBCIA petition asserted that this policy no longer ensures that the meat of *C. sapidus* is unambiguously identified. The petition argued that consumers in the United States are being misled because, while they have come to expect that products that are labeled only as ''crabmeat'' are derived from *C. sapidus*, in many instances, other, less desirable crabmeats are being substituted, in whole or in part, for the expected *C. sapidus* meat. Therefore, the petitioner requested that FDA establish by regulation that the common or usual name ''Blue crabmeat'' applies only to the meat of *C. sapidus*, thereby ensuring that consumers will not be misled about the source and nature of the crabmeat.

B. Common or Usual Name Provisions

The common or usual name of a food is the prevalent and meaningful name by which consumers ordinarily identify the food. This vernacular name may lack the specificity of the scientific or technical name of a food, but an appropriate common or usual name permits the public to distinguish between similar foods that are available in the marketplace. The common or usual name of a food may be established by a history of common usage or by regulation. Section 102.5 requires that the common or usual name of a food accurately identify, in simple and direct terms, the basic nature of the food and its characterizing properties. The name must be uniform among all identical or similar products. In fact, under 21 CFR 101.3(b)(1), a food with a common or usual name that has been established by regulation is misbranded if it is not identified by that name (see also section 403(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(b)).

Before proposing a common or usual name regulation, FDA tries to ensure that the name that it is considering is not false or misleading within the meaning of section 403(a) of the act, and that the name conforms to the provisions of § 102.5. Moreover, to prevent confusion and deceptive economic practices, the agency must ensure that the name is not inappropriately similar to one that has already been established by regulation.

In the case of crabmeats, to conform to these principles, the common or usual name needs to clearly identify the characterizing properties that consumers in the United States associate with the meat of a particular species or group of crab species (e.g., see 59 FR 36103, July 15, 1994). In some cases a geographical prefix serves this purpose by alerting the consumer that the meat is not that of domestic species.

C. Need to Establish a Common or Usual Name by Regulation

Section 403(a)(1) of the act states that a food shall be deemed to be misbranded if its labeling is false or misleading in any particular. Under section 403(b), a food is misbranded if it is offered for sale under the name of another food. If a less valuable crabmeat is substituted for the species represented on the label or labeling, the product is adulterated under section 402(b)(2) of the act (21 U.S.C. 342(b)(2)), which states that a food shall be deemed to be adulterated if any substance has been substituted wholly or in part thereof (i.e., economic adulteration). Consequently, it is a clear violation of the act when a food such as crabmeat is not correctly identified on its label or in its labeling.

The agency may provide guidelines about how to label a class of foods, as in the case of fish and crabmeat, so that they are identified in a manner that promotes honesty and fair dealing in the interest of consumers. Nonetheless, false or misleading labeling practices sometimes arise that persuade FDA of the need to require the use of a common or usual name that will ensure that consumers are able to make fair value judgments about a food they buy. For example, a regulation prescribing a common or usual name may become necessary when there is not consistent adherence to a guideline on labeling practice (e.g., to the recommendation in CPG 7108.04 to provide the name of the country of origin as a prefix to ''crabmeat'' for crabmeat other than that of *C. sapidus*), when guidelines are not available, or when the guidance provided would not adequately resolve differences that distinguish similar foods, (e.g., the King crabmeats listed in § 102.50 that are harvested from the same waters).

Such a situation has arisen with respect to *C. sapidus*. As explained in section II of this document, FDA has become convinced that its admonition to marketers to follow the guidance in CPG 7108.04 is not being followed. As a result, many consumers are not being appropriately informed of the identity of the crabmeat that they are buying. Therefore, under § 102.19, FDA is proposing to adopt ''Blue crabmeat'' as the common or usual name of meat from the species *C. sapidus* and to adopt common or usual names for crabmeat derived from 18 other species of crab of which the agency is aware.

II. Grounds for the Petition

The NBCIA petition requested that FDA amend § 102.50 to include the species *C. sapidus* and to provide for the use of ''Blue crabmeat'' as the common or usual name of the meat of this species.

The petition contended that it is necessary for FDA to establish a common or usual name regulation for the following reasons:

(1) Even though *C. sapidus* is commonly known as ''blue crab,'' there has also been wide acceptance of the generic term ''crabmeat'' to refer to its meat because it is by far the most commonly available type of crabmeat in many areas of the United States. It has become commonplace, however, to import and repack, in the United States, crabmeats that are generally of lower value, primarily derived from non-*C. sapidus* species, and to label them also as ''crabmeat.''

(2) In some cases the imported crabmeat is blended with higher value domestic blue crabmeat and misrepresented as being entirely *C. sapidus*.

(3) Industry observations and Federal and State enforcement activities provide evidence that the country of origin of imported crabmeat often does not appear on the label after the meat has been repacked in the United States, even though U.S. Customs Service regulations require that the labels of imported products identify the country of origin unless it has been substantially transformed.

(4) In the absence of a regulation, there are no binding rules to determine which crabmeat products may be appropriately identified by the name ''blue crabmeat.''

In support of its contention that the imported meats of other crab species are being substituted for and represented as domestic *C. sapidus*, the petition included a copy of a newspaper account of a processor convicted in the State of Virginia of misbranding imported crabmeat by representing it as locally harvested domestic crabmeat (i.e., *C. sapidus*). The petition also included a copy of an Import Alert issued by FDA for the detention of misbranded seafoods, including products identified as blue crabmeat (No. 16–04—Revised, December 6, 1988). The Import Alert advised FDA inspectors to conduct surveillance sampling and to review the import documents of incoming seafoods to prevent the unlawful entry of ''various species of fish or other seafood offered for entry into the United States under the name of a fictitious, incorrect, or substituted species.'' The alert further

advised that inspectors should sample entries of seafood labeled as a species not common to the exporting country. The alert included as guidance an appendix listing seafoods associated with previous misbranding events, and the market names of species that might be substituted, their scientific or likely fictitious name, and the region or country from which specific species are normally available.

The petition asserted that ''blue crab'' is the appropriate common or usual name to codify for *C. sapidus* because it is the widely accepted common or usual name for this species. FDA acknowledges that it has been the agency's longstanding policy to accept ''blue crab'' as the common or usual name for *C. sapidus*. The Import Alert, as well as the CPG for the appropriate labeling of crabmeats, demonstrate not only FDA's acceptance of the common or usual name ''blue crabmeat,'' but also attest to the measures the agency has taken to deal with the ongoing problem associated with the proper identification and labeling of crabmeats. For example, CPG 7188.04 states that ''Product labeled as 'crabmeat,' from domestic sources, without qualification are generally accepted to have been derived from the blue crab, *Callinectes sapidus*.'' Similarly, the petition noted that in the appendix of Import Alert No. 16–04—Revised, FDA identified ''blue crabmeat'' as the market name for *C. sapidus* and identified its source as the Atlantic Ocean. Whenever possible, FDA recommends the use of the established common or usual name of a food as the market name.

More recently, FDA identified *C. sapidus* with the common name ''blue crab'' in ''The Seafood List,'' which is the agency's guide to acceptable market names and common names for the species of food fish and invertebrates sold in U.S. interstate commerce that do not have common or usual names established by regulation (57 FR 47144, September 14, 1994). In compiling this guide, FDA started with its own information and experience, but the agency relied primarily on consultation with seafood experts and authoritative works on seafood nomenclature.

FDA has confirmed that authoritative nomenclature and trade publications continue to accept ''blue crab'' as the common or usual name for *C. sapidus*. For example, the American Fisheries Society Special Publication 17, ''Common and Scientific Names of Aquatic Invertebrates from the United States and Canada: Decapod Crustaceans,'' addresses adherence to uniform scientific and common nomenclature of aquatic invertebrates and recognizes only *C. sapidus* by the common name ''blue crab'' (Ref. 1).

A nomenclature reference with an international perspective, ''Fish: Five-Language Dictionary of Fish, Crustaceans and Molluscs,'' also lists *C. sapidus* as ''blue crab'' (Ref. 2). Similarly, the ''Multilingual Dictionary of Fish and Fish Products,'' identifies ''blue crab (Atlantic-U.S.A.)'' as *C. sapidus* (Ref. 3).

Consequently, FDA agrees with the petitioner that ''blue crab'' is the common or usual name for *C. sapidus*. That name is not only descriptive of the remarkably distinctive blue coloration of the animal's claws, but it is the meaningful and informative name that has been established by common use.

III. The Proposed Regulation

The U.S. Government, including FDA, is concerned about recurring incidents of misrepresentations about the content of domestic products that are derived in whole or in part from imported crabmeat. The U.S. Customs Service expressed this concern in a detailed examination and ruling that addressed the relationship between the extent of domestic processing performed on imported crabmeat (i.e., whether a ''substantial transformation'' has occurred) and the requirement for country of origin labeling on the finished consumer product (Ref. 4). The U.S. Customs Service ruling held that:

> * * * the domestic processing of imported crab meat by thawing, sorting, blending with domestic crabmeat, canning and pasteurization does not constitute a substantial transformation. Accordingly, the repacked crab meat is subject to the country of origin marking requirements of 19 U.S.C. 1304 and 19 CFR 134 * * *.

The ruling also concluded that none of the above processing operations ''taken individually or together is sufficient to substantially transform the crab meat into a product with a different name, character or use.'' (Ref. 4)

The U.S. Customs Service ruling underscores the petitioner's contention that the labeling of imported crabmeats is misleading, particularly with regard to providing consumers with information that will enable them to distinguish these crabmeats from domestic *C. sapidus* similarly labeled as ''crabmeat.'' In light of the record of misbranding of imported crabmeat products, including the agency's own efforts to detect and prevent such abuses, FDA tentatively concludes that the petitioner's claims that consumers are being misled are valid.

The agency agrees with the petitioner that, in the absence of a regulation that requires *C. sapidus* to be labeled as ''Blue crabmeat,'' there is nothing that would require a conclusion that another crabmeat is misbranded when it is identified as ''Blue crabmeat.'' FDA also agrees with the petitioner that the generic ''crabmeat'' labeling of imports misleads because it implies that the crabmeat is domestic Blue crabmeat. Moreover, the term ''crabmeat'' does not adequately identify the food or allow consumers to distinguish between similar crabmeats that differ in value.

This proposal will remedy this situation because, if the agency adopts the proposed regulation, the meat of *C. sapidus* is misbranded unless it is labeled ''Blue crabmeat,'' and, conversely, if crabmeats of other species are labeled as ''Blue crabmeat,'' they also will be misbranded. Thus, the proposed action will protect consumers from the confusing and misleading labeling of *C. sapidus* meat and from non-*C. sapidus* meat being labeled as ''Blue Crabmeat.''

Consequently, FDA tentatively finds that the adoption of the common or usual name ''Blue crabmeat'' for *C. sapidus* meat will promote honesty and fair dealing in the interest of the consumer, and that this name accurately identifies, in simple and direct terms, the basic nature of the food and its characterizing properties. Accordingly, the agency tentatively concludes that § 102.50 should be amended to include the name ''Blue crabmeat'' as the common or usual name for the meat of *C. sapidus*.

However, FDA is not persuaded that this amendment will fully respond to the labeling concerns raised and reflected in the petition. Even if this proposed action becomes final, the meat of other crab species not listed in § 102.50 would continue to be labeled simply as ''crabmeat,'' which many consumers will interpret as meaning that the meat is from *C. sapidus*. For this reason and because of the persistent misrepresentation of crabmeats, FDA has tentatively concluded that the amendment requested by the petitioner is necessary but not sufficient to prevent the continuing abusive crabmeat labeling practices reviewed here. Therefore, the agency is proposing, on its own initiative, to amend § 102.50 more broadly than requested and to provide that all crabmeats must be identified on their label or labeling by the common or usual name of the species from which they are derived, as identified by FDA in ''The Seafood List.''

The extension of § 102.50 to include the common or usual name of all crabmeats is consistent with § 102.5(a): ''Each class or subclass of food shall be given its own common or usual name

that states, in clear terms, what it is in a way that distinguishes it from different foods.'' Under this proposal, consumers will have a means of differentiating among these similar foods. Products labeled simply as ''crabmeat'' will be misbranded.

Moreover, FDA tentatively concludes that it is appropriate and consistent with the efficient use of agency resources, to include these additional common or usual names in one amendment to § 102.50, rather than to continue to propose separate rulemakings to codify these names on a piecemeal basis, as it has since 1954.

As discussed under section II of this document, FDA has already expended considerable public resources to make ''The Seafood List'' available. It is an authoritative compendium of seafood nomenclature issued by FDA to promote the consistent and informative labeling of seafood species. To aid in their proper identification, this publication provides the scientific, ''common,'' and recommended market names (and in some cases regional vernacular names as well) for all of the domestic and imported species of finfish and invertebrates (shrimp, shellfish, and crustaceans) that are sold interstate in significant amounts as food in the United States.

The names entered under the ''Market'' heading in ''The Seafood List'' are the common or usual names of the species that have been established by common usage or by regulation. It is not uncommon to find that closely related species have the same common or usual (market) name. This also is the case with the species listed in § 102.50, where the meat from three different species of the *Paralithodes* genera share the common or usual name ''King crabmeat.'' The names under the heading ''Common'' in ''The Seafood List'' are the English language equivalent of the scientific name, and not the common or usual name, although these two types of common name frequently are very similar. When a common or usual name has not been established for a species, FDA recommends the use of the listed ''common'' name as an appropriate market name.

In addition to the common or usual names of the 6 crabmeats (from 9 species) that are currently listed in § 102.50, ''The Seafood List'' identifies the following 19 crab species by their scientific and common or usual (market) names: *Callinectes sapidus* (Blue crab), *Lithodes antarcticus* (Centolla crab), *Lithodes murrayi* (Centolla crab), *Paralomis granulosa* (Deepsea crab), *Cancer magister* (Dungeness crab), *Geryon fenneri* (Golden crab), *Cancer borealis* (Jonah crab), *Neolithodes brodiei* (Lithodes crab), *Geryon quinquedens* (Red crab), *Cancer irroratus* (Rock crab), *Cancer pagurus* (Rock crab), *Jacquinotia edwardsii* (Spider crab), *Maja squinado* (Spider crab), *Menippi adina* (Stone crab), *Menippi mercenaria* (Stone crab), *Callinectes arcuatus* (Swimming crab), *Callinectes toxotes* (Swimming crab), *Portunus pelagicus* (Swimming crab), and *Portunus puber* (Swimming crab).

FDA tentatively finds that, given the process that has gone into identifying and verifying the scientific and common or usual names of the crab species included in ''The Seafood List,'' it is appropriate to codify them in § 102.50 *Crabmeat*. Accordingly, FDA proposes to add the scientific and corresponding common or usual names of the 19 crab species listed in ''The Seafood List'' to § 102.50.

FDA solicits public comment on whether the agency should require, as it has proposed, that all crabmeat labeling include the use of an appropriate common or usual name to provide consumers with a more complete identification of the crabmeats available in the marketplace. FDA also solicits comment on whether there are other crab species that should be included in § 102.50, and, if there are, what the common or usual names is of each of these species.

If this proposal is finalized, anyone engaged in the interstate commerce of a crabmeat that is not listed in § 102.50 will have to petition FDA to include that species in the common or usual name regulation. The petition should demonstrate either the existence of an accepted common or usual name or propose to establish an appropriate one.

In recent years, FDA has developed a computer data base known as the ''Regulatory Fish Encyclopedia'' (RFE) to help ensure that the economic adulteration of seafoods can be detected and confirmed by scientific methods. As an aid to the identification of species by FDA field investigators, industry, and the public, the RFE is readily accessible on the Internet (vm.cfsan.fda.gov/~frf/rfe0.html) and from FDA's World Wide Web site. The RFE makes available high resolution, annotated color images of more than 60 authenticated fish species, as well as the unique electrophoretic patterns of the flesh proteins of about two-thirds of these species (i.e., their ''biochemical fingerprints'') (Ref. 5). Thus, in addition to a visual comparison of their anatomical features, an authentic protein pattern of a species that is displayed in the RFE can be compared with one obtained by isoelectric focusing methods from a suspected substitute species to determine whether misbranding and economic adulteration have occurred.

FDA is in the early stages of collecting and photographing authenticated species of various crabs, including *C. sapidus*; and the agency has plans to determine the unique biochemical pattern of their flesh proteins or, if necessary because crabmeat is often cooked, to determine the patterns of their cellular DNA (deoxyribonucleic acid) components for inclusion in the RFE. Thus, the RFE resources, when combined with requirements for the unambiguous labeling of these foods as proposed herein, will provide FDA with an effective means of establishing the identity of different crabmeats and combating economic fraud.

Under the proposed action, crabmeats that are labeled as ''Blue crabmeat'' and found to consist in whole or in part of crabmeat from other than *C. sapidus* will be misbranded and may be adulterated and will be subject to compliance action by the agency. Similarly, all other crabmeat will be misbranded unless labeled in accordance with the common or usual (market) name given in § 102.50.

Therefore, after a careful review of the petition and consideration of all of the available information, FDA is proposing to amend § 102.50 *Crabmeat*, by adding the crabmeat of the species *C. sapidus*, identified by the common or usual name ''Blue crabmeat.'' FDA is also proposing to amend § 102.50 by adding the scientific names of 18 additional crab species and the associated 11 common or usual names of their crabmeats as identified in ''The Seafood List.'' For the ease of the reader, FDA is proposing to further revise the table in § 102.50 by placing the ''Common or usual name of crabmeat'' in the first column followed by the ''Scientific name of crab'' in the second column. FDA also is correcting an inadvertent error that occurred in the **Federal Register** of July 3, 1995 (60 FR 34459 at 34460), in the scientific name column whereby the scientific name *Paralithodes Platypus* was incorrectly placed in the ''Common or usual name of crabmeat'' column and the word *Platypus* was incorrectly capitalized.

The impacts of this proposed rule on U.S. consumers and businesses are discussed in section V of this document. However, this proposed rule may also raise international trade issues that are not discussed in section V of this document. International trade issues may arise because the labeling changes necessitated by common or usual names may increase the demand for certain species of crab and decrease the demand

for other species of crab and because different countries and regions may harvest different species of crab. In some cases, these changes in demand will simply reflect preexisting differences in the value consumers place on the different species of crab. However, in other cases, these changes in demand might result from adverse consumer attitudes towards certain of the proposed common or usual names. For example, some consumers might find the name ''Spider crabmeat'' unappealing, creating an aversion to Spider crabmeat that did not previously exist. International trade effects caused by adverse consumer attitudes toward certain of the proposed common or usual names would ordinarily be considered a greater cause of concern than international trade effects caused by preexisting consumer preferences for different species of crab. FDA requests information on the international trade effects of this rule.

IV. Effective Date

The agency periodically has established by final rule in the **Federal Register** uniform effective dates for compliance with food labeling requirements (see, e.g., the **Federal Register** of December 27, 1996 (61 FR 68145)). FDA proposes that any final rule that may issue based upon this proposal become effective in accordance with a uniform effective date for compliance with food labeling requirements, which is established by final rule in the **Federal Register** and which is not sooner than 1 year following publication of any final rule based upon this proposal. The final rule would apply to affected products initially introduced or initially delivered for introduction into interstate commerce on or after its effective date. However, FDA notes that it generally encourages industry to comply with new labeling regulations as quickly as feasible. Thus, when industry members voluntarily change their labels, it is appropriate that they respond to any new requirements that have been published as final regulations up to that time. On the other hand, if any industry members can foresee that the proposed effective date will create particular problems, they should bring these problems to the agency's attention in comments on this proposal.

V. Analysis of Impacts

A. Executive Order 12866

FDA has examined the impacts of this proposed rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is ''economically significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered ''significant'' under Executive Order 12866 if it raises novel legal or policy issues. FDA finds that this proposed rule is neither an economically significant nor a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this proposed rule is not a major rule for the purpose of congressional review.

1. Options

FDA has assessed the costs and benefits of the following regulatory alternatives: Take no action, take the proposed action, or establish a common or usual name only for crabmeat derived from blue crab.

2. Benefits and Costs

a. *Option one: Take no action*. By convention, the option of taking no action is the baseline in comparison with which the costs and benefits of the other options are determined. Therefore, neither costs nor benefits are associated with taking no action.

b. *Option two: Take the proposed action*.

i. *Benefits*. The benefit of the proposed action is that consumers will be able to more easily identify the species source of crabmeat for which this proposed rule establishes common or usual names. The value consumers place on being able to more easily identify crabmeat derived from these species of crab is not known. However, in general terms, if consumer valuation of crabmeat differs widely by species, and consumers cannot differentiate those species in the absence of the proposed common or usual name regulations, then consumers will derive greater benefit from the establishment of the proposed common or usual names. If, in addition, consumers assume that products labeled simply as containing crabmeat contain a particular and relatively valuable species of crab, then the proposed common or usual names will protect consumers from the economic fraud associated with the substitution of crabmeat derived from a less valuable species of crab for that crabmeat derived from the more valuable species of crab. On the other hand, if consumer valuation of crabmeat does not differ widely by species, or if consumers can already differentiate species, e.g., because they are already labeled in a manner consistent with the proposed common or usual name regulations, then consumers will place relatively little value on the establishment of the proposed common or usual names.

FDA requests information about the following: Whether consumers can differentiate crabmeats derived from different species of crabs and, if so, how; whether consumers assume that products labeled simply as containing crabmeat contain a particular species of crab; and whether consumers place different values on crabmeats derived from different species of crabs. The agency also is interested in pricing data for crabmeat from different species. In particular, the agency is interested in data that takes into account seasonal availability and other factors that complicate price comparisons. The agency also requests information from consumers, crabmeat packers, and crabmeat product distributors about their experiences with species substitution practices, that is, where a less valuable crabmeat is substituted for a more valuable crabmeat.

ii. *Costs*. The primary social cost of the proposed action is the cost of changing the labels of crabmeat products that are not already labeled in a manner consistent with the proposed common or usual names. Depending on market conditions, these costs may be borne by crabmeat processors, packers, or repackers or may be passed on to consumers in the form of higher prices. This rule may also produce distributive effects, that is, this rule may make some firms and regions better off and some firms and regions worse off.

Labeling costs were estimated using a model developed for that purpose by Research Triangle Institute (RTI) under contract to FDA. The model allows one to estimate labeling costs based on the length of the compliance period, the complexity of the labeling change, and the Standard Industrial Code (SIC) classifications of the affected firms. The resulting labeling costs were comprised of administrative, redesign, and inventory costs. Total labeling costs are calculated by multiplying administrative costs by the number of affected firms and by multiplying redesign and inventory costs by the number of affected product lines, or Stock Keeping Units (SKU's). SKU's

differ from one another on the basis of either product formulation or packaging.

The proposed effective date is the next uniform effective date for labeling regulations following the publication of a final rule based on this proposal. This effective date will provide a compliance period of at least 1 year. The relevant SIC codes appear to be 2091, Canned and Cured Fish and Seafoods, and 2092, Fresh or Frozen Packaged Fish. The complexity of the required labeling changes depends on the current labeling of the affected products. If these products are currently labeled in such a way that only the ingredient list needs to be changed, then the required labeling changes will be relatively simple. If these products are currently labeled in such a way that both the ingredient list and the principal display panel must be changed, then the required labeling changes will be relatively complex. FDA has insufficient information on the current labeling of these products to estimate the proportion of products requiring label changes of different levels of complexity. Therefore, labeling costs will be estimated both for the case in which all affected products require only changes to the ingredient list and for the case in which all affected products require changes to both the ingredient list and the principal display panel. Actual labeling costs should fall somewhere between these two estimates.

The number of firms potentially affected by the proposed rule was determined using two data sources. These data sources differ with respect to data collection techniques, the frequency with which the data are updated, and so forth. Evaluation of the strengths and weaknesses of these data sources would be quite complex. Therefore, both data sources have been used.

One data source used to estimate the number of potentially affected firms was the Duns Market Identifiers data base. A search of this data base identified 108 establishments associated with 92 firms that appear to produce crab products of the type that would be affected by this proposed rule. In this case, the search procedure involved identifying establishments with either SIC 2091 or 2092 as their primary or secondary activity and having the word ''crab,'' but not the word ''imitation,'' in the description of their activity. The number of firms associated with these establishments was determined by further limiting the search to single establishment firms or headquarters of multiestablishment firms.

The other data source used to estimate the number of potentially affected firms was FDA Official Establishment Inventory (OEI). The OEI is a list of all establishments known to FDA.

A search of the OEI identified 594 establishments that are listed as either manufactures of crab products or crab repackers and that, therefore, could be affected by the proposed rule. Based on FDA experience, most of these plants probably represent independent firms. Based on these two data sources, the number of firms that might be affected by the proposed rule is estimated to be in the range of 92 to 594 firms.

The potential number of SKU's involved was estimated using the average number of distinct items per brand for crab products listed in the A. C. Nielsen Co. SCANTRACK Market Planner data base. This data base listed 210 brands and 346 items, for an average of 1.6 items per brand. Items are defined with respect to both product formulation and package size and, therefore, should correspond to SKU's. This average number of items or SKU's per brand was then multiplied by the estimated range of potentially affected firms to get a range of potentially affected SKU's. This procedure assumes that each firm is associated with only one brand name. Although some large firms may produce products under multiple brand names, the assumption of one brand name per firm is probably reasonable for most firms. Under these assumptions, the number of potentially affected SKU's is estimated to be between 147 and 950.

Some of the firms and SKU's that are potentially affected by the proposed rule might not actually be affected. In particular, some firms producing crab products might produce products containing only those nine species of crab for which common or usual names are already required by § 102.50. The products produced by these firms would not require label changes. In addition, some of the firms producing products containing species of crab for which common or usual names are being proposed might already be using the proposed common or usual name, which would be consistent with existing FDA labeling guidance provided in ''The Seafood List.'' Label changes would also not be required for these products. However, information is not available on the number of products that meet either of these conditions. To address the uncertainty generated by the absence of information on this issue, labeling costs will be estimated as a range with the low end of the range set to $0. Although it is unlikely that no products would require label changes, and that the cost of relabeling would actually be $0, it is possible that only a few products may need to be relabeled, and that relabeling costs might be quite low.

For a compliance period of 1 year, the RTI labeling cost model estimates the administrative costs for changing only the ingredient list and for changing both the ingredient list and the principal display panel to be $850 per firm for firms having fewer than 10 employees and to be $6,300 per firm for firms having 10 or more employees. Administrative costs are the same for firms in both SIC 2091 and 2092. With respect to firms listed in the Dun's Market Identifiers data base, 23 of the 92 firms are identified as having fewer than 10 employees. Data on the number of employees is not available for firms listed in the OEI. In the absence of other information, it is reasonable to suppose that the proportion of firms listed in the OEI that have fewer than 10 employees is the same as the proportion of firms listed in Dun's Market Identifiers. Under this assumption, 149 of the 594 firms listed in the OEI would have fewer than 10 employees. Based on these data and assumptions, total potential administrative costs are estimated to between $0.5 million and $3 million. Taking into account the fact that some potentially affected products may not contain the relevant species of crab or may already be labeled appropriately, administrative costs are estimated to be between $0 and $3 million.

For a compliance period of 1 year, the RTI labeling cost model estimates combined redesign and inventory costs for changing the ingredient statement only to be $290 per SKU for firms in SIC 2091 and $714 per SKU for firms in SIC 2092. That model estimates combined redesign and inventory costs for changing the ingredient statement and the principal display panel to be $1,740 per SKU for firms in SIC 2091 and $4,284 per SKU for firms in SIC 2092. Based on data from Dun's Market Identifiers, 17 potentially affected number are listed in SIC 2091, 62 firms are listed in SIC 2092, and 13 firms are listed in both. For the purposes of estimating costs, it seems reasonable to distribute the 13 firms that are in both SIC classes to one of the two relevant SIC classes in the same proportion as the firms found in only one of the relevant SIC classes. Under this assumption, 20 potentially affected firms would be found in SIC 2091 and 72 affected firms would be found in SIC 2092. Based on 1.6 SKU's per firm, this implies that the number of potentially affected SKU's in SIC 2091 is 32 and the

number of potentially affected SKU's in SIC 2092 is 119.

The OEI does not list firms by SIC. Therefore, it seems reasonable to suppose that the proportions of the relevant firms in SIC 2091 and SIC 2092 are the same as the proportions of the relevant firms in Dun's Market Identifiers. Under this assumption, 128 of the potentially affected 594 firms listed in the OEI would be in SIC 2091 and 466 of those firms would be in SIC 2092. Based on 1.6 SKU's per brand name, this implies that the number of potentially affected SKU's in SIC 2091 is 211 and the number of potentially affected SKU's in SIC 2092 is 768.

Based on the estimated number of potentially affected SKU's using Dun's Market Identifiers and the OEI, total potential redesign and inventory costs are estimated to be between $0 and $1 million for changing the ingredient statement only and between $1 million and $4 million for changing both the ingredient statement and the principal display panel. Taking into account the fact that some potentially affected products may not contain the relevant species of crab or may already be labeled appropriately, redesign and inventory costs are estimated to be between $0 and $4 million. Total labeling costs, including administrative, redesign, and inventory costs, are estimated to be between $0 and $7 million.

Labeling costs will be higher if some crabmeat products are currently made using any one of a number of species of crab. In that case, this proposed rule would require multiple product labels to be printed for products that currently use only one generic ''crabmeat'' label. Additional costs will be generated if compliance with the proposed labeling requirements involve other changes to the current method of manufacturing crabmeat products. However, FDA is not aware of any such costs. It should be noted that products may continue to be made with blends or mixtures of crabmeats, provided that each crabmeat in the blend or mixture is identified with its common or usual name. FDA requests information on the degree to which different crabmeats are used in the same products, and on any costs that may be generated by this proposed rule, including labeling, manufacturing, storage, and recordkeeping costs.

In addition to social costs, there may be distributive effects associated with establishing the proposed common or usual names because the labeling changes necessitated by common or usual names may increase the demand for certain species of crab and decrease the demand for other species of crab. In some cases, these changes in demand will simply reflect preexisting differences in the value consumers place on the different species of crab. However, in other cases, these changes in demand might result from adverse consumer attitudes towards certain of the proposed common or usual names. For example, some consumers might find the name ''Spider crabmeat'' unappealing, creating an aversion to Spider crabmeat that did not previously exist. Distributive effects caused by adverse consumer attitudes toward certain of the proposed common or usual names would ordinarily be considered a greater cause of concern than distributive effects caused by preexisting consumer preferences for different species of crab. FDA has insufficient information to estimate changes in the demand for various species of crab or to determine the degree to which any changes in demand reflect either preexisting preferences or consumer attitudes toward the words used in the proposed common or usual names. FDA requests information on the distributive effects of this rule. In addition, FDA requests information on whether any of the proposed common or usual names might reduce the demand for a particular species of crab for reasons unrelated to preexisting preferences for that species of crab.

c. *Option three: Establish a common or usual name only for blue crabmeat.*

i. *Benefits.* FDA cannot estimate the difference in the benefits of this option relative to the benefits of taking the proposed action because FDA does not have information on the value consumers place on blue crabmeat relative to crabmeat from other species of crab, the degree to which consumers can already differentiate products that contain blue crabmeat from products that contain crabmeat from other species of crab, or the degree to which consumers assume that products labeled as ''crabmeat'' contain blue crabmeat. FDA requests public comment and information on these issues.

ii. *Costs.* The costs associated with this option would be less than the costs associated with taking the proposed action because this option would affect only a subset of the products that would be affected by the proposed action. Therefore, estimated labeling costs would be less than $7 million and any other costs associated with the proposed action would also be less than they would be under the proposed action. FDA cannot estimate the difference in costs more precisely because FDA has information only on the number of products that contain crabmeat, not on the number of products than contain blue crabmeat. FDA requests information on the number of products containing exclusively blue crabmeat or on the proportion of all crabmeat-containing products that contain blue crabmeat.

B. Analysis of Impacts on Small Businesses

FDA has examined the impacts of this proposed rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. FDA finds that this proposed rule, if issued, might have a significant impact on a substantial number of small entities.

1. Options

FDA has assessed the impacts on small entities of the following regulatory alternatives:

Take no action, take the proposed action, or establish a common or usual name only for crabmeat derived from blue crab.

a. *Option one: Take no action.* Taking no action would have no impact on small businesses.

b. *Option two: Take the proposed action.* As discussed in the Executive Order 12866 analysis, the primary cost of taking the proposed action is the cost of changing the labels of products that contain the relevant species of crab and that are not already labeled in a manner consistent with the proposed common or usual names for those species. This cost was estimated to be between $0 and $7 million for all firms. The Small Business Administration's definition of a small business for the SIC codes identified as relevant in the Executive Order 12866 analysis, SIC codes 2091 and 2092, is a firm having 500 or fewer employees. Under this definition, 88 of the 92 firms identified in the Dun's Market Identifiers data base as potentially affected by this proposed rule are small businesses. As indicated previously, the OEI does not contain information on the number of employees.

Based on this information, it is likely that some portion of the costs estimated for all firms will be borne by small businesses. A more precise estimation of the proportion of estimated total costs borne by small firms would require information that is not currently available on the average difference in the number of SKU's (products and product sizes) produced by large and small firms. The estimated costs could be significant for some small firms.

However, only relatively modest cost reductions would be produced by further lengthening the compliance period, and any level of cost could be significant for some small firms.

With respect to the distributive effects discussed in the benefit-cost analysis of this option, FDA has no information to suggest systematic differences in the species of crabs used by small and large firms. Therefore, FDA has no reason to suspect that any distributive effects will have a net negative effect on small firms as a class of firms. Of course, some of the firms that may be negatively affected by distributive effects may be small firms.

c. *Option three: Establish a common or usual name for blue crab only* This option would reduce the impact of this proposed rule on small businesses because this option would affect only a subset of the products that would be affected by taking the proposed action. FDA cannot estimate the reduction of the impact on small businesses for two reasons. First, FDA has information only on the number of products that contain crabmeat, not on the number of products than contain blue crabmeat. Therefore, FDA cannot determine the degree to which total costs would be reduced by this option. Second, FDA has information only on the number of small businesses that manufacture products containing crabmeat, not on the number of small businesses that manufacture products containing blue crabmeat. Therefore, FDA cannot determine the proportion of the total cost reduction that would accrue specifically to those small businesses that manufacture crabmeat products without blue crabmeat. FDA requests information on the number of products that contain blue crabmeat and the number of small businesses that produce products containing blue crabmeat. FDA also requests information on the number of products that contain crabmeat from other species of crab, and the number of businesses and small businesses that produce products containing crabmeat from other species of crab. Finally, FDA also requests information on other alternatives that might reduce the burden of this proposed rule on small businesses.

VI. Environmental Impact

The agency has determined under § 25.30(k) (21 CFR 25.30(k)) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. The purpose of the proposed rule is to ensure that consumers are informed about the identity of all crabmeats, and this will not change the intended use of this food product. The proposed action is not expected to increase the demand for blue crabmeat because the competition in the marketplace between blue crabmeat and lower priced crabmeat from other species of crabs can be expected to control the demand for blue crabmeat. However, because the impact of this proposed rulemaking on consumer demand for blue crabmeat is uncertain, FDA solicits public comment on any adverse effects the proposed labeling provisions may have on blue crab populations. The agency will evaluate its tentative conclusion that the proposed action warrants a categorical exclusion under § 25.30(k) in light of any relevant comments responding to this proposal.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Williams, Austin B., Lawrence G. Abele, et al., ''Common and Scientific Names of Aquatic Invertebrates from the United States and Canada: Decapod Crustaceans,'' American Fisheries Society Special Publication 17, pp. 41, 1989.

2. Organization for Economic Cooperation and Development, ''Multilingual Dictionary of Fish and Fish Products,'' 3d ed., Fishing News Books, pp. 63, 1990.

3. Krane, W., ''Five-Language Dictionary of Fish, Crustaceans and Molluscs,'' Van Nostran Reinhold, pp. 32, 1986.

4. Letter to the District Director, U.S. Customs Service, Department of the Treasury, from Harvy B. Fox, Director, Office of Regulations and Rulings, U.S. Customs Service, Department of the Treasury, Washington DC, regarding ''Country of Origin Marking of Canned Crabmeat,'' August 6, 1989.

5. AOAC Official Methods of Analysis 980.16 Identification of Fish Species, Thin Layer Polyacrylamide Gel Isoelectric Focusing Method, p. 885, 1990.

VIII. Comments

Interested persons may on or before July 7, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 102

Beverages, Food grades and standards, Food labeling, Frozen foods, Oils and fats, Onions, Potatoes, Seafood.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 102 be amended as follows:

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

1. The authority citation for 21 CFR part 102 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 371.

2. Section 102.50 is revised to read as follows:

§ 102.50 Crabmeat.

The common or usual name of crabmeat derived from each of the following designated species of crabs shall be as follows:

Common or usual name of crabmeat	Scientific name of crab
Blue crabmeat	*Callinectes sapidus.*
Brown King crabmeat	*Lithodes aequispina.*
Centolla crabmeat	*Lithodes antarcticus* and *Lithodes murrayi.*
Deepsea crabmeat	*Paralomis granulosa.*
Dungeness crabmeat	*Cancer magister.*
Golden crabmeat	*Geryon fenneri.*
Jonah crabmeat	*Cancer borealis.*
King crabmeat	*Paralithodes camtschaticus* and *Paralithodes platypus.*
King crabmeat or Hanasaki crabmeat	*Paralithodes brevipes.*
Korean variety crabmeat or Kegani crabmeat	*Erimacrus isenbeckii.*

Common or usual name of crabmeat	Scientific name of crab
Lithodes crabmeat	*Neolithodes brodiei.*
Red crabmeat	*Geryon quinquedens.*
Rock crabmeat	*Cancer irroratus* and *Cancer pagurus.*
Snow crabmeat	*Chionoecetes angulatus*, *Chionoecetes bairdi*, *Chionoecetes opilio*, and *Chionoecetes tanneri.*
Spider crabmeat	*Jacquinotia edwardsii* and *Maja squinado.*
Stone crabmeat	*Menippi adina* and *Menippi mercenaria.*
Swimming crabmeat	*Callinectes arcuatus*, *Callinectes toxotes*, *Portunus pelagicus*, and *Portunus puber.*

Dated: April 17, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–10743 Filed 4–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–121268–97]

RIN 1545–AW10

Travel and Tour Activities of Tax Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations clarifying when the travel and tour activities of tax exempt organizations are substantially related to the purposes for which exemption was granted. These proposed regulations are intended to augment the guidance that currently exists with respect to travel tours and the unrelated business income tax.

DATES: Written comments and requests for a public hearing must be received by July 22, 1998.

ADDRESSES: *Send submissions to:* CC:DOM:CORP:R (REG–121268–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. *Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to:* CC:DOM:CORP:R (REG–121268–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Robin Ehrenberg, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

An organization generally exempt from tax under section 501(a) of the Internal Revenue Code (''Code'') must pay tax on its unrelated business taxable income, as defined in section 512. Section 512(a)(1) defines unrelated business taxable income (''UBTI'') as the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by the organization, less the deductions which are directly connected with the conduct of the trade or business. Gross income from an unrelated trade or business and any deductions directly connected to that trade or business are both computed in accordance with the general income tax rules of chapter 1 of the Internal Revenue Code, subject to the modifications provided in section 512(b).

Section 513(a) generally defines an unrelated trade or business as any trade or business the conduct of which is not substantially related (aside from the need of an organization for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

A ''trade or business'' is defined in Section 1.513–1(b) of the Income Tax Regulations as having the same meaning it has for purposes of section 162, and ''generally includes any activity carried on for the production of income from the sale of goods or performance of services.'' The key test of whether an activity constitutes a trade or business is whether the activity was conducted with a profit motive. See *U.S.* v. *American Bar Endowment,* 477 U.S. 105 (1986); *Professional Insurance Agents of Michigan* v. *Commissioner* 726 F.2d 1097 (6th Cir. 1983); *National Water Well Association* v. *Commissioner,* 92 T.C. 75 (1989). The regulations further provide that an activity conducted for the production of income does not lose its character as a business ''merely because [it is] carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization.'' This ''fragmentation rule,'' as it is commonly known, may result in different treatment of related activities under the unrelated business income tax.

Section 1.513–1(d)(2) of the Income Tax Regulations provides that a trade or business is ''substantially related'' to exempt purposes only where the conduct of the business activities has a substantial causal relationship to the achievement of the exempt purposes (other than through the production of income) of the organization conducting the trade or business. Thus, a trade or business is substantially related for purposes of section 513 only if the conduct of the trade or business contributes importantly to the accomplishment of the organization's exempt purposes.

In recent years, taxpayers and Congress have asked the IRS to publish guidance addressing questions relating to the unrelated business income tax treatment of income generated from travel tours conducted by tax exempt organizations. Although the IRS has issued a number of revenue rulings addressing situations in which tax exempt organizations sponsor travel tours, most of these rulings have analyzed whether an organization that offers travel tours as its primary activity can qualify as a charitable or educational organization described in section 501(c)(3) of the Code.

Rev. Rul. 67–327, 1967–2 C.B. 187, holds that an organization whose purpose is to arrange group tours for students and faculty of a university in order to allow them to travel abroad does not qualify for exemption because the organization operates essentially as

a commercial travel agency. The ruling concludes that the organization's activities are not ''educational'' as that term is defined in Treas. Reg. § 1.501(c)(3)–1(d)(3)(i)(a), because they do not provide instruction or training of individuals for the purpose of improving or developing their capabilities.

In contrast, in Rev. Rul. 69–400, 1969–2 C.B. 114, an organization that selects students and faculty members interested in a certain foreign history and culture and enrolls them at foreign universities and arranges for on-site tours conducted by local scholars that complement classroom studies, is held to be exempt. Rev. Rul. 69–400 distinguishes Rev. Rul. 67–327 on the basis that the organization in the later ruling is arranging for instruction not just travel.

Rev. Rul. 70–534, 1970–2 C.B. 113, describes an organization that conducts travel study tours as its primary activity. Tours are geared toward students, but others can take the tours as long as they participate in the mandatory study programs. Organized study, taught by certified teachers, is conducted five to six hours a day, and a library of materials related to the courses being taught is available. Exams are given, each student is graded and a state board of education allows credit for a student's participation in the study tour program. The revenue ruling concludes that the organization furthers educational purposes because it performs training and instruction for the purpose of allowing individuals to improve and develop their capabilities, and is, therefore, described in section 501(c)(3).

Rev. Rul. 77–366, 1977–2 C.B. 192, concerns an organization that arranges and conducts ocean cruises for ministers, church members and their families for the purpose of providing continuing education in an atmosphere supporting spiritual renewal. The organization's activities include lectures, discussions, workshops and some shore activities that further charitable purposes. However, because of the extensive resources the organization devotes to social and recreational programs, the scheduling of those programs relative to the schedule for the exempt purpose programs, and other facts and circumstances, the organization was held to be also serving a substantial nonexempt purpose and, therefore, not to qualify for exemption as an organization described in section 501(c)(3).

The Tax Court applied a similar analysis to an organization operating a mountain lodge when it held that the organization failed to qualify as a religious organization described in section 501(c)(3). Although religious activities were offered to guests in addition to a wide range of recreational activities, guests were not required to participate in the religious activities, and the record failed to show that the recreational activities were insubstantial. See *The Schoger Foundation* v. *Commissioner,* 76 T.C. 380 (1981).

In contrast, Rev. Rul. 77–430, 1977–2 C.B. 194, holds that an organization conducting weekend retreats is furthering its stated purpose of advancing religion. Individuals come to participate in a program of seminars, lectures, prayer sessions and meditation led by ministers and priests that are scheduled on an hourly basis throughout the day. Recreational activities are not scheduled, but are available to participants during their limited free time. Under these facts and circumstances, the ruling holds that the facilities are being used to advance religion and that recreational activities are incidental to the accomplishment of this purpose.

The revenue rulings all focus on the degree of educational or religious content participants are expected to receive in each travel program in determining whether the activity serves an exempt purpose. The same approach was taken in the one ruling that has specifically addressed the application of the unrelated business income tax to income generated by travel tours. Rev. Rul. 78–43, 1978–1 C.B. 164, describes the travel tour activity of a university alumni association. The association's program of approximately ten tours per year is open to all current members and their immediate families and is planned with various travel agencies. Each travel agency pays a per person fee to the association. The tours do not include any formal educational program and do not differ substantially from commercially operated tours. Rev. Rul. 78–43 concludes that there is no causal relationship between arranging the travel tours described in the ruling and the achievement of an exempt purpose. Accordingly, the ruling holds that the sale of tours to members is an unrelated trade or business within the meaning of section 513.

These proposed regulations are intended to augment the guidance that currently exists with respect to travel tours and the unrelated business income tax. The proposed regulations also provide additional guidance regarding the fragmentation rule and the distinctions that may be necessary among different tours or activities that are part of a single organization's travel program.

The IRS and Treasury are soliciting comments on these proposed regulations. In particular, because the IRS relies heavily on review of records to determine whether an organization's trade or business activities further an exempt purpose, comments are requested on whether the IRS should specify the types of records organizations should keep to establish the activity's purpose.

Explanation of Provisions

The proposed regulations add a new § 1.513–7 providing that the determination of whether travel tour activities of tax exempt organizations are substantially related to an organization's exempt purposes is a question of facts and circumstances. The proposed regulations set forth a series of examples to illustrate how various facts and circumstances would be analyzed.

Proposed Effective Date

These regulations are proposed to be effective for taxable years beginning after the date final regulations are published in the **Federal Register**. For prior taxable years, the IRS will continue to apply principles of existing law.

Special Analyses

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

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is

scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Robin Ehrenberg, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.513–7 is added to read as follows:

§ 1.513–7 Travel and tour activities of tax exempt organizations.

(a) Travel tour activities that constitute a trade or business, as defined in § 1.513–1(b), and that are not substantially related to the purposes for which exemption has been granted to the organization constitute an unrelated trade or business with respect to that organization. Whether travel tour activities conducted by an organization are substantially related to the organization's exempt purpose is determined by looking at all relevant facts and circumstances. Section 513(c) and § 1.513–1(b) also apply to travel tour activity. Application of the rules of section 513(c) and § 1.513–1(b) may result in different treatment for individual tours within an organization's travel tour program.

(b) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. O, a university alumni association, is exempt from federal income tax under section 501(a) as an educational organization described in section 501(c)(3). As part of its activities, O operates a travel tour program. The program is open to all current members of O and their guests. O works with travel agencies to schedule approximately 10 tours annually to various destinations around the world. Members of O pay $X to the organizing travel agency to participate in a tour. The travel agency pays O a per person fee for each participant. Although the literature advertising the tours encourages O's members to continue their lifelong learning by joining the tours, and a faculty member of O's related university is invited to join the tour as a guest of the alumni association, none of the tours includes any scheduled instruction or curriculum related to the destinations being visited. By arranging to make travel tours available to its members, O is not contributing importantly to the accomplishment of its educational purpose. Rather, O's program is designed to generate revenues for O by regularly offering its members travel services. Accordingly, O's tour program is an unrelated trade or business within the meaning of section 513(a) of the Code.

Example 2. N is an organization formed for the purpose of educating individuals about the geography and culture of the United States. It is exempt from federal income tax under section 501(a) as an educational and cultural organization described in section 501(c)(3). N engages in a number of activities to accomplish its purposes, including offering courses and publishing periodicals and books. As one of its activities, N conducts study tours to national parks and other locations within the United States. The study tours are conducted by teachers and other education professionals. The tours are open to all who agree to participate in the required study program. The study program consists of community college level courses related to the location being visited by the tour. While the students are on the tour, five or six hours per day are devoted to organized study, preparation of reports, lectures, instruction and recitation by the students. Each tour group brings along a library of material related to the subject being studied on the tour. Examinations are given at the end of each tour and N's state board of education awards academic credit for tour participation. Because the tours offered by N include a substantial amount of required study, lectures, report preparation, examinations and qualify for academic credit, the tours clearly further N's educational purpose. Accordingly, N's tour program is not an unrelated trade or business within the meaning of section 513(a) of the Code.

Example 3. R is a section 501(c)(4) social welfare organization devoted to advocacy on a particular issue. On a regular basis throughout the year, R organizes a travel tour for its members to Washington, D.C. The tours are priced to produce a profit for R. While in Washington, the members follow a schedule according to which they spend substantially all of their time over several days attending meetings with legislators and government officials and receiving briefings on policy developments related to the issue that is R's focus. Bringing members to Washington to participate in advocacy on behalf of the organization and learn about developments relating to the organization s principal focus is substantially related to R's social welfare purpose. Therefore, R's operation of the travel tours does not constitute an unrelated trade or business.

Example 4. S is a membership organization formed to foster cultural unity and to educate X Americans about X, their country of origin. It is exempt from federal income tax under section 501(a) and is described in section 501(c)(3) as an educational and cultural organization. Membership in S is open to all Americans interested in the X heritage. As part of its activities, S sponsors a program of travel tours to X. All of S's tours are priced to produce a profit for S. The tours are divided into two categories. Category A tours are trips to X that are designed to immerse participants in the X history, culture and language. The itinerary is designed to have participants spend substantially all of their time while in X receiving instruction on the X language, history and cultural heritage. Destinations are selected because of their historical or cultural significance or because of instructional resources they offer. Category B tours are also trips to X, but rather than offering scheduled instruction, participants are given the option of taking guided tours of various X locations included in their itinerary. Other than the optional guided tours, Category B tours offer no instruction or curriculum. Even if participants take all of the tours offered, they have a substantial amount of time free to pursue their own interests once in X. Destinations of principally recreational interest, rather than historical or cultural interest, are regularly included on Category B tour itineraries. Based on the facts and circumstances, sponsoring Category A tours is an activity substantially related to S's exempt purposes, and does not constitute an unrelated trade or business with respect to S. However, sponsoring Category B tours does not contribute importantly to S's accomplishment of its exempt purposes and is designed to generate a profit for S. Therefore, sponsoring the Category B tours constitutes an unrelated trade or business with respect to S.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–10747 Filed 4–20–98; 2:48 pm]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NE 052–1052b; FRL–6002–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Nebraska; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the Nebraska state 111(d) plan for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. The plan was submitted to fulfill the requirements of the Clean Air Act. The state plan establishes emission limits for existing MSW landfills, and

provides for the implementation and enforcement of those limits.

In the final rules section of the **Federal Register**, the EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated and the direct final rule will become effective. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 26, 1998.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: April 9, 1998.

Dennis Grams, P.E.,

Regional Administrator, Region VII.

[FR Doc. 98–10856 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IA 051–1051b; FRL–6002–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Iowa; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the Iowa state 111(d) plan for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. The plan was submitted to fulfill the requirements of the Clean Air Act. The state plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

In the final rules section of the **Federal Register**, the EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated and the direct final rule will become effective. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by May 26, 1998.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: April 9, 1998.

Dennis Grams, P.E.,

Regional Administrator, Region VII.

[FR Doc. 98–10854 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 88

[FRL–5994–6]

RIN 2060–AH56

Clean Fuel Fleet Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking; delay of implementation date.

SUMMARY: The provisions of subpart C of Title II of the Clean Air Act require states with certain ozone and carbon monoxide (CO) nonattainment areas to revise their State Implementation Plans (SIP) to incorporate a Clean Fuel Fleet Program. Under this program, specified percentages of new vehicles acquired by covered fleet operators in certain ozone and CO nonattainment areas must meet EPA's clean-fuel vehicle (CFV) emissions standards. In this action, EPA proposes to delay by one model year, the requirement that a covered area's State Implementation Plan implement a Clean Fuel Fleet Program (CFFP) fleet operator purchase requirement. As a result, EPA would approve a CFFP SIP revision which provides that covered fleet operators must include a certain percentage of CFVs in their fleet vehicle purchases each year beginning with model year 1999. This proposal is intended to ensure successful implementation of the CFFP, and to ensure that an adequate supply of appropriate vehicles is available for fleet operators to purchase and use once the program is underway, so that compliance with the mandatory purchase requirements will be possible and economically feasible for covered fleet operators.

DATES: Written comments on this proposal must be received no later than May 26, 1998.

ADDRESSES: Interested parties may submit written comments in response to this rule (in duplicate if possible) to Public Docket No. A–97–53. It is requested that a duplicate copy may be submitted to Sally Newstead at the address in the **FOR FURTHER INFORMATION CONTACT** section below. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW, Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 5:30 p.m. on weekdays, excluding holidays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Sally Newstead, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (734) 668–4474.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The statutory authority for this action is provided by sections 246 and 301 of the Clean Air Act.

Background

In the Rules and Regulations section of this **Federal Register**, EPA is adopting this provision as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no

further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

The Clean Air Act, as amended in 1990 (''CAA'' or ''the Act''), requires certain states to adopt and submit to EPA a State Implementation Plan (SIP) containing a CFFP for nonattainment areas with 1980 populations greater than 250,000 that are classified as Serious or worse for ozone, or with a design value of at least 16.0 ppm for carbon monoxide (CO). The nonattainment areas currently covered by the requirement to adopt and submit a CFFP are Atlanta, Washington DC metropolitan area, Chicago-Gary-Lake Counties, Milwaukee-Racine, Baton Rouge, and Denver-Boulder.[1]

Section 246 of the CAA provides that a states' SIP submission must require fleet operators with 10 or more vehicles that are centrally fueled or capable of being centrally fueled, to include a specified percentage of clean-fuel vehicles (CFVs) in their new vehicle purchases each year. In addition, states CFFP SIP submissions must comply with other specifications in Section 246, including the requirement that covered fleet operators must operate their CFVs in covered nonattainment areas on a clean alternative fuel, defined as a fuel on which the vehicle meets EPA's CFV standards when using such fuel. EPA promulgated emissions standards for CFVs in September 1994. *See* 40 CFR Part 88. EPA estimates that demand for CFVs by covered fleets in model year[2] 1998 would be approximately 47,000 light duty vehicles and 12,000 heavy duty vehicles.

Start Date for CFFP Purchase Requirement

Section 246(c) of the CAA provides that the specified percentage of new light duty vehicle purchases by covered fleet operators that must be CFVs in a given model year shall be 30% in model year 1998, 50% in model year 1999, and 70% in model year 2000 and later years, if certain categories of new vehicles (light duty trucks (LDTs) below 6000 lbs gross vehicle weight rating (GVWR) and light duty vehicles (LDVs)) certified to the Phase II CFV exhaust emissions standards are offered for sale in California.[3] In March 1993, EPA stated its expectation that the vehicles specified in Section 246(c) would be offered for sale in California by model year 1997, and therefore states' SIP submissions should provide for implementation of the CFFP purchase requirement beginning in model year 1998. EPA also stated its intent to delay this implementation date if it later determined that the requisite vehicles would not be offered for sale in California in model year 1997. *See* 58 FR 11888 (March 1, 1993).

EPA cannot mandate that vehicle manufacturers produce CFVs for fleets to purchase to meet the CFFP requirements—Congress intended that the creation of a market for CFVs would provide an incentive for vehicle manufacturers to produce and sell such vehicles outside California, ultimately resulting in broader market penetration. The specification in section 246 (c) that certain vehicles meeting CFV exhaust emissions standards must be available for sale in California for implementation of the CFFP purchase requirement to begin in model year 1998 was intended to provide a minimum level of reasonable assurance that complying vehicle technology was available and being produced.[4] Without some such evidence of vehicle availability, fleet operators cannot realistically be expected to comply with the CFFP purchase requirements. However, Section 246 is not clear on the issue of how many of the vehicles specified in Section 246(c) must be offered for sale in California before triggering implementation of the CFFP purchase requirements.

EPA is proposing to delay the start date that the SIP must contain for implementation of the CFFP purchase requirements from model year 1998 to model year 1999, and would approve state SIP submissions with CFFPs that start in model year 1999. EPA has received information from various stakeholders, including states, covered fleet operators, and vehicle manufacturers on this issue, and has concluded that a delay until model year 1999 will result in a successful, effective fleet program that advances the penetration of CFVs and clean alternative fuels into the national market, and is consistent with the provisions of Section 246(c) and with Congress' intent in adopting the CFFP provisions of the Act.

The legislative history of the 1990 amendments to the CAA indicates that, in adopting the CFFP, Congress made a clear choice between two alternatives: requiring auto manufacturers to produce and sell CFVs, or creating a market for CFVs and for clean alternative fuels by requiring fleet operators to purchase such vehicles and operate on such fuels. In choosing the latter option, Congress attempted to minimize the burden on fleet operators by requiring some evidence of vehicle availability in California as a precondition to implementation of the purchase requirement before model year 2001. However, the Act does not provide a clear indication of Congressional intent regarding the number of vehicles in each weight category specified in Section 246(c) that must be offered for sale in California to trigger the fleet operators' purchase requirement. Because the CAA is silent on this particular issue, and in the absence of a clear indication of Congressional intent, it is appropriate for EPA to reasonably exercise its discretion in a way that furthers the goals of the CFFP provisions, and determine whether a sufficient number of requisite vehicle models are offered for sale in California to require that other states SIPs implement the CFFP in MY1998.

Auto manufacturers have certified a number of vehicle models to the LEV standards in California on California reformulated gasoline, and EPA expects these vehicles could be certified as federal CFVs. However, because of the Act's requirement that fleet operators operate CFVs on clean alternative fuels, as defined in Section 241(b), fleet operators who purchase such CFVs to meet CFFP purchase requirements may have to operate these vehicles on California reformulated gasoline, which is generally not available outside California. EPA cannot conclude at this time that federal reformulated gasoline or federal conventional gasoline qualify as clean alternative fuels for CFVs certified to LEV standards on California reformulated gasoline, due to potential emissions differences resulting from differences in fuel composition between

[1] States with covered nonattainment areas may opt out of the CFFP with an adequate substitute program. *See* CAA Section 182(c)(4)(B). Eleven states have opted out of the CFFP pursuant to this provision. Areas reclassified for ozone, that have a 1980 population of at least 250,000, must also submit a SIP revision with a CFFP within one year of such reclassification. *See* CAA Section 246(a)(3).

[2] A ''model year'' for purposes of fleet operators'' compliance with CFFP purchase requirements, and as used in this notice, is not the same as ''model year'' as defined for purposes of motor vehicle production. The definition of ''model year'' for the CFFP means September 1 of the preceding year through August 31 of the named year. Therefore, model year 1998 for the CFFP runs from September 1, 1997 through August 31, 1998. *See* 40 CFR 88.302–94.

[3] The Phase II CFV exhaust emissions standards are found in CAA Section 243(a)(2) and 243(b)(2), and include standards for non-methane organic gases (NMOG), CO, oxides of nitrogen (NO_X), particulate matter (PM), and formaldehyde that are identical to California's Low Emission Vehicle (LEV) exhaust emissions standards.

[4] *See A Legislative History of the Clean Air Act Amendments of 1990,* Volume 1 at 903.

California reformulated gasoline and federal fuels. EPA expects that manufacturers could certify LEVs that have been certified to California LEV standards on California reformulated gasoline as federal CFVs on federal fuels—if manufacturers did so, fleet operators could purchase such vehicles to meet CFFP purchase requirements, and operate them on federal fuels in covered nonattainment areas without violating the fuel use requirement of the CFFP. Certain new light duty trucks (LDTs) below 6000 pounds GVWR and new light duty vehicles (LDVs) certified to LEV exhaust emissions standards are currently being offered for sale in California. However, only a limited number of LDTs below 6000 lbs. GVWR were certified to California's LEV standards and offered for sale in California in MY1997 as indicated in the following chart.

LIST OF CERTIFIED CA LEVS OFFERED FOR SALE IN CALIFORNIA IN MY97

[As of April 1997]

Manufacturer	Certification number	Models	Type	Standard	Fuel
Ford	FORD–LDV–97–01–00	Escort, Escort Wagon	LDV	LEV	CA RFG.
	FORD–LDV–97–38–00	Sable, Sable Wagon, Taurus, Taurus Wagon.	LDV	LEV	CA RFG.
General Motors	GM–LDT–97–29–00	Astro AWD (C&P)* Passenger	LDT	LEV	CA RFG.
	GM–LDT–97–40–00	Safari AWD (P), Astro AWD (C&P)	LDT	LEV	CA RFG.
Honda	HONDA–LDV–97–19–00	Civic, del Sol	LDV	LEV	CA RFG.
	HONDA–LDV–97–20–00	Civic	LDV	LEV	CA RFG.
	HONDA–LDV–97–21–00	Civic, del Sol	LDV	LEV	CA RFG.
	HONDA–LDV–97–22–00	Civic	LDV	LEV	CA RFG.
Nissan	NISSN–LDV–97–06–00	Sentra/200SX	LDV	LEV	CA RFG.
Suzuki	SUZUK–LDV–97–05–00	Metro	LDV	LEV	CA RFG.
	SUZUK–LDV–97–06–00	Metro, Swift	LDV	LEV	CA RFG.
Toyota	TOYOT–LDV–97–11–00	Camry	LDV	LEV	CA RFG.
	TOYOT–LDV–97–12–00	Camry	LDV	LEV	CA RFG.

*P=Passenger, C=Cargo.

In order to meet the MY98 purchase requirements, fleet operators must have placed vehicle orders in April, 1997; however, the supply of federally certified CFVs at this time was limited. Based on the limited numbers of light duty vehicles and trucks offered for sale in California in MY1997, and particularly the limited number of LDTs <6000 pounds GVWR, EPA believes that a short delay of the required implementation date of the CFFP for one model year is reasonable to avoid the potential for serious disruption of the initial implementation of this program from an inadequate supply of vehicles. Given the list of current federally certified CFVs, the available choices for passenger cars, pick-up trucks, vans and sport utility vehicles is limited to the following:

LIST OF CERTIFIED CFVS OFFERED FOR SALE IN MY97

[As of April 30, 1997]

Manufacturer	Certification number	Models	Type	Standard	Fuel
IMPCO Tech	IMPCO–LDCNGT–97–01	Sierra C Pickup	LDT	LEV	CNG.
Chrysler	CHRYSLER–LDCLT–97–01–00	Caravan(2WD), Voyager(2WD)	LDCLT	ILEV + ULEV	CNG.
	CHRYS–ZEV–97–01	Caravan(2WD), Voyager(2WD)	LDT	ZEV	Electricity.
Ford	FORD–LDCNGV–97–01	Crown Victoria	LDV	ILEV + ULEV	CNG.
	FORD–LDCNGT–97–01	F250(2WD)	LDT	ILEV + ULEV	CNG.
	FORD–LDCNGT–97–02	E250(2WD), E350(2WD)	LDT	ILEV + ULEV	CNG.
General Motors	GM–ZEV–97–01	EV1	LDV	ILEV + ZEV	Electricity.
	GN–ZEV–LDT–97–01	S10 Pickup	LDT	ILEV + ZEV	Electricity.
Honda	HN–ZEV–97–01	EV Plus	LDV	ILEV + ZEV	Electricity.
Cummins	CUMMINS–NGE(MHDD)–97–18	B5.9–195G		LEV	CNG.
	CUMMINS–NGE(MHDD)–97–19	B5.9–195F		LEV	CNG.
	CUMMINS–NGE(MHDD)–97–22	C8.3–250G		LEV	CNG.
	CUMMINS–NGE(MHDE)–97–01	B5.9–195G		ULEV	CNG
Detroit Diesel	DDC–NGE(LHDDE)–97–01	Series 30G		LEV	CNG.

SIP Revisions

In light of this proposal, states with adopted CFFP SIPs would revise their SIPs to provide for a model year 1999 start date for the CFFP purchase requirements. Fleet operators could still earn credits for early purchase of CFVs that meet all applicable requirements, including the requirement that fleet operators operate their CFVs on clean alternative fuels when in the covered nonattainment area. The EPA believes this proposed delay would provide states and fleet

owners the necessary flexibility in those areas that are unable to meet the CFF purchase requirements cited in the CAA.

Administrative Requirements

A. Administrative Designation

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

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

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

(3) Materially alter the budget impact of entitlement, 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, EPA believes that this proposed action is not a significant regulatory action and therefore not subject to OMB review. Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. This proposed action simply revises regulations governing the requirements states' CFFP SIP submissions must meet. It serves to delay states' required implementation of CFFP purchase requirements. Therefore, it has been determined that this proposal does not constitute a ''major'' regulation.

B. Reporting and Recordkeeping Requirement

There are no information requirements in this proposed rule which require the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 et seq.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities. This is based on the fact that this proposed action would not impose any new requirements, but simply would delay the applicable start date of the CFFP purchase requirements that must be included in certain state's SIPs, pursuant to the CAA. Thus, the impact created by the proposed action would not increase the preexisting burden of the existing rules which this proposal seeks to amend. Therefore, this proposed action would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the rules being proposed in this action would impose any mandate at all as defined in section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this proposal is not estimated to impose costs in excess of $100 million. EPA has determined that today's proposed action would simply delay the purchase requirements under state CFFPs and would not impose additional costs or regulatory burdens. In fact, the one-year delay of implementation of the purchase requirements is expected to reduce costs of compliance and ease regulatory burdens.

List of Subjects in 40 CFR Part 88

Environmental protection, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: April 3, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–10152 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[I.D.041698G]

RIN 0648–AK48

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Stone Crab Fishery of the Gulf of Mexico; Amendment 6

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 6 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 6 would extend, for up to 4 years, the existing temporary moratorium on the Federal registration of stone crab vessels. Written comments are requested from the public.

DATES: Written comments must be received on or before June 22, 1998.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 6, which includes a regulatory impact review and an environmental assessment, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 813–228–2815; Fax: 813-225–7015.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Amendment 6 would continue, for up to 4 years, the FMP's temporary moratorium on the Federal registration of stone crab vessels by the Regional Administrator, Southeast Region, NMFS. This Federal moratorium would end no later than June 30, 2002.

Amendment 5, implemented on April 14, 1995 (60 FR 13918), placed a 3-year moratorium (April 15, 1995 - June 30, 1998) on the Federal registration of stone crab vessels. The Council recommended, and NMFS approved and implemented, the Federal moratorium because the Florida Legislature passed a moratorium on the issuance of state permits, effective July 1, 1995, while the Florida Marine Fisheries Commission (FMFC), in cooperation with the stone crab industry, considered development of a limited access system. Without the Federal moratorium, fishermen could have circumvented the state moratorium.

The Council recommended Amendment 6 to extend the Federal moratorium on vessel registration for up to 4 years (i.e., up to June 30, 2002) because it is concerned that legislative action by Florida to create a limited access system may be delayed beyond June 30, 1998.

If the Federal moratorium expires on June 30, 1998, anyone could apply to NMFS for vessel registration. Substantial entry into the stone crab fishery would adversely affect current participants in the fishery by reducing their respective shares of the harvest. The fishery is already overcapitalized both in gear deployed, with approximately 798,000 traps deployed in 1995–96, and in the number of permitted vessels. As of July 1, 1995, there were 6,501 commercial permits issued. Only 1,556 permit holders, however, had stone crab landings, and 70 percent of them, or 1,102 permittees, had annual landings of 500 lb (225 kg) or less. Landings have not increased significantly since 1982–83, when approximately 350,000 traps were deployed. Catch-per-unit-of-effort has declined significantly since then.

In cooperation with the stone crab industry, FMFC proposed to the Florida Legislature a limited access program that contains provisions for a license limitation system that would exclude permit holders with no record of landings during recent years. The Florida Legislature is expected to pass this limited access program in 1999 with the state law to become effective July 1, 1999. The Council will then submit a regulatory amendment to extend the license limitation program to Federal waters off Florida's Gulf coast, including Monroe County.

A proposed rule to implement Amendment 6 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 6, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish it in the **Federal Register** for public review and comment.

Comments received by June 22, 1998, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 6. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 6 or on the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: April 17, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–10871 Filed 4–22–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 78
Thursday, April 23, 1998

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 17, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions 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 are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Research on Rural Cooperative Opportunities and Problems.

OMB Control Number: 0570–New.

Summary of Collection: The mission of the Rural Business-Cooperative Service (RBS) is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance and creating effective strategies for rural development. Approximately $1.9 million in competitive cooperative agreement funds have been allocated for RBS to award to public or private colleges or universities, research foundations maintained by a college or university, or private nonprofit organizations to encourage research on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities. Information required from applicants applying for these funds will include written proposals and forms describing the proposed research project and the individual or organization's profile and legal authority to apply for funds. If selected, the funding recipient, will be required to submit quarterly progress reports and maintain financial records and supporting documentation for three years.

Need and Use of the Information: The application information to be collected will be used by RBS to evaluate (1) eligibility; (2) the specific purpose for which the funds will be utilized; (3) time frames or dates by which activities surrounding the use of funds will be accomplished; (4) feasibility of the project; (5) applicants' experience in managing similar activities; and (6) the effectiveness and innovation used to address critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities. Progress reports from funding recipients will be used to monitor the actual accomplishments to established objectives and compliance with funding requirements. Recordkeeping requirements are imposed by regulation to support audit activities.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 2,280.

Food and Nutrition Service

Title: Food Stamp Program Regulations, Quality control—Part 275.

OMB Control Number: 0584–0303.

Summary of Collection: The Food and Nutrition Service (FNS), as administrator of the Food Stamp Program, requires each State agency implementing a quality control system to provide a basis for determining each State agency's error rates through review of a sample of Food Stamp cases. Each State agency is responsible for the design and selection of the quality control samples and must submit a quality control sampling plan for approval to FNS. Additionally, State agencies are required to maintain case records for three years to ensure compliance with provisions of the Food Stamp Act.

Need and Use of the Information: The quality control sampling plan is necessary for FNS to monitor State operations and is essential to the determination of a State agency's error rate and corresponding entitlement to increased Federal share of its administrative costs or liability for sanctions.

Description of Respondents: State, Local, or Tribal Government; Federal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 3,830.

Rural Business-Cooperative Service

Title: Revolving Loan Funds Capitalized by USDA Rural Development.

OMB Control Number: 0570–New.

Summary of Collection: The Rural Business-Cooperative Service (RBS), an agency within the Rural Development mission areas of USDA, operates several programs that provide funds to organizations to be used for loans to third-party recipients. RBS currently has little information about the ultimate recipients of these programs. Accordingly, RBS has entered into a cooperative agreement with Virginia Polytechnic Institute and State University (VA Tech) to development an automated data base of information on

ultimate recipients of loans. Collection of information will be accomplished through the use of a form that may be completed manually or electronically.

Need and Use of the Information: The information collected will include data about the ultimate recipients of loans made by intermediaries (i.e., organizations which receive loans or grants directly from the Federal government). This information will improve measurement of program impacts in accordance with the National Performance and Results Act and provide information necessary for an analysis of the potential for secondary market sales of the loans held by the intermediaries.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 550.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,750.

Agricultural Marketing Service

Title: Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts (7 CFR Part 998).

OMB Control Number: 0581–0067.

Summary of Collection: The Agricultural Marketing Service (AMS), through the authorities emanating from the Agricultural Marketing Agreement Act of 1937 and marketing agreement No. 146 (covering peanuts grown in the U.S.), regulates certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to producers. The required information relating to peanut supplies, shipments, inspection, disposition, and other inventory information is collected through the use of standardized forms and written letters.

Need and Use of the Information: The information collected falls into two categories: (1) Information from peanut handlers nominated, and subsequently selected, to serve on the Peanut Administrative Committee, and (2) information about peanut stocks—quantity purchased and milled, and monthly expenses. The information related to the first category is used by the Secretary of Agriculture to determine whether nominees are eligible to serve in the positions for which they were nominated. Information in the second category is necessary to implement regulations and provide oversight of the marketing agreement.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 29.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Annually.

Total Burden Hours: 126.

Rural Housing Service

Title: Form RD 1940–59, Settlement Statement.

OMB Control Number: 0575–0088.

Summary of Collection: The Rural Housing (RHS) and the Farm Service Agency (FSA) are requesting an extension of the OMB clearance for Form RD 1940–59, ''Settlement Statement.'' The Real Estate Settlement Procedures Act (RESPA), as amended, requires the disclosure of real estate settlement costs to real estate buyers and sellers. Disclosure of the nature and costs of a mortgage transaction enables the borrower to be a more informed customer and protects the public from unnecessarily high settlement charges.

Need and Use of the Information: Form RD 1940–59 is completed by Settlement Agents, Closing Attorneys, and Title Insurance Companies performing the closing of RHS loans and credit sales used to purchase or refinance Section 502 Housing, Rural Rental Housing, and Farm Laboring Housing. The information is collected to provide the buyer and the seller with a statement detailing the actual costs of the settlement services involved in certain Agency financed real estate transactions. Failure to collect the information and disclose the information would be a violation of the RESPA.

Description of Respondents: Business or other for-profit.

Number of Respondents: 17,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 20,500.

Farm Service Agency

Title: Potato Diversion Program—7 CFR Part 80.

OMB Control Number: 0560–0145.

Summary of Collection: The Potato Diversion Program is administered under the general direction of and supervision of the Agricultural Marketing Service, and in the field will be carried out by the Farm Service Agency (FSA) through State or County Committees. The Potato Diversion Program is authorized by the Act of August 24, 1935, Section 32. The objectives of the Potato Diversion Program are to make payment to producers for the diversion of potatoes subject to the terms and condition set forth, to charitable institutions, for use as livestock feed, or for compost. Information must be collected in order to determine the amount paid to each producer for the quantity of potatoes diverted by the producer under the Potato Diversion Program.

Need and Use of the Information: Information will be collected from producers of eligible potatoes on Forms FSA–117, FSA–118, FSA–120 by the County FSA Offices. The information on Form FSA–117 is obtained from producers desiring to participate in this program and establishes the hundredweight of potatoes approved for diversion. The information on Form FSA–118 is obtained from the producer by arranging for inspection so that the inspector can be present to determine the proportion of potatoes in each lot which meet the quality requirements for the program. The information on Form FSA–120 is obtained from the producer after the FSA–117 is approved and the diversion has been completed, but before diversion period has expired for the Potato Diversion Program.

Description of Respondent: Farm; Individuals or households; Business or other for-profit.

Number of Respondent: 1,500.

Frequency of Responses: Reporting: Annually; Other-when authorized.

Total Burden Hours: 8,251.

Nancy Sternberg,

Departmental Information Clearance Officer.

[FR Doc. 98–10800 Filed 4–22–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's intention to request an extension and revision for a currently approved information collection in support of the List of Commodities by Firm Available for Exporting (U.S. Supplier Listing) based on re-estimates.

DATES: Comments on this notice must be received by June 22, 1998 to be assured of consideration.

REQUESTS FOR COMMENTS: Send comments regarding (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 methodology and assumptions used; (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 those who are to respond, including through the use of automated electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to, and copies of the U.S. Supplier List registration form and qualification criteria may be obtained from: Charles T. Alexander, Director, AG Export Services Division, Commodity and Marketing Programs, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Stop 1052, Washington, D.C. 20250–1052. All written comments received will be available for public inspection at the above address during business hours from 8:00 a.m. to 5:00 p.m.—Phone (202)720–0159, Fax: (202)720–0193.

SUPPLEMENTARY INFORMATION:

Title: List of Commodities by Firm Available for Exporting (U.S. Supplier Listing) OMB Number 0551–0031.

Expiration Date of Approval: July 31, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The List of Commodities by Firm Available for Exporting is a service provided to any foreign buyer, or other U.S. agent or broker. This service is intended to assist foreign buyers to contact U.S. exporters or small and medium size U.S. companies about purchasing products. The lists are contained in a searchable database on CD rom that is distributed to USDA overseas offices. It is a tool for offices to use in responding to requests from foreign buyers and importers to help them find a U.S. supplier of food, farm, and forest products. An exporter may be listed in a number of products areas. Each listing provides a product description and information about the exporter. This information is collected by the USDA from a registration form which the exporter completes followed by a qualification process before the exporter is listed in the database. The database is necessary to facilitate effective advertisement and marketing of the U.S. agricultural product in overseas markets. Authority for this program falls under 7 U.S.C. Part 1761. The program is voluntary. A small fee is charged for use of the service in the domestic United States and is free through USDA's overseas offices.

Estimate of Burden: The burden to U.S. exporters is estimated to average 0.25 hours per response.

Respondents: U.S. agricultural exporters of food, farm, and forest products.

Estimated Number of Respondents: 4500 per annum.

Estimated Number of Responses: 1 per annum.

Estimated Total Annual Burden of Respondents: 1,125 hours per annum.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C. April 17, 1998.

Christopher E. Goldthwait,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 98–10798 Filed 4–22–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lawson Timber Sale and Associated Projects, Siskiyou National Forest, Curry County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On April 27, 1992, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Lawson Timber Sale and Associated Projects on the Gold Beach Ranger District of the Siskiyou National Forest was published in the **Federal Register** (57 FR 15279). Forest Service has decided to cancel the environmental analysis process. An EIS was being prepared because timber harvest was proposed in an inventoried roadless area. This area was designated as Late-Successional Reserve under the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl. Timber harvest is no longer being planned in this area at this time. The NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Bill Blackwell, Resource Planner, Gold Beach Ranger District, 29279 Ellensburg, Gold Beach, Oregon 97444. (541) 247–3600.

Dated: April 13, 1998.

J. Michael Lunn,

Forest Supervisor.

[FR Doc. 98–10783 Filed 4–22–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Quosatana/Bradford Timber Sales and Integrated Resource Projects, Siskiyou National Forest, Curry County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On January 8, 1992, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Quosatana/Bradford Timber Sales and Integrated Resource Projects on the Gold Beach Ranger District of the Siskiyou National Forest was published in the **Federal Register** (57 FR 664). A Notice of Availability for the draft EIS was published in the **Federal Register** on April 17, 1992 (57 FR 13743). After an extension of the comment period on the draft EIS, the comment period ended June 22, 1992. Forest Service has decided to cancel the environmental analysis process. An EIS was being prepared because timber harvest was proposed in an inventoried roadless area. This area was designated as Late-Successional Reserve under the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl. Timber harvest is no longer planned in this area at this time. The NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Bill Blackwell, Resource Planner, Gold Beach Ranger District, 29279 Ellensburg, Gold Beach, Oregon 97444. (541) 247–3600.

Dated: April 13, 1998.

J. Michael Lunn,

Forest Supervisor.

[FR Doc. 98–10784 Filed 4–22–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Two Forks Timber Sales and Other Projects, Siskiyou National Forest, Curry County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On February 25, 1992, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Two Forks Timber Sales and Other Projects on the Chetco Range District of the Siskiyou National Forest was published in the **Federal Register** (57 FR 6490). A Notice of Availability for the draft EIS was published in the **Federal Register** on May 22, 1992 (57 FR 21792). After an extension of the comment period on the draft EIS, the comment period ended July 20, 1992. Forest Service has decided to cancel the environmental analysis process. An EIS was being prepared because timber harvest was proposed in an inventoried roadless area. This area was designated as Late-Successional Reserve under the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl. Timber harvest is no longer planned in this area at this time. The NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Bill Blackwell, Resource Planner, Gold Beach Ranger District, 29279 Ellensburg, Gold Beach, Oregon 97444. (541) 247–3600.

Dated: April 13, 1998.

J. Michael Lunn,

Forest Supervisor.

[FR Doc. 98–10785 Filed 4–22–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock market named below is a stockyard as defined by Section 302 (a). Notice was given to the stockyard owner and to the public as required by Section 302 (b), by posting notice at the stockyard on the date specified below, that the stockyard is subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name and location of stockyard	Date of posting
AL–191, M & H Horse Sales, Russellville, Alabama.	March 28, 1998.

Done at Washington, D.C. this 15th day of April 1998.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 98–10769 Filed 4–22–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Farm Service Agency

Inviting Preapplications for Rural Cooperative Development Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $1.7 million in competing Rural Cooperative Development Grant (RCDG) funds for fiscal year (FY) 1998. This action will comply with legislation which authorizes grants for establishing and operating centers for rural cooperative development. The intended effect of this notice is to solicit preapplications for FY 1998 and award grants before September 1, 1998.

DATES: The deadline for receipt of a preapplication is June 15, 1998. Preapplications received after that date will not be considered for FY 1998 funding.

ADDRESSES: Entities wishing to apply for assistance should contact their USDA Rural Development State Office to receive further information and copies of the preapplication package.

FOR FURTHER INFORMATION CONTACT: James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 720–8460.

SUPPLEMENTARY INFORMATION: The Rural Technology and Cooperative Development Grants (RTCDG) program is authorized by section 310B(f) through (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) and regulations are contained in 7 CFR part 4284, subpart F. The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) removed ''technology'' from RTCDG, thereby directing the focus of the program specifically to cooperative development. The 1996 Act also clarified that public bodies were not eligible applicants, and modified application requirements and applicant selection criteria. The final rule for the Rural Cooperative Development Grant (RCDG) program was published August 7, 1997 (62 FR 42385–91). The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. The program is administered through USDA Rural Development State Offices acting on behalf of RBS. RBS is one of the successors of the Rural Development Administration pursuant to the Department of Agriculture Reorganization Act of 1994.

Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria. The priorities described in this paragraph will be used by RBS to rate preapplications. RBS review of preapplications will include the complete preapplication package submitted to the Rural Development State Office. Points will be distributed according to ranking as compared with other preapplications on hand. Points will be awarded to each factor on a 5, 4, 3, 2, 1 basis depending on the applicant's ranking compared to other applicants.

(a) Preference will be given to applications that:

(1) Demonstrate a proven track record in administering a nationally coordinated, regionally or State-wide operated project;

(2) Demonstrate previous expertise in providing technical assistance to cooperatives in rural areas;

(3) Demonstrate the ability to assist in the retention of business, facilitate the establishment of cooperatives and new cooperative approaches, and generate employment opportunities that will improve the economic conditions of rural areas;

(4) Demonstrate the ability to create horizontal linkages among cooperative businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets;

(5) Commit to providing technical assistance and other services to underserved and economically distressed rural areas of the United States;

(6) Commit to providing greater than a 25 percent matching contribution with private funds and in-kind contributions;

(7) Evidence transferability or demonstration value to assist rural areas outside of project area; and

(8) Demonstrate that any cooperative development activity is consistent with positive environmental stewardship.

Fiscal Year 1998 Preapplication Submission

Preapplications must include a clear statement of the goals and objectives of the project and a plan which describes the proposed project as required by the statute and 7 CFR part 4284, subpart F. Each preapplication received in the State Office will be reviewed to determine if the preapplication is consistent with the eligible purposes outlined in 7 CFR part 4284, subpart F. Preapplications without supportive data to address selection criteria will not be considered. Copies of 7 CFR part 4284, subpart F, will be provided to any interested applicant by making a request to the Rural Development State Office or RBS National Office.

Preapplications must be completed and submitted to the State Rural Development Office as soon as possible, but no later than June 15, 1998. Preapplications received after June 15 will not be considered.

For ease of locating information, each preapplication must contain a detailed Table of Contents containing page numbers for each component of the preapplication. The preapplication must also contain a project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals, relevance of the project, and a listing of all organizations involved in the project. The project summary should immediately follow the Table of Contents.

The National Office will score applicants based on the grant selection criteria contained in 7 CFR part 4284, subpart F, and will select awardees subject to the availability of funds and the awardee's satisfactory submission of a formal application and related materials in accordance with subpart F. Entities submitting preapplications that are selected for award will be invited by the State Office to submit a formal application prior to September 1. It is anticipated that grant awardees will be selected by September 1, 1998.

Dated: April 16, 1998.

Dayton Watkins,

Administrator, Rural Business-Cooperative Services.

[FR Doc. 98–10773 Filed 4–22–98; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041698A]

Notice of Workshop

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

ACTION: Notice.

SUMMARY: Notice is hereby given that NMFS will sponsor a workshop for the members of its Individual Fishing Quota (IFQ) Advisory Panels and of the National Research Council (NRC) Committee to Study IFQs. The workshop will be held in Boston, Massachusetts and will be open for public observation.

DATES: The workshop will begin at 8:30 a.m. on May 5, 1998, and will end at 2 p.m. on May 6, 1998.

ADDRESSES: The workshop will be held at the Harborside Hyatt Conference Center and Hotel, 101 Harborside Drive, Boston, MA; telephone: 800–233–1234.

FOR FURTHER INFORMATION CONTACT: Amy Gautam, NMFS, Office of Science and Technology; telephone: (301) 713–2328.

SUPPLEMENTARY INFORMATION: In the reauthorization of the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act), Congress required the NRC to provide a report with recommendations on a national policy for implementing IFQs by October 1, 1998. The Magnuson-Stevens Act also required the formation of NMFS Advisory Panels to provide support to the NRC committee and to NMFS in their respective roles of preparing and evaluating the IFQ study. The workshop is intended to continue the dialogue between IFQ Advisory Panel and NRC committee members related to key questions the NRC has developed. Issues discussed will include initial allocation criteria, restrictions on transferability of quota shares, enforcement and monitoring requirements, and long-term implications of implementing IFQs relative to other management regimes. Members of the public are invited to observe the proceedings, but will not be allowed to participate.

Dated: April 20, 1998.

Lamarr B. Trott,

Acting Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 98–10870 Filed 4–22–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041798D]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Council (Council) will hold its 96th meeting in Honolulu, HI.

DATES: The full Council (some members by conference call) will meet on May 8, 1998, from 12:00 a.m. to 4:00 p.m., Honolulu time.

ADDRESSES: The meeting will be held at the Council Office Conference Room, Honolulu, HI; telephone: (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)–522–8220.

SUPPLEMENTARY INFORMATION: At the May 8 meeting, the Council will consider two regulatory amendments:

1. Fishing bank/area-specific harvest guidelines for the Northwestern Hawaiian Islands lobster fishery (this will be the second meeting under the Crustaceans Fishery Management Plan framework procedure for a new measure [final action]); and

2. Prohibition of the taking of pelagic management unit species by domestic or foreign fishing vessels longer than 50 feet (length overall) from waters within 100 nautical miles of the islands of American Samoa.

Summary of Issue

1. Lobster bank/area guidelines: Using the Amendment 7 and 9 formula for determining the harvest guideline, the Regional Administrator, Southwest Region, NMFS, has determined that the total 1998 guideline for the Northwestern Hawaiian Islands fishery is 286,000 lobsters. At its November 1997 meeting, the Council requested NMFS to investigate bank or area specific guidelines for review by its advisory bodies. At its April 1998 meeting, the Council concurred with the recommendations of its advisory bodies (that met in March 1998) to limit the harvest of lobsters at specific banks/areas as follows: Maro Reef no more

than 80,000 lobsters, Necker Island no more than 70,000 lobsters, Gardner Pinnacles no more than 20,000 lobsters, and the remainder from all other banks/areas combined 116,000 lobsters. When the allocation for any bank/area is projected to be taken, the Regional Administrator will close that area or bank to prevent overfishing. When a total of 286,000 lobsters is projected to be taken, the Regional Administrator will close the fishery for the season. The fishery opens July 1.1998.

The Council will meet on May 8, 1998 to take final action on this allocation of the harvest guidelines. At its April 1998 meeting, the Council also recommended that NMFS and industry work together to get data on the distribution and abundance of lobsters throughout the archipelago, and that observers should be placed on all vessels that volunteer for observer coverage during the 1998 season to provide the needed data. Documents describing the issue, alternative solutions, the preferred Council action and anticipated impacts, are being prepared and distributed for review/comment to lobster permit lobster permit holders and interested parties prior to the meeting. Copies may be obtained from the Council (see **ADDRESSES**); and

2. American Samoa closed area: Fishermen in American Samoa who are members of the Council's advisory panels have expressed concern about the long-term sustainability of the local small-boat pelagics fishery. In particular, there is concern that large longline vessels will seek new fishing opportunities in the exclusive economic zone (EEZ) around American Samoa as fisheries in other areas of the U.S. EEZ become increasingly restricted. Such a rapid influx of large vessels occurred in Hawaii during the late 1980s and led to extensive gear conflicts. In addition, there is concern that the large vessels supplying fish to American Samoa's tuna canneries already occasionally fish in the EEZ. A widely held perception among small-scale trollers and longliners is that these larger vessels intercept fish migrating to local waters and reduce the supply of tuna and other pelagic species available for capture by artisanal and recreational fishermen.

The Council was asked at the 92nd meeting in April 1997 to assist in forming a fishermen's working group to consider various management options to ensure the long-term sustainability of the small-boat fishery. Various meetings of the working group and other fishermen were convened by the Council and the American Samoa Department of Marine and Wildlife Resources between June and October 1997. The consensus among fishermen was that the most effective management action would be to close an area around the islands of American Samoa to pelagic fishing vessels longer than 50 ft.

In anticipation of possibly creating such a closed area, the Council established a control date of November 13, 1997, after which vessels larger than 50 ft entering the fishery will not be assured of being allowed to use longline gear to fish for pelagic management unit species within 100 nautical miles of the islands of American Samoa. At its April 1998 meeting, the Council also considered prohibiting other US fishing vessels (e.g. purse seiners, trollers and pole-and-line bait boats) greater than 50 feet in length from fishing for pelagic management unit species within 100 nautical miles of the islands of American Samoa.

The Council will seek to identify all interested persons and organizations and solicit their involvement in discussion of this issue and the proposed actions. In addition, a document presenting the issue will be distributed to all pelagic advisory groups of the Council who have not yet received it, with request for comments. The document will also be distributed to the Council's mailing list associated with the Pelagics Fishery Management Plan, and to all parties who may be affected by the proposed action to solicit their input and to indicate that the Council will take action on this issue at the May 8th meeting. Copies may be obtained from the Council (see **ADDRESSES**).

The meeting is open to the public and public comments are encouraged.

Although other issues not contained in this agenda, may come before these groups for discussion, according to the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 20, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–10869 Filed 4–22–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041798A]

Endangered Species; Permits

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

ACTION: Receipt of applications for scientific research permits (1147, 1149) and a request for modification 2 to permit 1011; issuance of scientific research permits (1065, 1114, 1115, 1116)

SUMMARY: Notice is hereby given that the Columbia River Inter-Tribal Fish Commission at Portland, OR (CRITFC) has applied in due form for permits (1147, 1149) and the Oregon Department of Fish and Wildlife at La Grande, OR (ODFW) has applied in due form for a modification to a permit (1101) that would authorize takes of anadromous fish species listed under the Endangered Species Act for the purpose of scientific research/enhancement.

Notice is also given that NMFS has issued scientific research permits that authorize takes of ESA-listed species for the purpose of scientific research and/or enhancement, subject to certain conditions set forth therein, to: Humboldt Fish Action Council (HFAC) (1065); Washington Department of Fish and Wildlife at Olympia, WA (WDFW) (1114); Public Utility District No. 1 of Chelan County (PUDCC) (1115); and Public Utility District No. 1 of Douglas County (PUDDC) (1116).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before May 26, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1101, 1114, 1115, 1116, 1147, and 1149: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

For permit 1065: Administrator, Southwest Region, NMFS, NOAA, 777 Sonoma Avenue Room 325, Santa Rosa, CA 95405 (707–575–6050).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1101, 1147, and 1149: Robert Koch, Portland, OR (503–230–5424).

For permits 1114, 1115, and 1116: Tom Lichatowich, Portland, OR (503–230–5438).

For permit 1065: Thomas Hablett, Santa Rosa, CA (707–575–6066).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of these permits, modifications, and amendments, as required by the ESA, was based on a finding that such permits, modifications, and amendments: (1) Were applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits, modifications, and amendments were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in this Notice

Chinook salmon (*Oncorhynchus tshawytscha*)

Coho salmon (*Oncorhynchus kisutch*)

Steelhead trout (*Oncorhynchus mykiss*)

Applications Received

CRITFC (1147) requests a 5-year permit that would authorize an annual direct take of adult and juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a supplementation program at Johnson Creek of the South Fork Salmon River in ID. The objectives of CRITFC's program are to: (1) supply broodstock for supplementation, (2) restore and maintain natural spawning, (3) increase nutrient enrichment into Johnson Creek, and (4) reestablish sport and tribal fisheries for chinook salmon. CRITFC proposes to capture ESA-listed adult salmon, tag and/or mark them, inoculate them for diseases, retain a percentage for hatchery broodstock, and release the rest above the weir to spawn naturally. Progeny of the broodstock would be reared at McCall Fish Hatchery, tagged with coded-wires and passive integrated transponders, and released when ready to outmigrate to the ocean. An annual incidental take of ESA-listed species associated with juvenile fish releases is also requested.

CRITFC (1149) also requests a 3-year permit that would authorize an annual direct take of adult and juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon associated with a supplementation program at the Lostine River in OR. The supplementation program would be a component of a coordinated enhancement effort already begun by ODFW under the authority of permit 1011 (see below). The objectives of CRITFC's supplementation program are to: (1) Collect broodstock for production for acclimated releases back into the Lostine River; (2) provide monitoring and evaluation of returning adults from captive brood, conventional, and natural production; and (3) provide acclimation release facilities for captive brood smolts produced under the authority of permit 1011. CRITFC proposes to capture fish at the Lostine River weir, tag and/or mark them, innoculate them for diseases, retain a percentage for hatchery broodstock, and release the remaining fish above the weir to spawn naturally. Progeny of the broodstock would be reared at Lookingglass Hatchery, tagged with coded wires and passive integrated transponders, and released when ready to outmigrate to the ocean. An annual incidental take of ESA-listed species associated with juvenile fish releases is requested.

Permit 1011 authorizes ODFW annual direct takes of adult and juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon associated with a captive broodstock program for Catherine Creek, upper Grande Ronde River, and Lostine River populations. Modification 1 to permit 1011, issued on June 20, 1997, authorized ODFW to collect naturally-produced returning adults from the three watersheds in 1997 only to begin a supplementation program. For modification 2 to permit 1011, ODFW requests to collect returning adults from Catherine Creek and the upper Grande Ronde River to continue the supplementation program. CRITFC will be primarily responsible for operating adult trapping and smolt acclimation facilities at the Lostine River as proposed in their application for a permit (1149, see above). The ESA-listed adult salmon not retained for broodstock, including all adult salmon from captive brood production, will be tagged and/or marked, sampled for tissues and scales, and released above the weirs to spawn naturally. ODFW proposes to transport the collected adults to Lookingglass Hatchery where they will be spawned, the resulting eggs incubated, and the juveniles reared. ODFW believes that the collection of ESA-listed adults for hatchery supplementation will increase the persistence of the populations because of the survival advantage provided by the hatchery. Releases of juvenile fish from the supplementation program are requested. An annual incidental take of ESA-listed species associated with juvenile fish releases is requested. Modification 2 is requested to be valid for the duration of the permit which expires on December 31, 2000.

Permits Issued

Notice was published on January 15, 1998 (63 FR 2364) that an application had been filed by WDFW for a scientific research permit. Permit 1114 was issued to WDFW on April 9, 1998. The permit authorizes takes of juvenile, endangered, naturally produced and artificially propagated, upper Columbia River steelhead associated with a smolt monitoring program at Rock Island Dam on the Columbia River. The purpose of the program is to collect information on juvenile fish migration timing, survival, travel timing, and general fish health. The data will be used to make in-season adjustments to water releases from upstream reservoirs that optimize downstream migration conditions. Permit 1114 expires on December 31, 2002.

Notice was published on January 15, 1998 (63 FR 2364) that an application had been filed by PUDCC for a scientific research permit. Permit 1115 was issued on April 10, 1998 and authorizes the takes of juvenile, endangered, naturally produced and artificially propagated, upper Columbia River steelhead associated with research. The purpose of the research is to: (1) Evaluate the juvenile fish bypass system installed at Rocky Reach Dam, and (2) monitor juvenile fish gas bubble trauma at Rocky Reach and Rock Island Dams on the Columbia River. Permit 1115 expires on December 31, 2002.

Notice was published on January 15, 1998 (63 FR 2364) that an application had been filed by PUDDC for a scientific research permit. Permit 1116 was issued

to PUDDC on April 10, 1998 and authorizes takes of juvenile, endangered, naturally produced and artificially propagated, upper Columbia River steelhead associated with two research studies. Study 1 is designed to determine the survival and migration differences of juvenile fish as they pass downstream through Lake Pateros and Wells Dam. The information will be used to determine the appropriateness of utilizing selected surrogate stocks in future survival studies in the mid-Columbia River. Study 2 is designed to understand the status of juvenile salmonid migration at Wells Dam. ESA-listed juvenile fish will be lethally taken by fyke nets. Permit 1116 expires on December 31, 2002.

Notice was published on December 17, 1997 (62 FR 66053) that an application had been filed by HFAC for a scientific research permit. Permit 1065 was issued to HFAC on April 15, 1998. Permit 1065 authorizes takes of adult and juvenile, threatened, southern Oregon/northern California coast coho salmon (*Oncorhynchus kisutch*) in California, associated with fish population studies in the Freshwater Creek drainage within the evolutionarily significant unit. The studies consist of coho salmon abundance and spawner surveys for which ESA-listed fish are proposed to be taken. ESA-listed fish will be captured, handled, and released. ESA-listed salmon indirect mortalities associated with the research are also authorized. Permit 1065 expires on June 30, 2003.

Dated: April 20, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–10868 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041698F]

Marine Mammals; Permit No. 1031 (P623)

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Ms. D. Ann Pabst, Biological Sciences and Center for Marine Science Research, The University of North Carolina at Wilmington, 601 South College Road, Wilmington, North Carolina 28403–3297, has requested an amendment to Permit No. 1031.

DATES: Written comments must be received on or before May 26, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250);

Regional Administrator, Southeast Region, National Marine

Fisheries Service, 9721 Executive Center Drive, North, St. Petersburg, FL 33702–2432 (813/570–5301).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit Holder is currently authorized to conduct photo-identification studies, acoustic recording, and aerial and vessel surveys, on up to 1,200 humpback whales (*Megaptera novaeangliae*) annually over a five year period. In addition, the following non-target species may be harassed during the course of the research: North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), Atlantic bottlenose dolphins (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), beaked whales (*Mesplodon sp.*), and pelagic dolphins (*Stenella sp.*). The primary goal of the research is to identify potential anthropogenic causes of mortality of humpback whales (*Megaptera novaeangliae*)in the mid-Atlantic Ocean.

The Holder is now requesting that the Permit be amended to: (1) expand the geographic coverage of the research to include offshore waters to the continental shelf from Cape Fear, North Carolina north to the mouth of Delaware Bay; (2) increase the number of takes of animals currently authorized to be harassed under the permit; and to add sperm whales (*Physeter macrocephalus*) and common dolphins (*Delphinus delphis*) to the species authorized to be harassed. The purpose of the amendment is to conduct increased numbers of offshore aerial and vessel surveys to more thoroughly identify the temporal and spatial distribution of humpback whales and other cetacean species.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 20, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–10867 Filed 4–22–98; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 17994 April 13, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, April 23, 1998.

CHANGES IN MEETING: The Commission briefing on the FY 1998 Mid-Year Review is canceled. The meeting has been rescheduled for Thursday, April 30, 1998.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: April 20, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–10982 Filed 4–21–98; 2:35 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, April 30, 1998, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Mid-Year Review: The staff will brief the Commission and the Commission will consider issues related to fiscal year 1998 mid-year review.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: April 20, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–10983 Filed 4–21–98; 2:35 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR April 13, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETINGS: 10:00 a.m., Wednesday, April 22, 1998.

CHANGES IN MEETING: The Commission Meeting on the Compliance Status Report has been rescheduled to Tuesday, April 21, 1998 at 2:00 p.m.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sayde E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: April 20, 1998.

Sayde E. Dunn,

Secretary.

[FR Doc. 98–10984 Filed 4–21–98; 2:35 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Tuesday, April 21, 1998 2:00 p.m.

(Previously scheduled for Wednesday, April 22, 1998 at 10:00 a.m.)

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: April 20, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–10985 Filed 4–23–98; 2:35 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Number: TRICARE Senior Prime Enrollment Application Form: OMB No. 0720–[to be determined].

Type of Request: New collection; Emergency Processing requested with a shortened public comment period ending May 4, 1998. An approval date of May 15, 1998, is requested.

Number of Respondents: 77,381.

Responses per Respondent: 1.

Annual Responses: 77,381.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 25,536 hours.

Needs and Uses: This information collection is a requirement for TRICARE Senior Prime, a joint demonstration project of military managed health care conducted by the Department of Defense (DoD) and the Department of Health and Human Services (HHS). Under this demonstration, authorized by the Balanced Budget Act of 1997, DoD will offer Medicare-eligible military retirees and their dependents enrollment in a DoD-operated managed health care program. Medicare-eligible beneficiaries will be offered the opportunity to enroll at selected Medical treatment Facilities (MTFs) in a managed care program modeled after the existing TRICARE Prime benefit. Medicare will reimburse DoD on a capitated basis for health care services it provides to the enrolled beneficiaries. Eligible beneficiaries seeking enrollment in the program will be required to fill out an enrollment application which will provide information pertaining to eligibility for the program, personal information for identification purposes, and information on other health insurance.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD/Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503, or via facsimile at (202) 395–6974.

DOD Clearance Officer: Mr. Robert Cushing.

Requests for copies of the information collection proposal should be sent to Mr. Cushing at OSD/WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, or via facsimile at (703) 604–6270, or requested telephonically at (703) 604–4582.

Dated: April 17, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–10746 Filed 4–22–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information System Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information System Agency, DOD.

ACTION: Notice of Membership of the Defense Information Systems Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board of the Defense Information Systems Agency. The publication of membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DISA.

EFFECTIVE DATE: 30 April 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie K. Bazemore, SES Program Manager, Civilian Personnel Division, Personnel and Administration Directorate, Defense Information Systems Agency (703) 607–4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the DISA SES Performance Review Board. They will serve a one-year renewable term, effective 30 April 1998.

Ms. Diann L. McCoy, Deputy Director for C4 and Intelligence Program Integration

Mr. Peter Paulson, Chief, Networks Division

John W. Meincke, Brigadier General, USAF, Vice Director, DISA

Jack Penkoske,

Chief, Civilian Personnel Division.

[FR Doc. 98–10828 Filed 4–22–98; 8:45 am]

BILLING CODE 3610–05–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the following Defense Nuclear Facilities Safety Board (Board) meeting described below.

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: Published April 13, 1998, 63 FR 17995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:00 a.m., May 6, 1998.

CHANGE IN THE MEETING: The meeting has been postponed until 9:00 a.m. on May 7, 1998.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: April 20, 1998.

John T. Conway,

Chairman.

[FR Doc. 98–10809 Filed 4–21–98; 11:44 am]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.317]

Comprehensive Local Reform Assistance Notice; Correction

AGENCY: Department of Education.

SUMMARY: The Department of Education published a document in the **Federal Register** of April 9, 1998 inviting applications from local educational agencies in Montana and Oklahoma for new awards with fiscal year 1997 and 1998 Goals 2000 funds.

FOR FURTHER INFORMATION CONTACT: Cindy Cisneros (contact for Oklahoma applicants) or Jay McClain (contact for Montana applicants), U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202–2110, Telephone: (202) 401–0039, FAX: (202) 205–0303. These contacts may also be reached via e-mail at cindy__cisneros@ed.gov or jay__mcclain@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet at http://www.ed.gov. However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Correction

In the **Federal Register** issue of April 9, 1998, in FR Doc. 98–9344, on pages 17639 and 17640, the ''INSTRUCTIONS FOR PART III: APPLICATION NARRATIVE'' are corrected to read:

INSTRUCTIONS FOR PART III: APPLICATION NARRATIVE

Before preparing the Application Narrative an applicant should read carefully the description of the program, the background of the program, application requirements, and the selection criteria the Secretary will use to evaluate these applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that summarizes the proposed project;

2. Describe the proposed project in light of the application requirements and each of the selection criteria in the order in which the criteria are listed in the application; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 pages (double-spaced, typed on one-side only, using font no smaller than 11 point). The Department has found that successful applications for similar programs generally meet this page limit. In addition to the Application Narrative, the applicant must include the cover form (SF–424), budget forms and budget narrative, assurances, and a statement regarding how the application meets the requirements of GEPA 427. Any supplemental attachments should be limited to those that are crucial to supporting the integrity of the applicant's project and how it has met application requirements.

Dated: April 17, 1998.

Gerald N. Tirozzi,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 98–10866 Filed 4–22–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–153–011]

Granite State Gas Transmission, Inc., Notice of Request for Extension of Time

April 17, 1998.

Take notice that on April 2, 1998, Granite State Gas Transmission, Inc. (Granite State) submitted a request for a further extension of time through March 31, 1999, to implement the Gas Industry Standards Board (GISB) Standards related to data elements, data sets, invoice details, and EDM as listed below:

1.2.2, 1.4.1–1.4.5, 2.3.19, 2.3.25, 2.4.1–2.4.5, 3.3.1, 3.3.2, 3.3.5, 3.3.7, 3.3.10, 3.3.12, 3.3.14, 3.4.1–3.4.3, 4.3.1–4.3.4, 5.3.9, 5.3.10, and 5.4.1–5.4.17

According to Granite State, in order to be fully compliant with all GISB EDI standards, it must develop a new database and build a new interface to process incoming and outgoing requests. Granite State indicates that the preliminary cost estimate of $600,000 and at least one full time employee to address its internal information system requirements appear excessive. Further, Granite States claims that its customers did not express any specific interest in doing business with the Company via EDI. Accordingly, the Company continues to explore different options for meeting the GISB requirements and its customer's needs, including its evolving information system configuration in a least cost matter.

Granite State further states that copies of its filing have been served on its firm transportation customers, Bay State Gas Company and Northern Utilities, Inc., and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 24, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10822 Filed 4–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–187–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

April 17, 1998.

Take notice that on April 15, 1998, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 57A and Fifth Revised Sheet No. 92. The proposed effective date of these revised tariff sheets is May 16, 1998.

Iroquois states that in its current rate case (Docket No. RP–126) the Presiding Administrative Law Judge issued an Initial Decision (on December 31, 1997) eliminating the minimum capacity release volume of 200 Dth/day which is set forth on Sheet No. 92. Iroquois did not except this aspect of the Initial Decision and has agreed to eliminate this restriction from its tariff prior to the date of the Commission's opinion on the Initial Decision. Iroquois is also proposing to modify Sheet No. 57A to eliminate the option for shippers to submit written or facsimile nominations, except in emergency situations and for new shippers (for a period of thirty days from commencement of service).

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Sheet, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10820 Filed 4–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–315–007]

Northwest Pipeline Corporation; Notice of Compliance Filing

April 17, 1998.

Take notice that on April 13, 1998, in compliance with the Commission's Order on Compliance Filing issued March 13, 1998 in Docket No. RP97–315–005 Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance a clarification to its nominations procedure for pooling gas from an Associated Receipt Point.

Northwest states that a pooling party should use its DUNS number in the service requestor contract field when it nominates gas from an Associated Receipt Point into a pool without using a transportation service agreement.

Northwest states that a copy of this filing is being served upon all parties designated on the official service list as compiled by the Secretary in Docket No. RP97–315.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10821 Filed 4–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–367–009]

Northwest Pipeline Corporation; Notice of Compliance Filing

April 17, 1998.

Take notice that on April 6, 1998, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed on Appendix A to the filing, with the effective date indicated.

Northwest states that the purpose of this filing is to comply with the Commission's November 25, 1997 Letter Order approving the Offer of Settlement filed in the referenced proceeding on July 22, 1997 as reaffirmed by the Commission in an Order Denying Rehearing on April 1, 1998.

Northwest states that the rates included in this compliance filing are for two separate rate periods. The First Period One rates are for March 1, 1997 through February 28, 1998. The Second Period One rates are for March 1, 1998 forward. Northwest states that the base rates for the entire period have been restated in the new proposed tariff sheets in Appendix A to the filing. All affected rate schedule tariff sheets that were in effect from March 1, 1997 through April 1, 1998 have been changed. The proposed tariff sheets reflect these changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10823 Filed 4–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–188–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

April 17, 1998.

Take notice that on April 15, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1, Ninth Revised Sheet No. 317, Eighth Revised Sheet No. 318 and Third Revised Sheet No. 339A. Tennessee requests that these revised tariff sheets be made effective on June 1, 1998.

Tennessee states that the revised tariff sheets eliminate three practices on Tennessee's system. These practices are:

1. Once segmented capacity has been released to a replacement shipper, nominations by the releasing shipper or by the replacement shipper outside of their respective retained or acquired capacity segment resulting in overlapping use of capacity;
2. Multiple releases of the same segment of capacity (each release creating a new contract) so that the sum of the contracts' total quantity (TQ) exceeds the original contract holder's capacity rights through that segment of pipe; and
3. Releases by a replacement shipper of capacity segments outside of the capacity segment the shipper acquired through capacity release.

Tennessee states that these three practices occur due to the use of a priority of service entitled Secondary Segmenting Within a Zone, a service flexibility unique to Tennessee's system that is provided to firm transportation shippers who segment capacity through Tennessee's capacity release program. It is Secondary Segmenting Within a Zone that allows firm shippers on Tennessee's system, in both the supply and market areas, to effectuate the practices discussed herein, and, through those practices, overlap and extend capacity entitlements beyond an original contract's capacity entitlements. Tennessee further states that the multiplication and overlap of capacity entitlements is not consistent with Commission policy and is not required by Tennessee to provide the flexibility envisioned by Order No. 636, *et al.*

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10819 Filed 4–22–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–37–000, et al.]

Central Hudson Gas & Electric Corporation, et al.; Electric Rate and Corporate Regulation Filings

April 15, 1998.

Take notice that the following filings have been made with the Commission:

1. Central Hudson Gas & Electric Corporation

[Docket No. EC98–37–000]

Take notice that on April 9, 1998, Central Hudson Gas & Electric Corporation (Applicant), tendered for filing pursuant to Section 203 of the Federal Power Act an application for Commission approval to effect a corporate reorganization which involves the creation of a holding company as more fully set forth in the application.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Western Kentucky Energy Corp., Western Kentucky Leasing Corp., WKE Station Two Inc.

[Docket No. EL98–39–000]

Take notice that on April 9, 1998, Applicants Western Kentucky Energy Corp. (WKEC), Western Kentucky Leasing Corp. (Leaseco), and WKE Station Two Inc. (Station Two Subsidiary) on behalf of themselves and their affiliate, LG&E Energy Marketing Inc. (LEM), tendered for filing pursuant to Section 385.207 of the Commission's Regulations, 18 CFR 385.207, an Application seeking an order disclaiming jurisdiction with respect to (1) the lease and operation by WKEC, pursuant to a Lease and Operating Agreement, of non-jurisdictional generating facilities which are presently owned or controlled by Big Rivers Electric Corporation (Big Rivers), (2) the merger of WKEC and Leaseco with WKEC as the surviving entity, and (3) the transfer of control by assignment of certain contractual rights and obligations from Big Rivers to Station Two Subsidiary to purchase power from and operate a certain generating facility owned by the City of Henderson, Kentucky.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Pennsylvania-New Jersey-Maryland Interconnection

[Docket No. ER97–3189–010]

Take notice that April 2, 1998, Pennsylvania-New Jersey-Maryland Interconnection tendered for filing an amendment in the above-referenced docket.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation

[Docket No. ER98–1613–000]

Take notice that on April 10, 1998, Central Vermont Public Service Corporation (Central Vermont), filed (1) revised amendments to its Open Access Tariff No. 7 to provide for transmission service over the 225 MW AC/DC Converter at Highgate, Vermont, and (2) revised unexecuted service agreement with New England Power Pool.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PG Energy Power Plus

[Docket No. ER98–1953–000]

Take notice that on April 10, 1998, PG Energy Power Plus (PGEPP), filed an amendment to its February 20, 1998, petition to the Commission for acceptance of PGEPP Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. In its amendment, PGEPP confirms that there are no ''associated (affiliated) companies'' within the meaning of definition No. 5 of the Uniform System of Accounts, except as specifically stated in its February 20, 1998, petition in the above docket.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Energy International Power Marketing, Corp.

[Docket No. ER98–2059–000]

Take notice that on April 9, 1998, Energy International Power Marketing Corp. (EIP), filed a supplement to its application for market-based rates as power marketer. The supplemental information pertains to EIP's sole business purpose as a power marketer. Furthermore Energy International Corporation, the parent company of EIP, is entirely owned by Ned Fawaz, an individual who founded the corporation. Energy International Corporation is solely affiliated with Energy Penn Ventilator Equipment Industry, LLC (Energy-Penn). Energy-Penn is primarily a manufacturer of fans and ventilation equipment.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. PEI Power Corporation

[Docket No. ER98–2270–000]

Take notice that on April 10, 1998, PEI Power Corporation (PEI Power), filed an amendment to its petition to the Commission for acceptance of PEI Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. PEI Power is a wholly-owned subsidiary of Pennsylvania Enterprises, Inc. In its amendment, PEI Power confirms that there are no ''associated (affiliated) companies'' within the meaning of definition No. 5 of the uniform system of accounts, except as specifically stated in its March 23, 1998, petition in the above docket.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Houston Lighting & Power Company

[Docket No. ER98–2426–000]

Take notice that on April 10, 1998, Houston Lighting & Power Company (HL&P), submitted for filing a notice of cancellation of a transmission service agreement with PanEnergy Power Services, Inc. (PanEnergy), under HL&P's tariff for transmission service ''to, from and over'' certain HVDC Interconnections. This revised notice corrects the earlier notice issued in this docket which stated that the notice of cancellation concerned a transmission service agreement with Duke/Louis Dreyfus, L.L.C.

HL&P states that a copy of the filing has been served on the affected customer.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER98–2499–000]

Take notice that on April 9, 1998, the California Independent System Operator Corporation (ISO), tendered for filing an Interconnected Control Area Operating Agreement executed by the ISO and the Los Angeles Department of Water and Power for acceptance by the Commission. The ISO requests a waiver of the 60-day notice requirement to allow an effective day as of April 1, 1998.

The ISO states that this filing has been served on all parties listed on the official service list in the Docket Nos. EC96–19–003 and ER96–1663–003, including the California Public Utilities Commission.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER98–2508–000]

Take notice that on April 9, 1998 the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of Carolina Power & Light Company. PJM requests an effective date on the day after this Notice of Filing is received by FERC.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Carolina Power & Light Company

[Docket No. ER98–2517–000]

Take notice that on April 10, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service executed between CP&L and Amoco Energy

Trading Corporation (Eligible Customer). Service to the Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER98–2519–000]

Take notice that on April 10, 1998, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with CNG Energy Services, Inc.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective March 11, 1998.

A copy of this filing was served upon CNG Energy Services, Inc.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Central Maine Power Company

[Docket No. ER98–2520–000]

Take notice that on April 10, 1998, Central Maine Power Company (CMP), tendered for filing a service agreement for sale of capacity and/or energy service entered into with Cinergy Operating Companies. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4, as supplemented.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Montana Power Company

[Docket No. ER98–2521–000]

Take notice that on April 10, 1998, Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, Firm Point-To-Point Transmission Service Agreements with PacifiCorp; Portland General Electric Company (Portland); Puget Sound Energy, Inc. (Puget); and Washington Water Power Company (Water Power) under Montana's FERC Electric Tariff, Second Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon PacifiCorp, Portland, Puget and Water Power.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ER98–2522–000]

Take notice that on April 10, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 24, 1998, between KCPL and Dayton Power and Light. KCPL proposes an effective date of April 1, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Kansas City Power & Light Company

[Docket No. ER98–2523–000]

Take notice that on April 10, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated April 1, 1998, between KCPL and Koch Energy Trading, Inc. KCPL proposes an effective date of April 1, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Public Service Corporation

[Docket No. ER98–2524–000]

Take notice that on April 10, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Northern Indiana Public Service Company under its Market-Based Rate Tariff.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Unitil Power Corp.

[Docket No. ER98–2525–000]

Take notice that on April 10, 1998, Unitil Power Corp. (UPC), tendered for filing service agreements between UPC and Connecticut Municipal Electric Energy Cooperative (Connecticut Municipal) and Northeast Energy Services, Inc., (Northeast Energy), for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000. UPC requests an effective date of March 23, 1998, for Connecticut Municipal and an effective date of March 31, 1998, for Northeast Energy.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Fitchburg Gas and Electric Light Company

[Docket No. ER98–2526–000]

Take notice that on April 10, 1998, Fitchburg Gas and Electric Light Company (Fitchburg), tendered for filing service agreements between Fitchburg and Connecticut Municipal Electric Energy Cooperative (Connecticut Municipal) and Northeast Energy Services, Inc. (Northeast Energy), for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000. Fitchburg requests an effective date of March 27, 1998, for Connecticut Municipal and an effective date of March 31, 1998, for Northeast Energy.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Oklahoma, and Southwestern Electric Power Company

[Docket No. ER98–2528–000]

Take notice that on April 10, 1998, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO), (collectively, the ''CSW Operating Companies'') submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services to OG&E Energy Resources (OG&E), ConAgra Energy Services, Inc. (ConAgra), Constellation Power Source (Constellation), American Electric Power Service Corporation (AEP),

Electric Clearinghouse, Inc. (ECI), Tenaska Power Services Company (Tenaska), Western Resources Generation Services (Western Resources), Tennessee Valley Authority (TVA), Amoco Energy Trading Corporation (Amoco), and Entergy Power Marketing Corp. (Entergy) in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of this filing was served on ConAgra, OG&E, Constellation, AEP, TVA, Amoco, ECI, Tenaska, Western Resources, and Entergy.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. PacifiCorp

[Docket No. ER98–2530–000]

Take notice that on April 10, 1998, PacifiCorp, tendered for filing in accordance 18 CFR 33 of the Commission's Rules and Regulations, an application seeking an order authorizing PacifiCorp to acquire from James River Paper Company, Inc. (James River), approximately 1.0 miles of 69 kilovolt transmission line located in Clark County, Washington.

PacifiCorp requests that, pursuant to Section 33.10 of the Commission's Regulations, the Commission accept this application for filing, to be effective forty-five (45) days after the date of filing.

A copies of this filing was supplied to James River and the Washington Utilities and Transportation Commission.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Hafslund Energy Trading, LLC

[Docket No. ER98–2535–000]

Take notice that on April 13, 1998, Hafslund Energy Trading, LLC (Hafslund), petitioned the Commission for acceptance of Hafslund Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Hafslund intends to engage in wholesale electric power and energy purchases and sales as a marketer. Hafslund is not in the business of generating or transmitting electric power.

Hafslund is a wholly-owned subsidiary of Hafslund Energy LLC, which in turn is a wholly-owned subsidiary of Hafslund USA, Inc., (HUSA). HUSA, through its affiliates, has an interest in three qualifying facilities, all of whose capacity and marketable output are committed to purchasers under long term power purchase agreements. HUSA, through affiliates, has a contract to acquire an interest in a fourth qualifying facility, all of whose capacity and output will be committed to a purchaser under a long term power purchase agreement.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. First Energy Operating Companies Centerior Energy Corporation, Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company

[Docket Nos. OA98–6–001, OA97–673–001, OA97–154–001 OA97–292–001 and OA97–596–002]

Take notice that First Energy Operating Companies, on behalf of Centerior Energy Corporation, Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company, submitted revised standards of conduct on April 9, 1998.

Comment date: April 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10826 Filed 4–22–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER89–383–000, et al.]

Nevada Power Company, et al.; Electric Rate and Corporate Regulation Filings

April 17, 1998.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Company

[Docket No. ER89–383–000]

Take notice that on April 14, 1998, Nevada Power Company (Nevada Power), tendered for filing Amendment No. 1 to its Agreement for transmission service between Nevada Power Company, Overton Power District No. 5 and Lincoln County Power District No. 1, with a proposed effective date of June 8, 1998. The Amendment modifies certain contract provisions relating to the ownership, installation, maintenance, and operation of equipment that was relocated by Lincoln and Overton.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Southwest Power Pool

[Docket No. ER98–1163–002]

Take notice that on April 13, 1998, Southwest Power Pool submitted its compliance filing in response to the Commission's March 13, 1998, order.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota Company)

[Docket No. ER98–2349–000]

Take notice that on April 14, 1998, Northern States Power Company (NSP), tendered for filing an amendment to the Electric Service Agreement filed on March 30, 1998, between NSP and the City of Granite Falls, MN in Docket No. ER98–2349–000.

A copy of the Amendment was served upon each of the parties named in the Service List.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Long Beach Generation LLC

[Docket No. ER98–2537–000]

Take notice that on April 14, 1998, Long Beach Generation LLC, tendered for filing pursuant to Section 205 of the Federal Power Act an initial rate schedule pursuant to which Long Beach

Generation LLC would sell ancillary services at cost-based rates. Long Beach Generation LLC has requested an effective date of April 14, 1998.

Comment date: May 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Energy Corporation

[Docket No. ER98–2538–000]

Take notice that on April 14, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Allegheny Power. The parties have not engaged in any transactions under the TSA prior to thirty (30) days prior to the filing date. Duke requests that the TSA be made effective as a rate schedule as of April 1, 1998.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Indiana Gas and Electric Company

[Docket No. ER98–2539–000]

Take notice that on April 14, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing the following agreements concerning the provision of electric service to the Town of Ferdinand, Indiana:

1. Agreement for the Supply of Electric Energy Between the Town of Ferdinand, Indiana and Southern Indiana Gas and Electric Company
2. Service Agreement for Network Integration Transmission Service
3. Transmission Service Specifications for Network Integration
4. Network Operating Agreement

Comment date: May 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Tucson Electric Power Company

[Docket No. ER98–2541–000]

Take notice that on April 14, 1998, Tucson Electric Power Company (TEP), tendered for filing a Umbrella Service Agreement for Short-Term Transactions with American Electric Power Service Corp., dated March 26, 1998, for sales under TEP's Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 3.

Comment date: May 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Tucson Electric Power Company

[Docket No. ER98–2542–000]

Take notice that on April 14, 1998, Tucson Electric Power Company (TEP), tendered for filing a Umbrella Service Agreement for Short-Term Transactions with New Energy Ventures L.L.C., dated April 1, 1998, for sales under TEP's Market-Based Power Sales Tariff for Affiliate Sales, FERC Electric Tariff Original Volume No. 4. Service has not yet commenced under this service agreement.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. MidAmerican Energy Company

[Docket No. ER98–2544–000]

Take notice that on April 14, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Amoco Energy Trading Corporation (Amoco) dated March 23, 1998, and a Non-Firm Transmission Service Agreement with Amoco dated March 23, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of March 23, 1998, for the Agreements with Amoco, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Amoco, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10825 Filed 4–22–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF98–5171–000, et al.]

Western Area Power Administration, et al.; Electric Rate and Corporate Regulation Filings

April 16, 1998.

Take notice that the following filings have been made with the Commission:

1. Western Area Power Administration

[Docket No. EF98–5171–000]

Take notice that on March 27, 1998, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–78, did confirm and approve on an interim basis, to be effective on April 1, 1998, Western Area Power Administration's (Western) Rate Schedules SLIP–F6 for firm power service from the Salt Lake City Area Integrated Projects,(SLCA/IP) SP–PTP5 for firm point-to-point transmission over the Colorado River Storage Project (CRSP) transmission system. SP–NW1 for network Integration transmission service over the CRSP transmission system, SP–NW1 for network Integration transmission service over the CRSP transmission system, SP–NFT4 for nonfirm transmission over the same system, and SP–SD1, SP–RS1, SP–El1, SP–FR1, and SP–SSR1 for ancillary services.

The rates in Rate Schedules SLIP–F6, SP–PTP5, SP–NW1, SP–NFT4, SP–SD1, SP–RS1, SP–El1, SP–FR1, and SP–SSR1 will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval of these or of substitute rates on a final basis, ending March 1, 2003.

Comment date: May 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Western Area Power Administration

[Docket No. EF98–5181–000]

Take notice that on March 27, 1998, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–80, did confirm and approve on an interim basis, to be effective on April 1, 1998, Western Area Power Administration's (Western), formula rates under Rate Schedules L–NT1, L–FPT1, and L–NFPT1 for firm and non-firm transmission over the Loveland Area Projects (LAP), system and L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6 for ancillary services for the Western Area Colorado Missouri control area.

The formula rates in Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6 will be in effect pending the Federal

Energy Regulatory Commission's (FERC) approval of these or of substitute formula rates on a final basis, ending March 31, 2003.

Comment date: May 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. GMR Vasavi Power Corporation Private Limited

[Docket No. EG98–54–000]

Take notice on March 9, 1998, GMR Vasavi Power Corporation Private Limited (Applicant), with its principal office at 25/1 SKIP House, Ground Floor, Museum Road, Bangalore 560 025, India, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. On April 14, 1998, Applicant filed an amendment to this application. In its amendment, Applicant provides background information supporting the need for the sewage water treatment plant and amends Section III(B) of its application in its entirety including the footnote provided therein by replacing it with language providing clarification of the sewage water treatment plant which will treat untreated water for use only in the Facility.

Applicant will own a 200 MW diesel engine based power project in the State of Tamil Nadu in southern India (Facility). Electric energy produced by the Facility will be sold at wholesale to the state-owned Tamil Nadu Electricity Board in southern Indiana. In no event will any electric energy be sold to consumers in the United States.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Long Beach Generation LLC

[Docket No. EG98–61–000]

Take notice that on April 14, 1998, Long Beach Generation LLC, tendered for filing an amended application to its March 27, 1998, filing submitted in the above-referenced docket.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. ESI Vansycle Partners, L.P.

[Docket No. EG98–64–000]

Take notice that on April 8, 1998, ESI Vansycle Partners, L.P. (ESI Vanscyle), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

ESI Vansycle is developing a wind-powered eligible facility with a capacity of 24.9 megawatts (net), powered by 660–750–kW wind turbines, which will be located on Vansycle Ridge in eastern Umatilla County, Oregon.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Cinergy Services, Inc.

[Docket No. ER98–746–001]

Take notice that on April 13, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Town of Etna Green, Indiana, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER98–747–001]

Take notice that on April 13, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Town of Walkerton, Indiana, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–748–001]

Take notice that on April 13, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Town of Chalmers, Indiana, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER98–749–001]

Take notice that on April 13, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Town of Winamac, Indiana, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER98–750–001]

Take notice that on April 13, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Town of Kingsford Heights, Indiana, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER98–751–001]

Take notice that on April 13, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Town of Bremen, Indiana, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER98–752–001]

Take notice that on April 13, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Town of Brookston, Indiana, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Southwest Power Pool

[Docket No. ER98–1163–002]

Take notice that on April 13, 1998, Southwest Power Pool submitted its compliance filing in response to the Commission's March 13, 1998, order.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. TransCurrent , LLC.

[Docket No. ER98–1297–000]

Take notice that on April 13, 1998, TransCurrent, LLC. (TransCurrent),

petitioned the Commission for acceptance of TransCurrent Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

TransCurrent intends to engage in wholesale electric power and energy purchases and sales as a marketer (trading). In addition to power marketing TransCurrent is offering consulting services and portfolio management. TransCurrent is not in the business of generating or transmitting electric power. TransCurrent is owned by—

—Kraftholding USA AS, a Norwegian based company owned by private investors.

—Calpol LLC., The business activity of Calpol is to act as a Scheduling Coordinator and to offer standardized physical contracts (OTC brokering).

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER98–1438–000]

Take notice that on April 13, 1998, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), tendered for filing certain additional executed signature pages in order to supplement its January 15, 1998, filing in Docket No. ER98–1438.

Specifically, the Midwest ISO tendered signature pages to the ''Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation,'' and the ''Agency Agreement for Open Access Transmission Service Offered by the Midwest ISO for Nontransferred Transmission Facilities'' executed by Allegheny Energy, Inc., and Dusquesne Light Company.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources, Inc.

[Docket No. ER98–1743–001]

Take notice that on April 13, 1998, Western Resources, Inc., tendered for filing a refund report in compliance with letter order issued March 27, 1998, issued in the above-referenced docket.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Tenaska Frontier Partners, Ltd.

[Docket No. ER98–1767–003]

Take notice that on April 13, 1998, Tenaska Frontier Partners, Ltd., filed a supplement to Rate Schedule No. 1 to comply with Ordering Paragraph (A) of the Commission's order of March 30, 1998 in Tenaska Frontier Partners, Ltd., Docket No. ER97–1767 (82 FERC ¶ 61,323).

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER98–1781–000]

Take notice that on April 13, 1998, Cinergy Services, Inc., (Cinergy), tendered for filing unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon Nordic Electric and Michigan Public Service Commission.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. PacifiCorp

[Docket No. ER98–2262–000]

Take notice that PacifiCorp, on April 13, 1998, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, an exhibit unbundling a power sale to Citizens Power Sales.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Transmission Function's Bulletin Board System through a personal computer by calling (503) 813–5758 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Edison Company

[Docket No. ER98–2531–000]

Take notice that on April 13, 1998, Commonwealth Edison Company (ComEd), submitted for filing two Short-Term Firm Service Agreements with Southern Illinois Power Cooperative (SIPC) and Southern Company Energy Marketing L.P. (SCEM), and a Non-Firm Service Agreement establishing Merchant Energy Group of the Americas, Inc. (MEGA), as non-firm transmission customer under the terms of ComEd's Open Access Transmission Tariff (OATT). ComEd also submitted a revised Index of Customers reflecting the addition of the two new customers and a name change for current customer Heartland Energy Services, Inc.

ComEd requests an effective date of April 13, 1998, for the service agreements, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served on SIPC, SCEM, MEGA, CIEG, and the Illinois Commerce Commission.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Western Resources, Inc.

[Docket No. ER98–2533–000]

Take notice that on April 13, 1998, Western Resources, Inc., tendered for filing a long-term firm transmission agreement between Western Resources and Public Service Company of Oklahoma. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective June 1, 1999.

Copies of the filing were served upon Public Service Company of Oklahoma and the Kansas Corporation Commission.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Power and Light Company

[Docket No. ER98–2534–000]

Take notice that on April 13, 1998, Wisconsin Power and Light Company (WP&L), tendered for filing executed Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service, establishing AYP Energy, Inc., as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of April 6, 1998, and; accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas And Electric Company

[Docket No. ER98–2543–000]

Take notice that on April 13, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Allegheny Power Service Corporation

under LG&E's Open Access Transmission Tariff.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10824 Filed 4–22–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6001–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Application for NPDES Discharge Permit and the Sewage Sludge Management Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Application for National Pollutant Discharge Elimination System (NPDES) Discharge Permit and the Sewage Sludge Management Permit ICR (Applications ICR), EPA ICR No. 0226.13, OMB Control No. 2040–0086, expires August 31, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 22, 1998.

ADDRESSES: A copy of the ICR will be available at the Water Docket (W–98–12), Mail Code-4101, U.S. Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C. 20460. Copies of the ICR can be obtained free of charge by writing to this address. All public comments shall be submitted to: ATTN: NPDES Applications ICR Renewal Comment Clerk, W–98–12, Water Docket MC–4101, U.S. EPA, 401 M Street SW, Washington, DC 20460.

Please submit the original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to: ow-docket@epamail.epa.gov Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–98–12. No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 5.1 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. The record for this proposed ICR revision has been established under docket number W–98–12, and includes supporting documentation as well as printed, paper versions of electronic comments. It does not include any information claimed as CBI. The record is available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at the Water Docket, Room M2616, Washington, DC 20460. For access to the docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Phone: (202)260–6814, Fax: (202) 260–9544, E-mail: Lee.Angela@EPAmail.EPA.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Publicly owned treatment works (POTWs), privately owned treatment works, new and existing manufacturing and commercial dischargers, storm water dischargers, treatment works treating domestic sewage (TWTDS), and other entities that apply for NPDES permits.

Title: Application for NPDES Discharge Permit and the Sewage Sludge Management Permit (EPA ICR No. 0226.13, OMB Control No. 2040–0086, expiring 8/31/98).

Abstract: This ICR calculates the burden and costs associated with permit applications for NPDES discharges and sewage sludge management activities. EPA uses the data contained in applications and supplemental information requests to set appropriate permit conditions, issue permits, and assess permit compliance. EPA maintains national applications information in databases, which assist permit writers in determining permit conditions. For most permits, EPA has developed standard application forms. In some cases, such as requests for additional information and storm water applications from municipal separate sewer systems, standard forms do not exist because standard forms are not appropriate for the information collected or because they have not been developed. Application forms correspond to the different types of applicants, each form requesting information necessary for issuing permits to the associated applicants. Applicants include POTWs, privately owned treatment works, new and existing manufacturing and commercial dischargers, storm water dischargers, TWTDS, and others. Depending on the application form they are using, applicants may be required to supply information about their facilities, discharges, treatment systems, sewage sludge use and disposal practices, pollutant sampling data, or other relevant information. Section 308 of the Clean Water Act authorized EPA to request from dischargers any information that may be reasonably required to carry out the objectives and provisions of the Act. Under this authority, EPA sometimes requests information supplemental to that contained in permit applications. In its burden and cost calculations, this ICR includes requests for information supplemental to permit applications. Other parts of the Clean Water Act and federal regulations authorize EPA to collect information that supplements permit applications, such as section 403(c). This ICR calculates the burden and costs for all information collection activities associated with applications for permits. Application information is necessary to obtain an NPDES or sewage sludge permit. Information provided can be accessed by the public through a Freedom of Information Act request. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The total respondent burden nation-wide for the Application for National Pollutant Discharge Elimination System (NPDES) Discharge Permit and the Sewage Sludge Management Permit ICR is 612,732 burden hours and a cost of $38,414,978 (including State government burden). This total cost includes contracting costs of $17,720,000 for biological testing. Tables 1 and 2 detail the respondent and government costs for each of the applications included in this ICR.

TABLE 1.—ESTIMATED ANNUAL RESPONDENT BURDEN

Form/request	Number of respondents	Burden hours per form	Total hours	Respondent labor rate	Total Respondent cost ($)
Standard Form A	802	15	12,030	$26.13	$314,344
Short Form A	3,483	1	3,483	26.13	91,011
Biological Testing:					
Major Municipalities	802	20	16,040	26.13	419,125
Minor Municipalities	84	20	1,680	26.13	43,898
Contractor Costs					17,720.000
Section 308 Requests (Municipalities) Major Municipalities:					
Routine	610	5	3,050		
Medium	107	50	5,350		
Complex	54	1,000	54,000		
Totals	771		62,400	26.13	1,630,512
Contractor Costs					48,600
Minor Municipalities:					
Routine	519	5	2,595	26.13	67,807
Interim Sewage Sludge Permit:					
Municipalities	3,623	8	30,433	26.13	795,220
Privately Owned Treatment Works	27	8	227	43.67	9,904
Form 1:					
New Facilities	5,167	3	15,501	43.67	676,929
Existing Facilities	10,203	1	10,203	43.67	445,565
Form 2b	990	6	5,940	43.67	259,400
Form 2c	5,989	33	197,637	43.67	8,630,808
Form 2d:					
Major New Facilities	40	46	1,840	43.67	80,353
Minor New Facilities	322	32	10,304	43.67	449,976
Section 308 Requests (Non-municipal) Majors:					
Routine	219	5	1,095	43.67	47,819
Medium	27	50	1,350	43.67	58,955
Minors:					
Routine	483	5	2,415	43.67	105,463
Form 2e:					
New Facilities	138	14	1,932	43.67	84,370
Existing Facilities	3,225	14	45,150	43.67	1,971,701
Form 2f	66	29	1,888	43.67	82,431
Alaskan Lands MS4s	3	30	90	43.67	3,930
Large	4	4,432	17,730	26.13	463,274
Medium	7	2,813	19,690	26.13	514,508
Notice of Intent (NOI):					
NOI for Storm Water (SW) General Permit	5,288	1	5,288	43.67	230,927
NOI for SW discharges to MS4s	11,053	1.5	16,580	43.67	724,027
NOI for general permits other than SW	4,217	1	4,217	43.67	184,156
Petition for Individiaul Permit	24	40	960	26.13	25,085
Permit Consolidation	100	2	200	43.67	8,734
Notice of Construction	3	1	3	43.67	131
Ocean Discharge Recordkeeping	30	778	23,340	43.67	1,019,258
Existing Facilities (Municipal)	4,284	1	4,284	26.13	111,941
Existing Facilities (Non-Municipal)	10,203	1	10,203	43.67	445,565
Major New Facilities	40	5	200	43.67	8,734
Municipal Separate Storm Sewer Systems	11	5	55	26.13	1,437
Minor New Facilities & Individual SW Permits	520	1.5	780	43.67	34,063
Sludge Only Facilities (municipals)	390	1.5	585	26.13	15,286
Sludge Only Facilities (non-municipals)	40	1.5	60	43.67	2,820
Totals	58,480		574,640		37,208,220

TABLE 2.—ESTIMATED ANNUAL GOVERNMENT BURDEN

Form/request	Number reviewed by State	Number reviewed by Federal	Review time (hours)	State burden hours	State cost ($)	Federal burden hours	Federal cost ($)
Standard Form A	661	141	0.5	331	$10,530	70.5	$2,233
Short Form A	3,040	443	0.5	1,520	48,427	221.5	7,017
Section 308 Requests (Municipalities)							
Major Municipalities:							
Routine	503	107	1.0	503	16,026	107.0	3,390
Medium	88	19	10.0	880	28,037	190.0	6,019
Complex	45	9	20.0	900	28,674	180.0	5,702
Minor Municipalities:							
Routine	453	66	1.0	453	14,443	66.0	2,091
Interim Sewage Sludge Permit:							
Municipalities	2,971	652	3.0	8,913	283,968	1,956.0	61,966
Privately Owned Treatment Works	22	5	2.0	44	1,402	10.0	317
Form 1:							
New Facilities	4,547	620	0.5	2,274	72,434	310.0	9,821
Existing Facilities	8,979	1,224	0.5	4,490	143,035	612.0	19,388
Form 2b	792	198	0.5	396	12,617	99.0	3,136
Form 2c	5,836	796	2.0	11,672	371,870	1,592.0	50,435
Form 2d:							
Major New Facilities	.....	40	0.5	0	.....	20.0	634
Minor New Facilities	.....	322	0.5	0	.....	161.0	5,100
Section 308 Requests (Non-municipal)							
Majors:							
Routine	192	27	1.0	192	6,117	27.0	855
Medium	22	5	10.0	220	7,009	50.0	1,584
Minors:							
Routine.							
Form 2e:							
New Facilities	121	17	0.5	61	1,928	8.5	269
Existing Facilities	3,143	428	0.5	1,572	50,068	214.0	6,780
Form 2f	53	13	2.2	117	3,715	28.6	906
Alaskan Lands MS4s	0	3	0.6	0	.....	1.8	57
Large	3	1	60.0	180	5,735	60.0	1,901
Medium	5	2	40.0	200	6,372	80.0	2,534
Notice of Intent (NOI) NOI for Storm Water (SW) General:							
Permit—MSGP	0	5,288	0.5	0	0	2,644.0	83,762
NOI for SW discharges to MS4s	7,050	2,163	0.3	2,115	67,384	649.0	.....
NOI for general permits other than SW	3,458	759	0.3	865	27,543	189.8	6,011
Petition for Individual Permit	20	4	8.0	160	5,098	32.0	1,014
Permit Consolidation	81	19	0.5	41	1,290	9.5	301
Notice of Construction	0	3	0.6	0	.....	1.8	57
Ocean Discharge	24	6	88.0	2,112	67,288	528.0	16,727
Totals	.....	.....	.....	38,092.10	1,206,758	6,825.95	216,246.10

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 16, 1998.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 98–10858 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6002–1]

Request for Proposals for Small Public Water Systems Technology Assistance Centers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is soliciting proposals from institutions of higher learning interested in establishing a Small Public Water Systems Technology Assistance Center (SPWSTAC). Section 1420(f) of the Safe Drinking Water Act (SDWA) as amended authorizes the Agency to make grants to institutions of higher learning to establish and operate such centers. The responsibilities of the centers will include the conduct of training and technical assistance relating to the information, performance, and technical needs of small public water systems or public water systems that serve Indian Tribes. The Environmental Protection Agency's fiscal year 1998 appropriation provides $2 million for establishment of five SPWSTAC's. This document

explains what information an interested institution of higher learning must submit as part of its proposal to be considered for funding. The document also explains the criteria that the Agency will use to evaluate proposals and award funding.

DATES: Proposals must be received by June 8, 1998.

ADDRESSES: Send proposals to Peter E. Shanaghan, Small Systems Coordinator, Mail Code 4606, Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Peter E. Shanaghan, 202–260–5813 or shanaghan.peter@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The 1996 Safe Drinking Water Act Amendments focus attention on enhancing the technical, financial, and managerial capacity of public water systems to consistently comply with national primary drinking water regulations. Section 1420 of the Act as amended requires states to develop and implement a program to ensure that new systems demonstrate adequate capacity prior to start-up and to develop and implement a strategy to assist existing systems in acquiring and maintaining capacity. The Act provides for a variety of assistance for states and public water systems, especially small systems, in meeting capacity development objectives.

Section 1420(f) of the SDWA as amended authorizes EPA to make grants to institutions of higher learning to establish and operate small public water system technology assistance centers. The responsibilities of these centers would include the conduct of training and technical assistance relating to the information, performance, and technical needs of small public water systems or public water systems that serve Indian Tribes.

Section 1420(f)(4) directs EPA to select recipients of grants on the basis of the following criteria:

(A) The small public water system technology assistance center shall be located in a state that is representative of the needs of the region in which the state is located for addressing the drinking water needs of small and rural public water systems.

(B) The grant recipient shall be located in a region that has experienced problems, or may reasonably be foreseen to experience problems, with small and rural public water systems.

(C) The grant recipient shall have access to expertise in small public water system technology management.

(D) The grant recipient shall have the capability to disseminate the results of small public water system technology and training programs.

(E) The projects that the grant recipient proposes to carry out under the grant are necessary and appropriate.

(F) The grant recipient has regional support beyond the host institution.

Additionally, section 1420(f)(5) requires that at least two of the grants be made to consortia of states with low population densities.

As part of its fiscal year 1998 appropriation, Congress provided EPA with $2 million to fund five SPWSTAC's. The Agency recognizes that, based on the merits of the proposals received, equal funding of all five centers may not be appropriate, but we expect no single assistance offer to exceed about $500,000.

Ongoing Related Initiatives

EPA is concerned about the potential for wasteful duplication of effort between these new SPWSTAC's and the extensive existing network of initiatives designed to assist small public water systems. To avoid such potentially wasteful duplication of effort, EPA urges applicants to carefully review the following summary of ongoing related initiatives. The Agency encourages applicants to propose projects, which would be complementary to and not duplicative of these existing initiatives.

Environmental Technology Verification (ETV) Program

The Small Drinking Water System Package Plant Pilot project under the ETV program is being managed by the National Sanitation Foundation (NSF). The objective of this pilot project is to establish a self-supporting program for the performance verification testing of package drinking water treatment equipment. This pilot project includes development of detailed protocols for the performance verification testing of various types of package plant technologies; procedures to qualify field testing organizations to conduct testing using the protocols; and actual performance verification testing of package plant technologies.

Rural Community Assistance Program, Inc. (RCAP)

RCAP, a network of six regional organizations with multi-state service areas, provides technical assistance and community-specific training to rural areas with populations of 10,000 or fewer to help them access safe, reliable, and affordable drinking water supplies. In this program, most of RCAP's activities are carried out in rural areas with population of 2,000 or less, and in minority communities, under-served rural areas or rural areas with a high percentage of low-income individuals. They provide free services to meet the water supply needs of community leaders, system owners, system operators, and local residents. RCAP also works with rural residents currently not served by a drinking water system or those whose drinking water system is inadequate or in need of capital improvements to identify options and find financing to solve these problems.

National Rural Water Association (NRWA)

NRWA, comprised of 45 state rural water associations conducts a rural and small drinking water system training and on-site assistance program that provides direct training and on-site problem solving assistance to rural and small water system personnel in the 48 contiguous states. Regulatory training, water system operations training, water system maintenance training, conservation training, and public health training is provided through seminars and formal training courses. NRWA's on-site problem solving includes non-compliance problems, complex operating and maintenance problems, operator certification problems, and source protection problems. Each state rural water association performs at least 300 scheduled hours of assistance/training per year under the program.

The National Drinking Water Clearinghouse (NDWCH)

West Virginia University operates the NDWCH. The clearinghouse offers a wide array of information services for small public water systems. They operate a toll-free information and assistance hotline, publish technical assistance oriented newsletters, and provide access to publications.

Existing University Centers

Congress has earmarked funding for specific university small water system centers, in addition to the $2 million earmarked for the five SPWSTAC's. Montana State University (MSU) has operated a small water system assistance center since 1995. MSU has focused on documenting technology performance and developing innovative Internet based distance learning tools. Western Kentucky University and the University of Missouri at Columbia are establishing centers, which will commence operation in mid to late 1998. Both of these institutions are developing detailed work plans at this time.

EPA will encourage the three existing centers and the five centers for which

proposals are being solicited to cooperate to the maximum extent feasible. The Agency expects that each center will use its unique regional emphasis to address problems of national importance, as manifested in specific regional conditions.

Content of Proposals

Proposals should be succinct and directly to the point. In general they should not exceed 20 pages in length. Applicants whose proposals are selected for funding will be required to complete the *Application for Federal Assistance* (SF 424).

Proposals must address each of the following questions:

(1) How is the state in which the proposed center is located representative of the drinking water needs of small and rural communities or Indian Tribes in the surrounding region?

(2) Within this region, what problems have been experienced or are foreseen to be experienced with small and rural public water systems?

(3) To what experience in small public water system technology management does the applicant have access?

(4) What capability does the applicant have to disseminate the results of small public water system technology and training programs?

(5) For each proposed project:

(i) What is the objective of the work?

(ii) What specifically does the applicant propose to do?

(iii) Why does the applicant believe this project is necessary and how would it contribute to enhancing the technical capacity of small public water systems?

(iv) Does the applicant have documented support *for this project* beyond their own institution (from, for example, state drinking water programs, technical assistance providers, local government, small systems, etc.)?

(v) What are the proposed deliverables?

(vi) What is the proposed schedule and major milestones?

(vii) Approximately how much of your total requested grant amount would you devote to this project? What other resources (from any source), if any do you propose to devote to this project?

(viii) How will this project complement, and not duplicate, ongoing related initiatives described earlier?

(6) What regional support (from, for example, other institutions of higher learning and/or neighboring state drinking water programs) does the applicant have *for the proposed center?*

(7) What is the total amount of assistance sought by the applicant? What is the total amount of funding, in addition to the requested assistance that the applicant plans to devote to the proposed center?

(8) If the applicant wishes to be considered as representing a consortia of states with low population density, then the applicant must provide a detailed justification specifically identifying the states which are members of the consortia, the population density of each state, and the specific working agreement among consortia members.

Criteria for Evaluation of Proposals

A panel of EPA staff and state drinking water program administrators will evaluate proposals for overall technical merit based upon the selection criteria contained in section 1420(f)(4). To implement the requirements of section 1420(f)(5), the Agency will assign extra credit to otherwise good quality proposals from applicants representing consortia of states.

The following criteria will be used to assess the answers to each of the questions posed under the previous section on Content of Proposals. Each of these questions will be given equal weight, and together they will account for a total of 30% of the applicants raw score.

(A1) Specificity of answer. Specific answers, which directly respond to the question, will be rated higher than vague or general answers.

(B1) Detail of answer. Detailed but concise answers will be rated higher than vague or general answers.

(C1) Factual basis of answer. Answers for which supporting objective data or other facts are provided will be rated higher than answers relying on generalizations or unsubstantiated statements.

In addition to being evaluated on the quality of the responses to individual questions, each proposal will be evaluated in its entirety based upon the criteria contained in section 1420(f)(4). For purposes of this solicitation, the criteria contained in section 1420(f)(4) are being designated as (A2), (B2), (C2), (D2), (E2), and (F2). Criteria (A2), (B2), (C2), (D2), and (F2) will each be weighted by a factor of 1, criterion (E2) will be weighted by a factor of 2. Collectively these criteria will account for 70% of an applicants raw score. The criteria are:

(A2) Representativeness of host state. Proposals from states that are most representative of the drinking water needs of small and rural communities or Indian Tribes in the surrounding region will be rated higher than proposals from less representative states.

(B2) Nature of problems experienced by water systems. Proposals from regions where the problems experienced or foreseen to be experienced by small and rural public water systems are more serious or fundamental will be rated higher than proposals from regions where the problems are less serious.

(C2) Experience. Proposals from institutions having access to greater experience in small water system technology management will be rated higher than those from institutions having access to less experience.

(D2) Dissemination capability. Proposals documenting greater capability to disseminate the results of small public water system technology and training programs will be rated higher than proposals documenting less capability.

(E2) Necessity and appropriateness of proposed projects. Higher ratings will be given to proposals whose projects clearly address well-documented needs, do not duplicate ongoing initiatives, enjoy broad support beyond the host institution, and most effectively leverage federal resources.

(F2) Regional support. Proposals, which have substantial clearly documented support beyond the host institution, will be rated more highly than those proposals having less documented support.

Finally, the Agency will consider one additional factor.

(A3) The Agency will assign extra-credit to otherwise good quality applicants who represent consortia of states with low population densities. Extra credit will take the form of a 25% increase in the applicants raw score, with the threshold rating for ''good quality'' to be recommended by the review panel after the consideration of the quantitative merits of all applications.

Timing of Awards

Grant awards will be made on or before September 30, 1998. EPA will move as expeditiously as possible to complete review of applications following June 8, 1998.

Dated: April 17, 1998.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–10857 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6003–3]

Request for Comment on Proposed Statement of Policy Regarding Spent Antifreeze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Comment on Proposed Statement of Policy.

SUMMARY: EPA is currently considering issuing a statement announcing that data available to the Agency indicates that spent antifreeze rarely fails the Toxicity Characteristic Leaching Procedure (TCLP) test. The TCLP is used for determining whether or not a secondary material that is a solid waste is subject to regulation as a hazardous waste by virtue of exhibiting a ''toxicity characteristic'' (TC). The purpose of such a statement and any supporting information would be to assist generators in determining whether their spent antifreeze exhibits a hazardous waste characteristic. In today's notice, EPA is providing the data and qualitative information that we would use to support such a finding. The public has 60 days from publication of this notice to comment on whether it is appropriate to issue this statement given the available data.

DATES: Comments are due by June 22, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–SAFA–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–SAFA–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD 703 412–3323.

For information on specific aspects of the supporting materials in the docket, contact Stephen A. Bergman, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308–7262, bergman.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice is also available in electronic format on the Internet. Follow these instructions to access the notice.

WWW: http://www.epa.gov/osw/hazwaste.htm#id
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this notice. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form.

Potential Policy

In 1995, the Antifreeze Coalition [1] requested that EPA, by rule, categorically exclude used antifreeze from either the definition of solid waste or the definition of hazardous waste. The Coalition argued that such a determination is justified by the diminimis potential for spent antifreeze to pose a hazard to the environment and that it would significantly encourage greater recycling of spent antifreeze. As part of its effort to demonstrate to the Agency that it is inappropriate to regulate spent antifreeze as a hazardous waste under RCRA, the Coalition has provided the Office of Solid Waste (OSW) with both quantitative and qualitative information indicating that spent antifreeze rarely fails the TC for lead. The Coalition also has provided information on various changes in radiator technology that greatly reduce the chance that spent antifreeze would fail the TC for lead. The Coalition believes that the available data supports this conclusion.

Spent antifreeze that does not fail the TC for lead would not be regulated by EPA as a hazardous waste. This would be true unless some other constituent of concern is present that is not normally found in spent antifreeze or some other factor causes the spent antifreeze to meet the definition of hazardous waste. OSW has reviewed all of the existing data submitted to EPA in order to make a determination as to whether spent antifreeze fails the TCLP for lead and therefore meets the RCRA definition of hazardous waste. Of course, states authorized to implement the RCRA program may be more stringent than the federal program and therefore may regulate spent antifreeze as a hazardous waste even if it does not fail the TCLP for lead.

Although the Antifreeze Coalition has requested that EPA exclude spent antifreeze from the definition of solid waste or the definition of hazardous waste by rule, the Agency is not convinced that the expenditure of resources and time on a rulemaking is appropriate or necessary in this case. EPA believes that a statement of policy should be sufficient to address questions regarding the status of spent antifreeze. Based upon our review of the data in the docket, OSW has determined that it is appropriate to issue a statement announcing that data available to EPA indicate that spent antifreeze rarely fails the TC for lead. The information provided by the Antifreeze Coalition also indicates a trend away from the use of lead in the manufacture of radiators, thus decreasing the chance in the future that lead will be present in spent antifreeze at levels that would render the antifreeze hazardous.

The effect of an EPA statement on this issue (unless EPA receives comment on

[1] The Antifreeze Coalition is a group of trade associations representing antifreeze manufacturers, suppliers, distributors, recyclers, and businesses that service motor vehicle cooling systems. Most of these trade associations predominantly represent small businesses.

this notice that convinces us that our present evaluation is incorrect) would be to assist the industry in making a determination (as is required under 40 CFR 262.11(c)), on whether the spent antifreeze it generates exhibits a hazardous waste characteristic. Under § 262.11(c) the generator may either test the waste or rely upon its knowledge of the waste in light of the materials or processes used to make a determination as to whether it meets the definition of a hazardous waste. EPA's statement on this issue would assist the generators by directing them to a compilation of data which they could rely on or give weight to when making their hazardous waste determination. Although EPA believes that generators will find that spent antifreeze rarely fails the TC for lead and is therefore not a hazardous waste, there may be factors (e.g., spent antifreeze from an old vehicle that has not had the antifreeze changed for many years) known to the generator that increase the likelihood that a particular sample may be more likely to fail the TC than the spent antifreeze that is typically generated. The generator is responsible for taking such factors into account. Of course, a statement by EPA that antifreeze rarely fails the TC would not absolve generators of spent antifreeze from their obligation to make a correct § 262.11(c) determination.

The Agency is seeking comment on whether the information we are providing today supports a claim that spent antifreeze rarely fails the TC for lead. We are also seeking any additional data on the composition of spent antifreeze, particularly as they pertain to lead content. EPA is also seeking comment on whether we have properly limited the scope of our evaluation to the presence of lead in spent antifreeze, or whether there are other constituents of concern commonly present in spent antifreeze that would render it a hazardous waste under RCRA. Finally, the Agency solicits information on changes in automotive radiator manufacture that reduce or eliminate concerns about lead.

The information in the docket for today's notice falls into three main categories. The first of these is the TCLP data. We have included raw data submitted to the Agency by both Safety-Kleen and the Dames & Moore antifreeze study (conducted for the New Jersey Automobile Dealers Association). The raw data were organized and analyzed by Science Applications International Corporation (SAIC), an EPA contractor. The July 22, 1997 SAIC report in the docket is an analysis of the data contained in today's notice. The two spreadsheets of data that were prepared by SAIC and used to draft their report are also included. One contains raw data with no calculations. The other is sorted by constituent and concentration value. The Antifreeze Coalition also provided a summary and discussion of the data evaluated in the SAIC report and included in the docket for this notice. In addition to the data from Safety-Kleen, we have included a number of letters from Safety-Kleen and others that endeavor to put the data in its proper context. The Dames & Moore report, which concluded based on its data that ''antifreeze analyses indicate that antifreeze collected directly from automobiles lacks the characteristics of a hazardous waste,'' (p.7) is also included in the data portion of the documents placed in the docket for today's notice. The report represents a cross-section of the antifreeze used in automobiles. Spent antifreeze was collected from a variety of dealerships, including large, multi-brand dealerships. Based on consultations with the New Jersey Department of Environmental Protection and Energy, nine dealerships were chosen to participate in the study.

In addition to the TCLP data and analyses, the docket includes qualitative information provided to EPA by the Antifreeze Coalition. These documents include information on radiator technology and on the manner in which spent antifreeze is managed. Included in this category are the ''Voluntary Management Standards for Used Antifreeze Generator Facilities'' prepared by the Antifreeze Coalition. Although not legally binding, these are practices that the Coalition supports to promote the environmentally sound recycling of spent antifreeze. Although this document does address whether spent antifreeze fails the TC for lead, it is useful as background material to anyone desiring a broader understanding of how this material is managed and the industry's efforts to promote environmentally sound recycling. EPA strongly supports environmental sound recycling as the preferred method for managing spent antifreeze.

The Antifreeze Coalition documents also contain considerable information concerning changes in the manufacture of radiators. As stated above, EPA believes the trends in radiator manufacturing substantially diminish the likelihood that spent antifreeze will contain lead in levels that would fail the TC.

Documents pertaining to ethylene glycol comprise the third category into which the documents in the docket for today's notice fall. These are assorted letters and memoranda pertaining to whether or not there is a risk posed by ethylene glycol. There is also general discussion of the regulation of ethylene glycol-based antifreeze which, although not relevant to whether spent antifreeze fails the TC, may be useful as background information on the properties of spent antifreeze.

OSW will evaluate and thoroughly consider all of the comments we receive on this notice during the 60 day comment period prior to making a final decision on this issue.

Dated: April 9, 1998.

Matt Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98–10865 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6001–5]

National Environmental Justice Advisory Council; Notification of Meeting and Public Comment Period(s); Open Meetings

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC) along with the subcommittees will meet on the dates and times described below. All times noted are Pacific Daylight Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are *not* available from the NEJAC. The NEJAC and subcommittee meetings will take place at the Oakland Marriott City Center, 1001 Broadway, Oakland, California 94607, phone: 510/451–4000. The meeting dates are May 31, 1998 through June 3, 1998.

The NEJAC meeeting will begin Sunday, May 31 with a bus tour of local environmental justice sites and a community poster session from 12:00 p.m. to 4:30 p.m. Public comment periods are scheduled for Sunday, May 31 from 6:00 p.m. to 9:00 p.m. and Monday, June 1 from 1:30 p.m. to 4:30 p.m., and 6:00 p.m. to 9:00 p.m. The full NEJAC will convene Monday, June 1 from 9:00 a.m. to 12:00 p.m., and on Wednesday, June 3 from 9:00 a.m. to 6:00 p.m. to follow-up on pending items from the previous NEJAC meeting, to discuss the creation of the new Air and Water Subcommittee, and to address several new business interest items. The

subcommittees of the NEJAC will meet Tuesday, June 2 from 8:30 a.m. to 6:30 p.m. Any member of the public wishing additional information on the subcommittee meetings should contact the specific Designated Federal Official at the telephone number listed below.

Sub-committee	Federal official and telephone No.
Enforcement.	Ms. Sherry Milan –202/564–2619.
Health and Research.	Mr. Lawrence Martin –202/564–6497.
	Ms. Carol Christensen –202/260–2301.
International.	Ms. Wendy Graham –202/564–6602.
Indigenous Peoples.	Mr. Danny Gogal –202/564–2576.
Public Participation.	Ms. Renee Goins –202/564–2598.
Waste/Facility Siting.	Mr. Kent Benjamin –202/260–2822.

Members of the public who wish to present materials during the community poster session or participate in one of the public comment periods should register to do so by May 1. Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. If you wish to submit written comments of any length (at least 50 copies), they should also be received by May 1. Comments received after that date will be provided to the Council as logistics allow. Correspondence concerning comments, poster sessions, or registration should be sent to Tama Clare of Tetra Tech Environmental Management, Inc. at: 1593 Spring Hill Road, Suite 300, Vienna, VA 21882, phone: 703/287–8880 or fax: 703/287–8843. Hearing impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, may make appropriate arrangements using these numbers also. In addition, NEJAC offers a toll-free Registration Hotline at 888/335–4299. For on-line registration, you may visit the internet site: http://www.ttemi.com.nejac.

Dated: April 15, 1998.

Linda K. Smith,

Acting Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 98–10859 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[TRL–6000–7]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding City of Manhattan, KS

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of proposed sdministrative penalty sssessment and opportunity to comment regarding City of Manhattan, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On April 1, 1998, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following complaint:

In the Matter of, the City of Manhattan, Kansas; CWA Docket No. VII–98–W–0015.

The Complaint proposes a penalty of One Hundred Thirty-Seven Thousand Five Hundred Dollars ($137,500) for failure to comply with certain requirements of the sludge program, including monitoring, recordkeeping, reporting and application limitations in violation of Section 405 of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the City of Manhattan, Kansas is available as part of the administrative record subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: April 7, 1998.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 98–10719 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6001–6]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed assessment of Clean Water Act Class I Administrative Penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty in a ''Class I'' administrative penalty proceeding. Class I proceedings under section 309(g) are conducted in accordance with the proposed Consolidated Rules of Practice Governing the Administrative

Assessment of Civil Penalties, published at 63 FR 9464 (February 25, 1998).

EPA is providing notice of the following proposed Class I penalty proceeding initiated by the Water Management Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105:

In the Matter of Phelps Dodge Morenci, Inc., Docket No. CWA–IX–FY98–07, filed March 17, 1998; proposed penalty, $12,500; for unauthorized discharges to Chase Creek on August 13 and 14, 1996, at the Morenci Mine near Morenci, AZ.

Procedures by which the public may comment on a proposed Class I penalty or participate in a Class I penalty proceeding are set forth in the proposed Consolidated Rules. The deadline for submitting public comment on a proposed Class I penalty is thirty days after issuance of public notice. The Regional Administrator of EPA, Region 9 may issue an order upon default if the respondent in the proceeding fails to file a response within the time period specified in the proposed Consolidated Rules.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the proposed Consolidated Rules, review the complaint, proposed consent order, or other documents filed in this proceeding, comment upon the proposed penalty, or participate in any hearing that may be held, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in this proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty days after issuance of this notice.

Dated: April 9, 1998.

Mike Schultz,

Acting Director, Water Division.

[FR Doc. 98–10860 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 63 Fed. Reg. 17417, April 9, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 P.M. (Eastern Time) Tuesday, April 21, 1998.

CHANGE IN THE MEETING: The Closed portion of the meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: April 21, 1998.

This Notice Issued April 21, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–10950 Filed 4–21–98; 12:55 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

April 16, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 26, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0004.

Title: Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (Second Memorandum Opinion and Order), ET Docket No. 93–62.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal governments.

Number of Respondents: 126,108.

Estimated Time Per Response: 2 hours average time per response. This time will vary with the number of transmitters considered, e.g., a site with a single transmitter might require one hour to determine compliance, while a site with many co-located transmitters may require considerably more time.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $3,115,000.

Total Annual Burden: 223,376 hours.

Needs and Uses: This information collection is a result of responsibility placed on the FCC by the National Environmental Policy Act (NEPA), of 1969. NEPA requires that each federal agency evaluate the impact of ''major actions significantly affecting the quality of the human environment.'' It is the FCC's opinion that this is the most efficient and reasonable method of complying with NEPA with regard to the environmental issue of radiofrequency radiation from FCC-regulated transmitters.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–10776 Filed 4–22–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: 98–10197.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, April 21, 1998, 10:00 a.m., Meeting closed to the public.

This meeting was canceled.

DATE AND TIME: Tuesday, April 28, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, April 19, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION: Who Qualifies as a ''Member'' of a Membership Association.

Federal Election Commission, Sunshine Act Notices for Meetings of April 28, 29, and 30, 1998.

DATE AND TIME: Thursday, April 30, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1998–6: Bacardi-Martini, USA, Inc. by counsel, Bobby R. Burchfield.

Soft Money: Revised Draft Notice of Proposed Rulemaking.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–10934 Filed 4–21–98; 11:44 am]

BILLING CODE 6715–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Statement of policy.

SUMMARY: The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively referred to as the agencies), under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have approved the Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities (1998 Statement) which provides guidance on sound practices for managing the risks of investment activities. By this issuance of the 1998 Statement, the agencies have rescinded the Supervisory Policy Statement on Securities Activities published on February 3, 1992 (1992 Statement). Many elements of that prior statement are retained in the 1998 Statement, while other elements have been revised or eliminated. In adopting the 1998 Statement, the agencies are removing the specific constraints in the 1992 Statement concerning investments by insured depository institutions in ''high risk'' mortgage derivative products. The agencies believe that it is a sound practice for institutions to understand the risks related to all their investment holdings. Accordingly, the 1998 Statement substitutes broader guidance than the specific pass/fail requirements contained in the 1992 Statement. Other than for the supervisory guidance contained in the 1992 Statement, the 1998 Statement does not supersede any other requirements of the respective agencies' statutory rules, regulations, policies, or supervisory guidance. Because the 1998 Statement does not retain the elements of the 1992 Statement addressing the reporting of securities activities (Section II of the 1992 Statement), the agencies intend to separately issue supervisory guidance on the reporting of investment securities and end-user derivatives activities. Each agency may issue additional guidance to assist institutions in the implementation of this statement.

EFFECTIVE DATE: May 26, 1998.

FOR FURTHER INFORMATION CONTACT:

FRB: James Embersit, Manager, Capital Markets, (202) 452–5249, Charles Holm, Manager, Accounting Policy and Disclosure (202) 452–3502, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: William A. Stark, Assistant Director, (202) 898–6972, Miguel D. Browne, Manager, (202) 898–6789, John J. Feid, Chief, Risk Management, (202) 898–8649, Lisa D. Arquette, Senior Capital Markets Specialist, (202) 898–8633, Division of Supervision; Michael B. Phillips, Counsel, (202) 898–3581, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OCC: Kurt Wilhelm, National Bank Examiner, (202) 874–5670, J. Ray Diggs, National Bank Examiner, (202) 874–5670, Treasury and Market Risk; Mark J. Tenhundfeld, Assistant Director, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Robert A. Kazdin, Senior Project Manager, (202) 906–5759, Anthony G. Cornyn, Director, (202) 906–5727, Risk Management; Vern McKinley, Senior Attorney, (202) 906–6241, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

NCUA: Daniel Gordon, Senior Investment Officer, (703) 518–6360, Office of Investment Services; Michael McKenna, Attorney, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: In 1992, the agencies implemented the FFIEC's Supervisory Policy Statement on Securities Activities (57 FR 4028, February 3, 1992). The 1992 Statement addressed: (1) selection of securities dealers, (2) portfolio policy and strategies (including unsuitable investment practices), and (3) residential mortgage derivative products (MDPs).

The final section of the 1992 Statement directed institutions to subject MDPs to supervisory tests to determine the degree of risk and the investment portfolio eligibility of these instruments. At that time, the agencies believed that many institutions had demonstrated an insufficient understanding of the risks associated with investments in MDPs. This occurred, in part, because most MDPs were issued or backed by collateral guaranteed by government sponsored enterprises. The agencies were concerned that the absence of significant credit risk on most MDPs had allowed institutions to overlook the significant interest rate risk present in certain structures of these instruments. In an effort to enhance the investment decision making process at financial institutions, and to emphasize the interest rate risk of highly price sensitive instruments, the agencies implemented supervisory tests designed

to identify those MDPs with price and average life risks greater than a newly issued residential mortgage pass-through security.

These supervisory tests provided a discipline that helped institutions to better understand the risks of MDPs prior to purchase. The 1992 Statement generally provided that institutions should not hold high risk MDPs in their investment portfolios.[1] A high risk MDP was defined as a mortgage derivative security that failed any of three supervisory tests. The three tests included: an average life test, an average life sensitivity test, and a price sensitivity test.[2]

These supervisory tests, commonly referred to as the ''high risk tests,'' successfully protected institutions from significant losses in MDPs. By requiring a pre-purchase price sensitivity analysis that helped institutions to better understand the interest rate risk of MDPs, the high risk tests effectively precluded institutions from investing in many types of MDPs that resulted in large losses for other investors. However, the high risk tests may have created unintended distortions of the investment decision making process. Many institutions eliminated all MDPs from their investment choices, regardless of the risk versus return merits of such instruments. These reactions were due, in part, to concerns about regulatory burden, such as higher than normal examiner review of MDPs. By focusing only on MDPs, the test and its accompanying burden indirectly provided incentives for institutions to acquire other types of securities with complex cash flows, often with price sensitivities similar to high risk MDPs. The emergence of the structured note market is just one example. The test may have also created the impression that supervisors were more concerned with the type of instrument involved (i.e., residential mortgage products), rather than the risk characteristics of the instrument, since only MDPs were subject to the high risk test. The specification of tests on individual securities may have removed the incentive for some institutions to apply more comprehensive analytical techniques at the portfolio and institutional level.

As a result, the agencies no longer believe that the pass/fail criteria of the high risk tests as applied to specific instruments constitutes effective supervision of investment activities. The agencies believe that an effective risk management program, through which an institution identifies, measures, monitors, and controls the risks of investment activities, provides a better framework. Hence, the agencies are eliminating the high risk tests as binding constraints on MDP purchases in the 1998 Statement.

Effective risk management addresses risks across all types of instruments on an investment portfolio basis and ideally, across the entire institution. The complexity of many financial products, both on and off the balance sheet, has increased the need for a more comprehensive approach to the risk management of investment activities.

The rescission of the high risk tests as a constraint on an institution's investment activities does not signal that MDPs with high levels of price risk are either appropriate or inappropriate investments for an institution. Whether a security, MDP or otherwise, is an appropriate investment depends upon a variety of factors, including the institution's capital level, the security's impact on the aggregate risk of the portfolio, and management's ability to measure and manage risk. The agencies continue to believe that the stress testing of MDP investments, as well as other investments, has significant value for risk management purposes. Institutions should employ valuation methodologies that take into account all of the risk elements necessary to price these investments. The 1998 Statement states that the agencies believe, as a matter of sound practice, institutions should know the value and price sensitivity of their investments prior to purchase and on an ongoing basis.

Summary of Comments

The 1998 Statement was published for comment in the **Federal Register** of October 3, 1997 (62 FR 51862). The FFIEC received twenty-one comment letters from a variety of insured depository institutions, trade associations, Federal Reserve Banks, and financial services organizations. Overall, the comments were supportive of the 1998 Statement. The comments generally approved of: (i) the rescission of the high risk test as a constraint on investment choices in the 1992 Statement; (ii) the establishment by institutions of programs to manage market, credit, liquidity, legal, operational, and other risks of investment securities and end-user derivatives activities; (iii) the implementation of sound risk management programs that would include certain board and senior management oversight and a comprehensive risk management process that effectively identifies, measures, monitors, and controls risks; and (iv) the evaluation of investment decisions at the portfolio or institution level, instead of the focus of the 1992 Statement on limiting an institution's investment decisions concerning specific securities instruments.

The following discussion provides a summary of significant concerns or requests for clarifications that were presented in the aforementioned comments.

1. Scope

The guidance covers a broad range of instruments including all securities in held-to-maturity and available-for-sale accounts as defined in the Statement of Financial Accounting Standards No.115 (FAS 115), certificates of deposit held for investment purposes, and end-user derivative contracts not held in trading accounts.

Some comments focused on the 1998 Statement's coverage of ''end-user derivative contracts not held in trading accounts.'' According to these comments, the 1998 Statement appears to cover derivative contracts not traditionally viewed as investments including: (i) Swap contracts entered into when the depository institution makes a fixed rate loan but intends to change the income stream from a fixed to floating rate, (ii) swap contracts that convert the interest rates on certificates of deposit from fixed to floating rates of interest, and (iii) swap contracts used for other asset-liability management purposes. Those commenters objected to the necessity of additional guidance for end-user derivatives contracts given current regulatory guidance issued by the agencies with respect to derivative contracts.

The guidance contained in the 1998 Statement is consistent with existing agency guidance. The agencies believe that institutions should have programs to manage the market, credit, liquidity, legal, operational, and other risks of both investment securities and end-user derivative activities. Given the similarity of the risks in those activities and the similarity of the programs needed to manage those risks, especially when end-user derivatives are used as investment vehicles, the agencies believe that covering both activities

[1] The only exceptions granted were for those high risk securities that either reduced interest rate risk or were placed in a trading account. Federal credit unions were not permitted these exceptions.

[2] Average Life: Weighted average life of no more than 10 years; Average Life Sensitivity: (a) weighted average life extends by not more than 4 years (300 basis point parallel shift in rates), (b) weighted average life shortens by no more than 6 years (300 basis point parallel shift in rates); Price Sensitivity: price does not change by more than 17 percent (increase or decrease) for a 300 basis point parallel shift in rates.

within the scope of the 1998 Statement is appropriate.

2. Board Oversight

Some commenters stated that the 1998 Statement places excessive obligations on the board of directors. Specifically, comments indicated that it is unnecessary for an institution's board of directors to: (i) Set limits on the amounts and types of transactions authorized for each securities firm with whom the institution deals, or (ii) review and reconfirm the institution's list of authorized dealers, investment bankers, and brokers at least annually. These commenters suggested that it may be unnecessary for the board—particularly for larger institutions—to review and specifically authorize each dealer. They indicated that it should be sufficient for senior management to ensure that the selection of securities firms is consistent with board approved policies, and that establishment of limits for each dealer is a credit decision that should be issued pursuant to credit policies.

The agencies believe that the board of directors is responsible for supervision and oversight of investment portfolio and end-user derivatives activities, including the approval and periodic review of policies that govern relationships with securities dealers. Especially with respect to the management of the credit risk of securities settlements, the agencies encourage the board of directors or a subcommittee chaired by a director to actively participate in the credit decision process. The agencies understand that institutions will have various approaches to the credit decision process, and therefore that the board of directors may delegate the authority for selecting dealers and establishing dealer limits to senior management. The text of the 1998 Statement has been amended to clarify the obligation of the board of directors.

3. Pre-Purchase Analysis

The majority of the commenters were in full support of eliminating the specific constraints on investing in ''high risk'' MDPs. Some commenters expressed opposition with respect to the 1998 Statement's guidance concerning pre-purchase analysis by institutions of their investment securities. Those commenters felt that neither pre-acquisition stress testing nor any specific stress testing methodology should be required for individual investment decisions. Some commenters involved in the use of securities for collateral purposes emphasized the benefits of pre-and post-purchase stress testing of individual securities.

The agencies wish to stress that institutions should have policies designed to meet the business needs of the institution. These policies should specify the types of market risk analyses that should be conducted for various types of instruments, including that conducted prior to their acquisition and on an ongoing basis. In addition, policies should specify any required documentation needed to verify the analysis. Such analyses will vary with the type of investment instrument.

As stated in Section V of the 1998 Statement, not all investment instruments need to be subjected to a pre-purchase analysis. Relatively simple or standardized instruments, the risks of which are well known to the institution, would likely require no or significantly less analysis than would more volatile, complex instruments. For relatively more complex instruments, less familiar instruments, and potentially volatile instruments, institutions should fully address pre-purchase analysis in their policies. In valuing such investments, institutions should ensure that the pricing methodologies used appropriately consider all risks (for example, caps and floors in adjustable-rate instruments). Moreover, the agencies do not believe that an institution should be prohibited from making an investment based solely on whether that instrument has a high price sensitivity.

4. Identification, Measurement, and Reporting of Risks

Some commenters questioned whether proposed changes by the agencies concerning Schedule RC–B of the Consolidated Reports of Condition and Income (''Call Reports'') conflicted with the 1998 Statement's elimination of the high risk test for mortgage derivative products. The proposed changes to the Call Reports would require the disclosure of mortgage-backed and other securities whose price volatility in response to specific interest rate changes exceeds a specified threshold level. (*See* 62 FR 51715, October 2, 1997.)

The banking agencies have addressed the concerns presented in these comments within the normal process for changing the Call Reports. For the 1998 Call report cycle, there will be no changes to the high risk test reporting requirement in the Call Reports.

5. Market Risk

One commenter suggested that the agencies enhance the 1998 Statement by discussing and endorsing the concept of total return. The agencies agree that the concept of total return can be a useful way to analyze the risk and return tradeoffs for an investment. This is because the analysis does not focus exclusively on the stated yield to maturity. Total return analysis, which includes income and price changes over a specified investment horizon, is similar to stress test analysis since both examine a security under various interest rate scenarios. The agencies' supervisory emphasis on stress testing securities has, in fact, implicitly considered total return. Therefore, the agencies endorse the use of total return analysis as a useful supplement to price sensitivity analysis for evaluating the returns for an individual security, the investment portfolio, or the entire institution.

6. Measurement System

One respondent stated that the complexity and sophistication of the risk measurement system should not be a factor in determining whether pre- and post-acquisition measurement of interest rate risk should be performed at the individual investment level or on an institutional or portfolio basis. The agencies agree that this statement may be confusing and are amending the Market Risk section.

The text of the statement of policy follows.

Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities

I. Purpose

This policy statement (Statement) provides guidance to financial institutions (institutions) on sound practices for managing the risks of investment securities and end-user derivatives activities.[3] The FFIEC agencies—the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration—believe that effective management of the risks associated with securities and derivative instruments represents an essential component of safe and sound practices. This guidance describes the practices that a prudent manager normally would follow and is not intended to be a checklist. Management should establish practices and maintain documentation appropriate to the institution's

[3] The 1998 Statement does not supersede any other requirements of the respective agencies' statutory rules, regulations, policies, or supervisory guidance.

individual circumstances, consistent with this Statement.

II. Scope

This guidance applies to all securities in held-to-maturity and available-for-sale accounts as defined in the Statement of Financial Accounting Standards No.115 (FAS 115), certificates of deposit held for investment purposes, and end-user derivative contracts not held in trading accounts. This guidance covers all securities used for investment purposes, including: money market instruments, fixed-rate and floating-rate notes and bonds, structured notes, mortgage pass-through and other asset-backed securities, and mortgage-derivative products. Similarly, this guidance covers all end-user derivative instruments used for nontrading purposes, such as swaps, futures, and options.[4] This Statement applies to all federally-insured commercial banks, savings banks, savings associations, and federally chartered credit unions.

As a matter of sound practice, institutions should have programs to manage the market, credit, liquidity, legal, operational and other risks of investment securities and end-user derivatives activities (investment activities). While risk management programs will differ among institutions, there are certain elements that are fundamental to all sound risk management programs. These elements include board and senior management oversight and a comprehensive risk management process that effectively identifies, measures, monitors, and controls risk. This Statement describes sound principles and practices for managing and controlling the risks associated with investment activities.

Institutions should fully understand and effectively manage the risks inherent in their investment activities. Failure to understand and adequately manage the risks in these areas constitutes an unsafe and unsound practice.

III. Board and Senior Management Oversight

Board of director and senior management oversight is an integral part of an effective risk management program. The board of directors is responsible for approving major policies for conducting investment activities, including the establishment of risk limits. The board should ensure that management has the requisite skills to manage the risks associated with such activities. To properly discharge its oversight responsibilities, the board should review portfolio activity and risk levels, and require management to demonstrate compliance with approved risk limits. Boards should have an adequate understanding of investment activities. Boards that do not, should obtain professional advice to enhance its understanding of investment activity oversight, so as to enable it to meet its responsibilities under this Statement.

Senior management is responsible for the daily management of an institution's investments. Management should establish and enforce policies and procedures for conducting investment activities. Senior management should have an understanding of the nature and level of various risks involved in the institution's investments and how such risks fit within the institution's overall business strategies. Management should ensure that the risk management process is commensurate with the size, scope, and complexity of the institution's holdings. Management should also ensure that the responsibilities for managing investment activities are properly segregated to maintain operational integrity. Institutions with significant investment activities should ensure that back-office, settlement, and transaction reconciliation responsibilities are conducted and managed by personnel who are independent of those initiating risk taking positions.

IV. Risk Management Process

An effective risk management process for investment activities includes: (1) policies, procedures, and limits; (2) the identification, measurement, and reporting of risk exposures; and (3) a system of internal controls.

Policies, Procedures, and Limits

Investment policies, procedures, and limits provide the structure to effectively manage investment activities. Policies should be consistent with the organization's broader business strategies, capital adequacy, technical expertise, and risk tolerance. Policies should identify relevant investment objectives, constraints, and guidelines for the acquisition and ongoing management of securities and derivative instruments. Potential investment objectives include: generating earnings, providing liquidity, hedging risk exposures, taking risk positions, modifying and managing risk profiles, managing tax liabilities, and meeting pledging requirements, if applicable. Policies should also identify the risk characteristics of permissible investments and should delineate clear lines of responsibility and authority for investment activities.

An institution's management should understand the risks and cashflow characteristics of its investments. This is particularly important for products that have unusual, leveraged, or highly variable cashflows. An institution should not acquire a material position in an instrument until senior management and all relevant personnel understand and can manage the risks associated with the product.

An institution's investment activities should be fully integrated into any institution-wide risk limits. In so doing, some institutions rely only on the institution-wide limits, while others may apply limits at the investment portfolio, sub-portfolio, or individual instrument level.

The board and senior management should review, at least annually, the appropriateness of its investment strategies, policies, procedures, and limits.

Risk Identification, Measurement and Reporting

Institutions should ensure that they identify and measure the risks associated with individual transactions prior to acquisition and periodically after purchase. This can be done at the institutional, portfolio, or individual instrument level. Prudent management of investment activities entails examination of the risk profile of a particular investment in light of its impact on the risk profile of the institution. To the extent practicable, institutions should measure exposures to each type of risk and these measurements should be aggregated and integrated with similar exposures arising from other business activities to obtain the institution's overall risk profile.

In measuring risks, institutions should conduct their own in-house pre-acquisition analyses, or to the extent possible, make use of specific third party analyses that are independent of the seller or counterparty. Irrespective of any responsibility, legal or otherwise, assumed by a dealer, counterparty, or financial advisor regarding a transaction, the acquiring institution is ultimately responsible for the appropriate personnel understanding and managing the risks of the transaction.

Reports to the board of directors and senior management should summarize the risks related to the institution's investment activities and should address compliance with the investment policy's objectives, constraints, and

[4] Natural person federal credit unions are not permitted to purchase non-residential mortgage asset-backed securities and may participate in derivative programs only if authorized by the NCUA.

legal requirements, including any exceptions to established policies, procedures, and limits. Reports to management should generally reflect more detail than reports to the board of the institution. Reporting should be frequent enough to provide timely and adequate information to judge the changing nature of the institution's risk profile and to evaluate compliance with stated policy objectives and constraints.

Internal Controls

An institution's internal control structure is critical to the safe and sound functioning of the organization generally and the management of investment activities in particular. A system of internal controls promotes efficient operations, reliable financial and regulatory reporting, and compliance with relevant laws, regulations, and institutional policies. An effective system of internal controls includes enforcing official lines of authority, maintaining appropriate separation of duties, and conducting independent reviews of investment activities.

For institutions with significant investment activities, internal and external audits are integral to the implementation of a risk management process to control risks in investment activities. An institution should conduct periodic independent reviews of its risk management program to ensure its integrity, accuracy, and reasonableness. Items that should be reviewed include:

(1) Compliance with and the appropriateness of investment policies, procedures, and limits;

(2) The appropriateness of the institution's risk measurement system given the nature, scope, and complexity of its activities;

(3) The timeliness, integrity, and usefulness of reports to the board of directors and senior management.

The review should note exceptions to policies, procedures, and limits and suggest corrective actions. The findings of such reviews should be reported to the board and corrective actions taken on a timely basis.

The accounting systems and procedures used for public and regulatory reporting purposes are critically important to the evaluation of an organization's risk profile and the assessment of its financial condition and capital adequacy. Accordingly, an institution's policies should provide clear guidelines regarding the reporting treatment for all securities and derivatives holdings. This treatment should be consistent with the organization's business objectives, generally accepted accounting principles (GAAP), and regulatory reporting standards.

V. The Risks of Investment Activities

The following discussion identifies particular sound practices for managing the specific risks involved in investment activities. In addition to these sound practices, institutions should follow any specific guidance or requirements from their primary supervisor related to these activities.

Market Risk

Market risk is the risk to an institution's financial condition resulting from adverse changes in the value of its holdings arising from movements in interest rates, foreign exchange rates, equity prices, or commodity prices. An institution's exposure to market risk can be measured by assessing the effect of changing rates and prices on either the earnings or economic value of an individual instrument, a portfolio, or the entire institution. For most institutions, the most significant market risk of investment activities is interest rate risk.

Investment activities may represent a significant component of an institution's overall interest rate risk profile. It is a sound practice for institutions to manage interest rate risk on an institution-wide basis. This sound practice includes monitoring the price sensitivity of the institution's investment portfolio (changes in the investment portfolio's value over different interest rate/yield curve scenarios). Consistent with agency guidance, institutions should specify institution-wide interest rate risk limits that appropriately account for these activities and the strength of the institution's capital position. These limits are generally established for economic value or earnings exposures. Institutions may find it useful to establish price sensitivity limits on their investment portfolio or on individual securities. These sub-institution limits, if established, should also be consistent with agency guidance.

It is a sound practice for an institution's management to fully understand the market risks associated with investment securities and derivative instruments prior to acquisition and on an ongoing basis. Accordingly, institutions should have appropriate policies to ensure such understanding. In particular, institutions should have policies that specify the types of market risk analyses that should be conducted for various types or classes of instruments, including that conducted prior to their acquisition (pre-purchase analysis) and on an ongoing basis. Policies should also specify any required documentation needed to verify the analysis.

It is expected that the substance and form of such analyses will vary with the type of instrument. Not all investment instruments may need to be subjected to a pre-purchase analysis. Relatively simple or standardized instruments, the risks of which are well known to the institution, would likely require no or significantly less analysis than would more volatile, complex instruments.[5]

§ 703.90. Sec 62 FR 32989 (June 18, 1997).

For relatively more complex instruments, less familiar instruments, and potentially volatile instruments, institutions should fully address pre-purchase analyses in their policies. Price sensitivity analysis is an effective way to perform the pre-purchase analysis of individual instruments. For example, a pre-purchase analysis should show the impact of an immediate parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. Where appropriate, such analysis should encompass a wider range of scenarios, including non-parallel changes in the yield curve. A comprehensive analysis may also take into account other relevant factors, such as changes in interest rate volatility and changes in credit spreads.

When the incremental effect of an investment position is likely to have a significant effect on the risk profile of the institution, it is a sound practice to analyze the effect of such a position on the overall financial condition of the institution.

Accurately measuring an institution's market risk requires timely information about the current carrying and market values of its investments. Accordingly, institutions should have market risk measurement systems commensurate with the size and nature of these investments. Institutions with significant holdings of highly complex instruments should ensure that they have the means to value their positions. Institutions employing internal models should have adequate procedures to validate the models and to periodically review all elements of the modeling process, including its assumptions and risk measurement techniques. Managements relying on third parties for market risk measurement systems and analyses should ensure that they fully understand the assumptions and techniques used.

[5] Federal credit unions must comply with the investment monitoring requirements of 12 C.F.R. § 703.90. *See* 62 FR 32989 (June 18, 1997).

Institutions should provide reports to their boards on the market risk exposures of their investments on a regular basis. To do so, the institution may report the market risk exposure of the whole institution. Alternatively, reports should contain evaluations that assess trends in aggregate market risk exposure and the performance of portfolios in terms of established objectives and risk constraints. They also should identify compliance with board approved limits and identify any exceptions to established standards. Institutions should have mechanisms to detect and adequately address exceptions to limits and guidelines. Management reports on market risk should appropriately address potential exposures to yield curve changes and other factors pertinent to the institution's holdings.

Credit Risk

Broadly defined, credit risk is the risk that an issuer or counterparty will fail to perform on an obligation to the institution. For many financial institutions, credit risk in the investment portfolio may be low relative to other areas, such as lending. However, this risk, as with any other risk, should be effectively identified, measured, monitored, and controlled.

An institution should not acquire investments or enter into derivative contracts without assessing the creditworthiness of the issuer or counterparty. The credit risk arising from these positions should be incorporated into the overall credit risk profile of the institution as comprehensively as practicable. Institutions are legally required to meet certain quality standards (i.e., investment grade) for security purchases. Many institutions maintain and update ratings reports from one of the major rating services. For non-rated securities, institutions should establish guidelines to ensure that the securities meet legal requirements and that the institution fully understands the risk involved. Institutions should establish limits on individual counterparty exposures. Policies should also provide credit risk and concentration limits. Such limits may define concentrations relating to a single or related issuer or counterparty, a geographical area, or obligations with similar characteristics.

In managing credit risk, institutions should consider settlement and pre-settlement credit risk. These risks are the possibility that a counterparty will fail to honor its obligation at or before the time of settlement. The selection of dealers, investment bankers, and brokers is particularly important in effectively managing these risks. The approval process should include a review of each firm's financial statements and an evaluation of its ability to honor its commitments. An inquiry into the general reputation of the dealer is also appropriate. This includes review of information from state or federal securities regulators and industry self-regulatory organizations such as the National Association of Securities Dealers concerning any formal enforcement actions against the dealer, its affiliates, or associated personnel.

The board of directors is responsible for supervision and oversight of investment portfolio and end-user derivatives activities, including the approval and periodic review of policies that govern relationships with securities dealers.

Sound credit risk management requires that credit limits be developed by personnel who are as independent as practicable of the acquisition function. In authorizing issuer and counterparty credit lines, these personnel should use standards that are consistent with those used for other activities conducted within the institution and with the organization's over-all policies and consolidated exposures.

Liquidity Risk

Liquidity risk is the risk that an institution cannot easily sell, unwind, or offset a particular position at a fair price because of inadequate market depth. In specifying permissible instruments for accomplishing established objectives, institutions should ensure that they take into account the liquidity of the market for those instruments and the effect that such characteristics have on achieving their objectives. The liquidity of certain types of instruments may make them inappropriate for certain objectives. Institutions should ensure that they consider the effects that market risk can have on the liquidity of different types of instruments under various scenarios. Accordingly, institutions should articulate clearly the liquidity characteristics of instruments to be used in accomplishing institutional objectives.

Complex and illiquid instruments can often involve greater risk than actively traded, more liquid securities. Oftentimes, this higher potential risk arising from illiquidity is not captured by standardized financial modeling techniques. Such risk is particularly acute for instruments that are highly leveraged or that are designed to benefit from specific, narrowly defined market shifts. If market prices or rates do not move as expected, the demand for such instruments can evaporate, decreasing the market value of the instrument below the modeled value.

Operational (Transaction) Risk

Operational (transaction) risk is the risk that deficiencies in information systems or internal controls will result in unexpected loss. Sources of operating risk include inadequate procedures, human error, system failure, or fraud. Inaccurately assessing or controlling operating risks is one of the more likely sources of problems facing institutions involved in investment activities.

Effective internal controls are the first line of defense in controlling the operating risks involved in an institution's investment activities. Of particular importance are internal controls that ensure the separation of duties and supervision of persons executing transactions from those responsible for processing contracts, confirming transactions, controlling various clearing accounts, preparing or posting the accounting entries, approving the accounting methodology or entries, and performing revaluations.

Consistent with the operational support of other activities within the financial institution, securities operations should be as independent as practicable from business units. Adequate resources should be devoted, such that systems and capacity are commensurate with the size and complexity of the institution's investment activities. Effective risk management should also include, at least, the following:

- Valuation. Procedures should ensure independent portfolio pricing. For thinly traded or illiquid securities, completely independent pricing may be difficult to obtain. In such cases, operational units may need to use prices provided by the portfolio manager. For unique instruments where the pricing is being provided by a single source (e.g., the dealer providing the instrument), the institution should review and understand the assumptions used to price the instrument.
- Personnel. The increasingly complex nature of securities available in the marketplace makes it important that operational personnel have strong technical skills. This will enable them to better understand the complex financial structures of some investment instruments.
- Documentation. Institutions should clearly define documentation requirements for securities transactions, saving and safeguarding important documents, as well as maintaining

possession and control of instruments purchased.

An institution's policies should also provide guidelines for conflicts of interest for employees who are directly involved in purchasing and selling securities for the institution from securities dealers. These guidelines should ensure that all directors, officers, and employees act in the best interest of the institution. The board may wish to adopt policies prohibiting these employees from engaging in personal securities transactions with these same securities firms without specific prior board approval. The board may also wish to adopt a policy applicable to directors, officers, and employees restricting or prohibiting the receipt of gifts, gratuities, or travel expenses from approved securities dealer firms and their representatives.

Legal Risk

Legal risk is the risk that contracts are not legally enforceable or documented correctly. Institutions should adequately evaluate the enforceability of its agreements before individual transactions are consummated. Institutions should also ensure that the counterparty has authority to enter into the transaction and that the terms of the agreement are legally enforceable. Institutions should further ascertain that netting agreements are adequately documented, executed properly, and are enforceable in all relevant jurisdictions. Institutions should have knowledge of relevant tax laws and interpretations governing the use of these instruments.

Dated: April 17, 1998.

Keith J. Todd,

Assistant Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 98–10744 Filed 4–22–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 14% for the quarter ended March 31, 1998. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 16, 1998.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 98–10790 Filed 4–22–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following subcommittee scheduled to meet during the month of May 1998.

Name: Health Care Policy and Research Special Emphasis Panel ''Grants for Health Services Dissertation Research''.

Date and Time: May 7–8, 1998.

Place: Doubletree Hotel, 1750 Rockville Pike, Montrose Room, Rockville, Maryland 20852.

Purpose: To review and evaluate grant applications.

Agenda: The open session of the meetings will be devoted to business covering administrative matters and reports. During the closed sessions, the Subcommittees will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Sheila Simmons, Committee Management Officer, Office of Scientific Affairs, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1452x1627.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: April 14, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–10777 Filed 4–22–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Announcement 98037]

Centers for Disease Control and Prevention

Initiatives by Organizations To Strengthen National Tobacco Control Activities in the United States; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds for fiscal year (FY) 1998 for cooperative agreements with national organizations that serve one or more of the following special targeted populations; African-Americans, Hispanics/Latinos, Asians/Pacific Islanders, and youth, especially males (ages 12–24). The purpose of the awards is to improve or initiate tobacco control programs that are culturally appropriate to reduce nicotine addiction and other health related problems associated with the consumption of tobacco, with the ultimate goal of tobacco use reduction.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Tobacco. (For ordering a copy of Healthy People 2000, see the section **Where To Obtain Additional Information**.)

Authority

This program is authorized under section 317(k)(2) and 317(k)(3) [42 U.S.C. 247b(k)(2) and 247b(k)(3)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are public and private non-profit, national organizations with at least three or more years of tobacco control experience that have the ability to reach those special populations specified in the **Introduction**.

Eligible applicants must meet all the criteria listed below and provide evidence of eligibility in a cover letter and supporting documentation attached to their application. If the applicants do not meet all the eligibility criteria below, the application will be returned and not reviewed.

A. The applicant's organization must have a primary relationship with one of the targeted populations. A primary relationship is one in which the targeted population is viewed as the most important component of the organization's mission. The relationship to the targeted population must be direct (membership or affiliate) rather than indirect or secondary (philanthropy, fund raising, service).

B. The applicant organization must have affiliate offices, chapters, or related-membership organizations in more than one State or territory. Individual affiliates or chapters of parent organizations are not eligible to apply.

C. The applicant's organization must provide an existing tobacco control plan or a letter of commitment from the organization's President or Executive Director, acknowledging their intent to develop a tobacco control policy and plan that will be adopted by the national organization, and moved for adoption by affiliates, chapters, and related-membership organizations.

D. A private nonprofit organization must include evidence of its nonprofit status with the application. Any of the following is acceptable evidence.

1. A reference to the organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code.

2. A copy of a currently valid Internal Revenue Service Tax exemption certificate.

3. A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals.

4. A certified copy of the organization's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the organization.

E. The applicant must show the number of years that the organization has been actively engaged in tobacco control activities.

States or their bona fide agents or instrumentalities are not eligible for funding under this program announcement. States are currently funded for tobacco control activities under CDC Program Announcement 332 or by the National Cancer Institute under the America Stop Smoking Intervention Study (ASSIST) demonstration program.

Northwest Portland Area Indian Health Board, Great Lakes Intertribal Council, Inc., American Medical Women's Association, National Organization for Women, National Medical Association, Laborer's Health and Safety Fund of North America, and National Association of Children's & Related Institutions are not eligible applicants because they were funded in September 1997, for a three year project period, under Program Announcement 763, entitled ''Initiatives by Organizations to Strengthen National Tobacco Control Activities in the United States.''

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

Availability of Funds

Approximately $500,000, is available in FY 1998 to fund approximately 4 awards. It is expected that the average award will be $125,000, ranging from $50,000 to $125,000. It is expected that the awards will begin on or about July 30, 1998, and will be made for a 12-month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change.

CDC will fund at least one national organization that serves each of the following special populations (i.e., African Americans, Asian/Pacific Islanders, Hispanics/Latino, and youth, especially males (ages 12–24).

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grants cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Public Law 105–78) states in Sec. 503 (a) and (b) no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relations, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislative body itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

Tobacco use continues to be the single most preventable cause of disease and death in the United States. Every year, more than 400,000 Americans die prematurely as a result of their addiction to tobacco. One of the Healthy People 2000 objectives is to reduce cigarette smoking in the United States to no more than 15 percent of people aged 18 years and over. Smoking has a significant economic impact on our society. Direct medical costs attributed to smoking are estimated to be $50 billion each year, approximately seven percent of the total U.S. health care cost. In 1995, an estimated 47.0 million adults including 24.5 million men and 22.5 million women were smokers. Racial/ethnic group-specific prevalence is highest among American Indian/Alaskan Native (36.2) compared to (25.8) percent among Blacks and lowest among Asian/Pacific Islanders (16.6) percent. Smoking prevalence among males are highest among American Indian/Alaskan Native (37.3) compared to (28.8) percent among Blacks and

(21.1) percent among Hispanics. Among women, it is reported that American Indian/Alaskan Native (35.4) percent smoke compared to (24.1)percent of white women, and (23.5) percent of Black women. Racial/ethnic variations in smoking prevalence probably reflect the differences in educational level, income, employment status, and cultural factors. With the exception of persons with 0–8 years of education, smoking prevalence vary inversely with levels of education and is highest among persons with 9–11 years of education (37.5) percent. Smoking prevalence is highest among persons living below poverty level (34.7) than among those persons living at or above the poverty level (32.5) percent.

Current scientific and program findings support the implementation of the following tobacco control programs:

- Clean Indoor Air protection from Environmental Tobacco Smoke (ETS) in buildings, restaurants, schools, day care centers, and private work sites. ETS protection promotes positive environmental changes by reducing the use of tobacco, protecting the non-smoker, and reducing the modeling of tobacco use;
- Decreased tobacco advertising and promotion that specifically target African Americans, Hispanics/Latinos, American Indians/Alaska Natives, Asian/Pacific Islanders, youth, and women. Communities must be aware of tobacco industry campaigns which target youth, and other special populations that are disproportionately impacted by tobacco advertising and promotion, and communities need to be informed about ways to limit advertising and promotion of tobacco use;
- Increased educational efforts to provide broad-based tobacco related curricula to multiple school grades and the general public to educate youth and adults on the need to promote tobacco control measures and programs;
- Support and enforcement of existing laws such as the Federal Food and Drug Administration and State and local laws to reduce the appeal and illegal sales of tobacco products to young people;
- Promoting the adoption of comprehensive school health programs that involves parents, the strategic use of mass media, community organizations, and other tobacco control programs that can effectively raise awareness about the consequences of smoking and the need for environmental supports to reduce tobacco use; and
- Increased availability of smoking cessation programs that contain the following elements: (1) Nicotine replacement therapy (nicotine patches or gum); (2) social support (clinician-provider encouragement and assistance); and (3) skills training/problem solving (techniques on achieving and maintaining abstinence).

CDC is committed to working collaboratively with national organizations to help improve the health of our nation through community organization and mobilization actions on tobacco control programs, economic incentives, and public awareness. CDC has already awarded tobacco control cooperative agreements to State health agencies to develop infrastructure and strengthen capacity to implement tobacco control programs and collaborate with other national organizations and health agencies in the implementation of local and State tobacco control programs.

Purpose

These awards are to assist national organizations to provide leadership, training, and technical assistance and to mobilize their affiliates, chapters, and membership-related organizations in the development and accomplishment of tobacco control policies and programs among selected targeted populations in order to achieve the Healthy People 2000 tobacco objectives.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Develop an internal tobacco control policy for dissemination throughout affiliates, chapters, and related-membership organizations. Components of this activity should include the following:

a. An internal policy that explicitly delineates the organization's position on tobacco. This internal policy should be developed by the end of the first six months of the first budget period. If an internal tobacco control policy already exists, the organization should submit it to CDC, as part of the original application.

b. A plan to carry out the tobacco control policy. This activity should be completed by the end of the first year budget period. (A copy of the plan must be submitted to CDC, as part of the end of the year annual report.)

2. Facilitate the development of tobacco prevention and control leadership skills within affiliates, chapters, and related-membership organizations and among community leaders within the respective targeted populations. These skills are for the purpose of accomplishing recipient activities 3, 4, and 5 listed below. This may be accomplished through training, convening leadership forums, or workshops and mobilizing affiliates, chapters, and related-membership organizations in the following topics below:

a. *Youth access issues*: Activities that engage youth in skill building opportunities and provides a step by step process for youth-led actions in tobacco control issues such as retailer education, compliance checks, compliance with Synar Amendment and the Food and Drug Administration (FDA) regulations, and team building activities (e.g., letter writing campaign, internet exchange, press releases, PSA's, and youth community activist).

b. *Environmental tobacco smoke*: Process of developing tobacco control programs and policies that protect nonsmokers, children at risk, elderly people, individuals with cardiovascular, and individuals with impaired respiratory functions, including asthmatics and those with obstructive airway disease (e.g., smoke-free policies in workplace, public places, outdoor sporting arenas, and public transportation systems).

c. *Counter advertising and promotion*: Develop and implement advertising strategies to counter the promotion of tobacco use.

d. *Economic incentives*: Provide technical assistance and educational resources to local health departments and State agencies in support of tobacco pricing, economics of tobacco production, and the economic impact of tobacco related health cost attributable to tobacco use.

e. *Product regulation*: Support current Federal, State, and local regulations on tobacco products.

f. *Media and public education*: Maximize strategic use of the media to educate the public and raise awareness among special populations about the health affects of tobacco use.

g. *Farming issues*: Provide training to community leaders and organizational affiliates, chapters, and related-members on tobacco farmer issues (e.g., economic development and alternatives to tobacco farming, new agricultural skills, empowering farmers to sustain and develop new educational and training programs, marketing strategies, and education for program changes to assist farmers with improving the marketplace to grow and sell alternative crops).

h. *Minority issues*: Organize, develop, and implement culturally appropriate materials, programs and messages, alternative sponsorship, counter advertising campaigns to promote the non-use of tobacco products.

i. *Community mobilization*: Mobilize targeted populations, health professionals, businesses, local leadership, voluntary and civic organizations, and tobacco control networks to support tobacco control programs.

3. Facilitate the mobilization of the primary targeted population in support of tobacco control activities (e.g., World No Tobacco Day, The Great American Smokeout, national conferences, tobacco control initiatives, public education campaigns, tobacco cessation programs, and, participation in tobacco control coalitions).

4. Establish formal and informal linkages where appropriate, with national, State, and local tobacco control organizations and networks or coalitions (e.g., the American Cancer Society, the American Lung Association, the American Heart Association, the Advocacy Institute, SmokeLess States, the National Center for Tobacco Free Kids, Stop Teenage Addiction to Tobacco, Americans for Nonsmoker's Rights, and Doctors Ought to Care) to:

a. Support and promote tobacco control programs;

b. Provide assistance in the planning and implementation of tobacco control programs within the targeted populations;

c. Participate in existing tobacco control coalitions, or build new coalitions if appropriate; and

d. Share and disseminate information to affiliates, chapters, and related-membership organizations, and other interested health-related agencies (e.g., electronic bulletin boards, SCARCNet, newsletters, professional journals and publications, editorials, articles, tobacco news alerts, and press conferences).

5. Participate in national tobacco control campaigns sponsored by the CDC's Office on Smoking and Health (OSH) (e.g., Media Campaign Resource Center, Stop the Sale, Prevent the Addiction, Performance Edge Campaign, etc.).

6. Establish linkages with CDC and other appropriate agencies in planning and participating in the National Tobacco Prevention and Control annual conference, the Tobacco Control Summer Institute, and one 2-day workshop in Atlanta, Georgia, for national organizations.

7. Provide an evaluation plan that articulates what the organization wants to achieve before actually implementing the tobacco control activities. The organization's evaluation plan must demonstrate evaluation strategies that include the following:

a. How ongoing monitoring of tobacco control activities will be performed.

b. How information collected from the targeted population will be used.

c. How the impact of tobacco control activities on the targeted population will be determined.

B. CDC Activities

1. Provide and periodically update information related to the purposes or activities of this program announcement.

2. Provide programmatic consultation and guidance related to establishing linkages with relevant tobacco control networks, assist in the planning, implementation, and evaluation of the grantees program goals and objectives, and disseminate successful tobacco control strategies (i.e., guidelines and model programs on clean indoor air protection, tobacco advertising, and reducing the illegal sales of tobacco products to minors).

3. Plan meetings with national, State, and local partners, which include training meetings to address issues and program activities related to improving tobacco control programs.

4. Assist in the evaluation of program activities.

Technical Reporting Requirements

An original and two copies of a progress report are required on a semiannual basis. Progress reports are required no later than 30 days after the end of the first 6 months of the budget period; and 30 days after the end of the budget period. The progress reports must include the following for each goal and objective: (1) A comparison of actual accomplishments to the goals established for the period; (2) the reasons for slippage if established goals were not met; and (3) other pertinent information including, when appropriate, analysis and explanation of unexpectedly high costs for performance.

A Financial Status Report (FSR) is required no later than 90 days after the end of each budget period. The final FSR and progress report are required no later than 90 days after the end of the project period. All reports must be submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

Application Content

All applicants must develop their application in accordance with PHS Form 5161–1, (Revised 7/92, OMB Number 0937–0189), information contained in the program announcement, and the instructions provided in this section. The application should not exceed 75 pages, including appendixes.

A. Need To Address Tobacco Control (Not More Than 4 Pages)

Describe the tobacco control needs within the targeted populations and the action proposed to alleviate the problem. Information should describe the following:

1. Interest in addressing tobacco control in the targeted population.

2. Existing capacity of the organization to undertake tobacco control activities. Evidence of the number of years the organization has been actively engaged in tobacco activities and the ability to reach the special population specified in the **Introduction**.

3. State of readiness of applicant and the targeted population to engage in tobacco control activities.

4. The relationship of applicant and existing tobacco control organizations at national and State levels.

5. The relationship of the applicant and the targeted population to the tobacco industry and whether the applicant or target population receive funding or support from the tobacco industry.

B. Goals and Objectives (Not More Than 3 Pages)

1. Goals: List realistic goals that will be achievable over the 2-year project period. (Do not list separate goals for each budget year.)

2. Objectives: List objectives for each recipient activity for each 12-month budget period of the 2-year project. Objectives should be specific, measurable, and feasible to be accomplished during each projected 12-month budget period and directly relate to the project goals. (Note: See section on recipient activities.)

C. Action Plan (Not More Than 10 Pages)

1. Submit a plan that identifies specific activities that are proposed for each objective during each year of the 2-year project period. This plan must describe how the national office, affiliates, chapters, and related-membership organizations will achieve the purpose and recipient activities of this program announcement. (Note: See section on recipient activities.)

2. Identify staff responsible for completing each activity.

3. Provide a chart that includes timelines for completing the proposed tobacco control activities.

D. Capacity (Not More Than 8 Pages)

1. Submit a copy of the existing internal organizational policy or a letter of commitment from the organization's President or Executive Director.
2. Submit a copy of the organization's purpose, mission, and goals.
3. Describe how the national office communicates its purpose, mission, and goals to affiliates, chapters, and related-membership organizations (e.g., newsletters, conferences, minutes, bylaws, etc.).
4. Submit a copy of the organizational chart and describe the existing organizational structure and how it supports the development of a tobacco agenda, and programs.
5. Describe the proposed project staffing. Provide job descriptions and indicate if they are for existing or proposed positions. Staffing should include the commitment of at least one full-time staff member to provide direction for the proposed activities. Demonstrate that staff members have the professional background, experience, and organizational support needed to fulfill the proposed responsibilities. Include a curriculum vitae for each staff member and job descriptions for staff not yet identified.
6. Describe the affiliates, chapter, and related-membership organizations, to include:
a. Experience working with affiliates, chapters, and related-membership organizations within the last 12 months.
b. Provide a list of affiliates, chapters, and related-membership organizations.
c. Geographical location of affiliates, chapters, and related-membership organizations.
7. Describe efforts and relevant experience at the national, State, and local levels that would demonstrate the ability and capacity to perform the program activities, to include but not limited to:
a. Current and past experience in providing leadership in the development of health-related programs, training programs, health promotion or health-related campaigns, and programs within the organization or respective targeted population.
b. Current and past experience in mobilizing targeted populations, networking, and building partnerships and alliances with other organizations, particularly in health promotion and other health-related areas.
c. Current level of experience and ability that will demonstrate the capacity to form linkages and to develop and carry out tobacco control initiatives in the targeted population and among affiliates, chapters, and related-membership organizations.
d. Current and past experience working with public and private agencies (e.g., Federal agencies, State and local health departments, community-based organizations, civic, social, and religious organizations).

E. Evaluation (Not More Than 4 Pages)

Provide a plan for monitoring progress in meeting program objectives. Applicants must articulate what they want to achieve before actual implementation of their tobacco control activities. The applicant should submit an evaluation strategy that demonstrates the following:
a. How ongoing monitoring will be performed.
b. How information collected from the targeted population will be used.
c. How impact of tobacco control activities on the targeted population will be determined.
Evaluation of program performance should include:
1. Process evaluation. Applicants should describe how they plan to measure program performance and progress toward achieving the program's objectives in conducting tobacco control activities during each of the 12-month budget periods.
2. Outcome evaluation. Applicants should describe how they plan to measure the outcome of their organizational's goals, including tobacco control programs, constituent leadership skills, formal and informal linkages with other tobacco control networks and organizations, educational forums, technical assistance and support to State or local health departments, and the mobilizing of community resources.

F. Budget and Accompanying Justification (No Page Limitation)

Provide a detailed budget and line-item justification that is consistent with the stated objectives and planned activities of the project. To the extent necessary, applicants are encouraged to include budget items for the following:
1. A computer, modem, communicating software, and a dedicated telephone line to support a communications network, such as SCARCNet, CDC WONDER/PC, and Internet for sharing and dissemination of information.
2. Travel for not more than two persons to attend and participate in the 3-day National Tobacco Control Conference, held once each budget year.
3. Two trips, one to Atlanta, Georgia, for two individuals to attend a training and technical assistance workshop, and for one or two individuals to attend the Tobacco Use Prevention Summer Institute.

Evaluation Criteria (Total 100 Points)

Applications will be reviewed and evaluated according to the following criteria:

A. Need To Address Tobacco Control (10 Points)

The extent of the need of tobacco control activities within the target population(s), to include (1) a description of the targeted population; (2) state of readiness of the applicant and the targeted population; and (3) an existing or lack of tobacco control programs in the target population and proposed methodologies for overcoming current barriers, or enhancing existing programs.

B. Goals and Objectives (15 Points)

The extent to which the goals and objectives are achievable within the 2-year project period and consistent with the purpose of the announcement; and objectives are specific, measurable, feasible, and likely to be accomplished during the first 12-month budget period.

C. Action Plan (30 Points)

The feasibility, appropriateness, and extent to which the Action Plan describes (1) organizational involvement (national office, affiliates, chapters, and related-membership organizations) in program activities; (2) the likelihood of reducing tobacco use within the targeted population; (3) activities likely to achieve objectives during each of the two 1-year budget periods; (4) proposed linkages with other tobacco control networks; (5) roles and responsibilities of staff person responsible for the proposed tobacco control activities; and (6) provides timelines for completing proposed activities.

D. Capacity (35 Points)

The extent to which the applicant's capacity and ability to support and promote a tobacco control program as evidenced by their (1) statement and communication of purpose, goals, and mission, to affiliates, chapters, and related-membership organizations; (2) the organizational chart, structure, and tobacco control agenda, and programs; (3) current and proposed for project staff, to include one full-time staff member to direct program activities, and job descriptions; (4) professional background and experience of current or proposed staff; (5) ability of affiliates, chapters, and related-membership organizations to engage in tobacco

control activities within their targeted populations; (6) comprehensive listing of affiliates, chapters, and related-membership organizations' names and geographical locations; and (7) past experiences with coalition building, program development, collaboration with decision-makers, leaders of the target population, and other agencies on issues relevant to proposed program activities.

E. Evaluation (10 Points)

The extent and appropriateness of the evaluation plan in performing ongoing monitoring of the program's activities, measuring program effectiveness, and determining the level of tobacco control interventions necessary to achieve the desired program outcomes.

F. Budget and Accompanying Justification (Not Weighted)

The extent to which the applicant provides a detailed and clear budget consistent with the stated objectives and workplan of the project.

Typing and Mailing

Applicants are required to submit an original and two copies of the application, including an executive summary of not more than one page. Pages must be clearly numbered, and a complete table of contents for the application and its appendixes must be included. Begin each separate section on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All materials must be typewritten, single-spaced with unreduced type on 8½″ x 11″ paper, with at least a 1″ margin including headers and footers, and printed on one side only.

Content of Noncompeting Continuation Application

In compliance with 45 CFR 74.51(d), as applicable, noncompeting continuation applications submitted within the project period need only include:

A. A brief progress report that describes the accomplishments of the previous budget period.

B. Any new or significantly revised items or information (objectives, scope of activities, operational methods, evaluation, etc.) not included in the 01 Year application.

C. An annual budget and justification. Existing budget items that are unchanged from the previous budget period do not need rejustification. Simply list the items in the budget and indicate that they are continuation items.

Executive Order 12372 Review

This program is not subject to review as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance (CFDA) number for this project is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 255 East Paces Ferry Road, NE, Room 314, Mail Stop E–18, Atlanta, Georgia 30305, on or before May 22,1998.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information and request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mail Stop E–18, Atlanta, Georgia 30305, telephone (404) 842–6508, or the Internet address: nea1@cdc.gov.

Programmatic technical assistance may be obtained from Bonnie C. Dyck, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mail Stop K–50, Atlanta, GA 30341–3724; telephone (404) 488–5707, or the Internet address: bxd5@cdc.gov.

You may also obtain this announcement, and other CDC announcements, from one of two Internet sites on the actual publication date: CDC's homepage at http://www.cdc.gov or the Government Printing Office homepage (including free on-line access to the **Federal Register** at http://www.access.gpo.gov).

Please refer to Announcement 98037 when requesting information and submitting an application.

Glossary

National Organizations are those that have affiliate offices, chapters, or related-membership organizations in more than one State or territory.

Tobacco Control Programs are defined as population-based interventions that use a combination of educational strategies, environmental measures, or actions designed to reduce the incidence, prevalence, and initiation of tobacco use in the entire population. For purposes of this Announcement, special emphasis is placed on those target populations at highest risk for tobacco use and targeted tobacco industry marketing.

Tobacco Control Policy is defined as a plan or course of action designed as a guiding principle for the development of internal organizational tobacco control policy and the promotion of innovative approaches in community settings to protect nonsmokers from exposure to environmental tobacco smoke, to curtail youth and adult consumption of tobacco products, and to assist in the implementation of Federal programs within the Food and Drug Administration (FDA) and the Substance Abuse and Mental Health Services Administration to prevent the illegal sales of tobacco products to minors. Note: There are certain

restrictions on the extent to which a CDC-funded awardee can participate in or implement environmental changes within their respective communities. (See Section: Use of Funds.)

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock Number 017–001–00474–0), or Healthy People 2000 (Summary Report, Stock Number 017–001–00473–1), referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325; telephone (202) 512–1800.

Dated: April 17, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–10788 Filed 4–22–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0531]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Performance Standard for Electrode Lead Wires and Patient Cables: Petitions for Exemptions and Variances'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. 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 January 21, 1998 (63 FR 3141), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (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 0910–0367. The approval expires on April 30, 2001.

Dated: April 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–10778 Filed 4–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0485]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Shipment of a Blood Product Prior to Completion of Testing for Hepatitis B Surface Antigen (HbsAg), and Shipment of Blood Products Known Reactive for HbsAg'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 19, 1997 (62 FR 66633), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (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 0910–0168. The approval expires on April 30, 2001.

Dated: April 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–10781 Filed 4–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0046]

Comprehensive List of Current Guidance Documents at the Food and Drug Administration; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that published in the **Federal Register** of February 26, 1998 (63 FR 9795). The document provided a comprehensive list of all guidance documents currently in use at the agency. FDA committed to publishing this list in its February 1997 ''Good Guidance Practices'' (GGP's), which set forth the agency policies and procedures for the development, issuance, and use of guidance documents. The document was published with several errors. This document corrects those errors.

DATES: General comments on this list and on agency guidance documents are welcome at any time.

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

FOR FURTHER INFORMATION CONTACT: Lisa L. Barclay, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

In FR Doc. 98–4916, appearing on page 9795, in the **Federal Register** of Thursday, February 26, 1998, the following corrections are made:

1. On page 9795, in the second column, under the ''ADDRESSES'' caption, ''(HFD–305)'' is removed and ''(HFA–305)'' is added in its place.

2. On page 9834, in the fifth entry entitled ''Clinical Testing of Infant Formulas with Respect to Nutritional Suitability for Term Infants,'' in the second column, ''1985'' is removed and ''1988'' is added in its place.

3. On page 9834, in the first column, the sixth entry entitled ''Guidelines for the Evaluation of the Safety and Suitability of New Infant Formulas for Feeding Infants with Allergic Diseases'' is removed and ''Evaluation of Safety and Suitability of New Infant Formulas for Feeding Preterm Infants'' is added in its place.

4. On page 9834, under the heading, ''VI. Guidance Documents Issued by the Center for Veterinary Medicine (CVM),''

in the first entry entitled ''Citizen Petitions: Policy and Procedures (Guide No. 1240.2030),'' in the fourth column, ''Do'' is removed and ''Center for Veterinary Medicine (HFV–12), Communications Staff, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755'' is added in its place.

5. On page 9842, in the fourth entry entitled ''Guide to Inspections of Source Plasma Establishments (PB96–127360),'' in the second column, ''December 1994'' is removed and ''June 1997'' is added in its place.

Dated: April 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–10780 Filed 4–22–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–193]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* ''An Important Message From Medicare.'' and Supporting Regulations 42 CFR 466.78, 489.27, .20; *Form No.:* HCFA–R–193, OMB # 0938–0692; *Use:* Hospitals participating in the Medicare program have agreed to distribute ''An Important Message from Medicare'' to beneficiaries during each admission. Receiving this information will provide the beneficiary with some ability to participate and/or initiate discussions concerning discussions affecting Medicare coverage or payment and about his or her appeal rights in response to any hospitals notice to the effect that Medicare will no longer cover continued care in the hospital. *Frequency:* Other, as needed; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit, Federal Government, State, Local, or Tribal Government; *Number of Respondents:* 6,700; *Total Annual Responses:* 11,000,000; *Total Annual Hours:* 183,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 16, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98–10829 Filed 4–22–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–576]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization (OPO) Request for Designation and Supporting Regulations in 42 CFR 486.301–486.325; *Form No.:* HCFA–576 (OMB# 0938–0512); *Use:* The information provided on this form serves as a basis for certifying OPOs for participation in the Medicare and Medicaid programs and will indicate whether the OPO is meeting the specified performance standards for reimbursement of service. Additionally, the form is used for inputting minimal information into the Online Survey Certification Reporting (OSCAR) System; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 69; *Total Annual Responses:* 69; *Total Annual Hours:* 138.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 15, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–10831 Filed 4–22–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2082]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Statistical Report on Medical Care: Eligibles, Recipients, Payments and Services; *Form No.:* HCFA–2082 (OMB# 0938–0345); *Use:* State data are reported either on the hard copy HCFA–2082 or by the Federally mandated electronic process, known as the Medicaid Statistical Information System (MSIS). These data are the basis of actuarial forecasts for Medicaid service utilization, costs of analysis, cost savings estimates and responding to requests for information from HCFA components, the Department, Congress and other customers.; *Frequency:* Quarterly and Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 53; *Total Annual Responses:* 212; *Total Annual Hours:* 45,208.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 7, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–10764 Filed 4–22–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: April 27, 1998.

Time: 3:30 p.m.

Place: NIH, Rockledge 2, Room 4104, Telephone Conference.

Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Clinical Sciences.

Date: April 27, 1998.

Time: 6:30 p.m.

Place: NIH, Rockledge 2, Room 4104, Telephone Conference.

Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposal and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 10, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–10874 Filed 4–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Director's Consumer Liaison Group (DCLG), April 30-May 1 at the Doubletree Hotel, 1750 Rockville Pike, Rockville, MD.

This meeting will be open to the public on April 30, 1998 from 9:00 a.m. to approximately 5:00 p.m., and on May 1 from 9:00 a.m. to approximately 2:30 p.m. During this time there will be discussions on: consumer/patient issues, rights and concerns regarding participation in cancer research including population and genetic studies and clinical trials; cancer control; and developing mechanisms to identify consumer advocates to serve on NCI program and policy advisory committees.

The meeting will be closed to the public on May 1 from approximately 2:45 p.m. to approximately 4:00 p.m. for discussion of confidential issues. These discussions will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Elaine C. Lee, in the Office of Liaison Activities, National Cancer Institute, Building 31, Room 10A06, 31 Center Drive (MSC–2580), Bethesda, MD 20892–2580; or by calling telephone no. (301) 594–3194 or sending a fax to (301) 480–7558. Attendance by the public will be limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language

interpretation or other special accommodations, should contact Ms. Lee in advance of the meeting.

Dated: April 16, 1998.

Marvin Kalt,

Director, Division of Extramural Activities, National Cancer Institute.

[FR Doc. 98–10873 Filed 4–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Laboratory Support of Amifostine Trials, Telephone Conference Call.

Date: April 29, 1998.

Time: 10:00 a.m. to Adjournment.

Place: National Cancer Institute, Executive Plaza North, Room 643B, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Olivia T. Preble, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 643B, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, Telephone: 301/496–7929.

Purpose/Agenda: To review, discuss and evaluate grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAM NUMBERS: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: April 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–10882 Filed 4–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of the Meeting of the National Advisory Eye Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on June 11, 1998, Executive Plaza North, Conference Room G, 6130 Executive Boulevard, Bethesda, Maryland.

The NAEC meeting will be open to the public on June 11 from 8:30 a.m. until approximately 11:30 a.m. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public on June 11 from approximately 11:30 a.m. until adjournment at approximately 5:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Council Assistant, National Eye Institute, EPS, Suite 350, 6120 Executive Boulevard, MSC–7164, Bethesda, Maryland 20892–7164, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistant Program No. 93.867, Vision Research: National Institutes of Health)

Dated: April 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–10879 Filed 4–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of SEP: National Institute on Aging Special Emphasis Panel, Cooperative Agreement Type Grant Related to the Geriatrics Program (Teleconference).

Date of Meeting: April 23, 1998.

Time of Meeting: 2:00 p.m. to adjournment.

Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20892.

Purpose/Agenda: To review a cooperative agreement type grant related to the Geriatrics program.

Contact Person: Dr. Arthur Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: National Institute on Aging Special Emphasis Panel, The Development and Maintenance of aged, calorie-restricted mice and rats (Teleconference).

Date of Meeting: May 11, 1998.

Time of Meeting: 1:00 p.m. to adjournment.

Place of Meeting: Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20892.

Purpose/Agenda: To perform a technical evaluation of one contract proposal.

Contact Person: Dr. Arthur Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health Bethesda, Maryland 20892–9205, (301) 496–9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposal and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866 Aging Research, National Institutes of Health)

Dated: April 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–10875 Filed 4–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: Targeted HIV Vaccine and other Biomedical Prevention Research and Development.
Date: April 29, 1998.
Time: 1:00 p.m. to Adjournment.
Place: Teleconference, Solar Building, Room 4C07, 6003 Executive Boulevard, Rockville, MD 20892, (301) 496–2550.
Contact Person: Dr. Dianne E. Tingley, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C07, Bethesda, MD 20892, (301) 496–2550.
Purpose/Agenda: To evaluate contract proposals.

Name of SEP: Immunology Quality Assessment Program.
Date: May 1, 1998.
Time: 1:00 p.m. to Adjournment.
Place: Sheraton Crystal City Hotel-Arlington, 1800 Jefferson Davis Highway, Arlington, VA 22202, (703) 486–1111.
Contact Person: Dr. Edward Schroder, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C38, Bethesda, MD 20892, (301) 435–8537.
Purpose/Agenda: To evaluate contract proposals.

Name of SEP: SPIRAT Supplement.
Date: May 5, 1998.
Time: 11:00 a.m. to Adjournment.
Place: Teleconference, Solar Building, Room 4C05, 6003 Executive Boulevard, Bethesda, MD 20892, (301) 496–7966.
Contact Person: Dr. Allen C. Stoolmiller, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C05, Bethesda, MD 20892, (301) 496–7966.
Purpose/Agenda: To evaluate a grant application.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: April 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–10876 Filed 4–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

SEP: Mechanisms of Ige Regulation on Human Leukocytes.
Date: May 8, 1998.
Time: 12:30 p.m. to Adjournment.
Place: Teleconference, Solar Building, Room 1A2, 6003 Executive Blvd., Bethesda, MD 20892, (301) 496–2550.
Contact Person: Dr. Vassil Georgiev, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C04, Bethesda, Maryland 20892, (301) 496–8206.
Purpose/Agenda: To evaluate a grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: April 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–10877 Filed 4–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARMTENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Meeting: AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases

Pursuant to Pub. L. 92–463; notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on June 2, 1998 in Conference Rooms E1 and E2, Natcher Conference Center, Building 45, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 8:30 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress. Attendance by the public will be limited to space available.

Ms. Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, Room 2A21, telephone 301–435–3732, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Siskind in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: April 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 98–10878 Filed 4–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meetings:

Name of SEP: Prenatal Childhood Exposures and Age at Menarche (Teleconference).
Date: April 26, 1998.
Time: 4:00 p.m.—adjournment.

Place: 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852.

Contact Person: Edgar E. Hanna, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485.

Name of SEP: A Non-Intrusive Fiber Optic Lead Sensor (Teleconference).

Date: April 27, 1998.

Time: 1:30 p.m.—adjournment.

Place: 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852.

Contact Person: Gopal Bhatnagar, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review research grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: April 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–10880 Filed 4–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Pediatric Pharmacology Research Unit (PPRU), Data Coordinating Center.

Date: May 18, 1998.

Time: 9:00 a.m.—adjournment.

Place: 6100 Executive Boulevard, 5th Floor Conference Room, Rockville, Maryland 20852.

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20582, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review contract grant proposal.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these contract proposals could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institute of Health, HHS)

Dated: April 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–10881 Filed 4–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Child Health and Human Development Contraception and Infertility Research Loan Repayment Program

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice

SUMMARY: The Center for Population Research of the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH), announces the availability of educational loan repayment under the NICHD Contraception and Infertility Research Loan Repayment Program (CIR–LRP or the Program). The CIR–LRP, which is authorized by Section 487B of the Public Health Service (PHS) Act (42 U.S.C. 288–2) as added by the NIH Revitalization Act of 1993 (Pub. L. 103–43). provides for the repayment of the educational loan debt of qualified health professionals (including graduate students) who agree to commit to a period of obligated service of not less than two years conducting research with respect to contraception and/or infertility. The CIR–LRP will pay up to $20,000 of the principal and interest of such individual's educational loans for each year of obligated service. In addition to the loan repayments, the CIR–LRP will pay participants an amount equal to 39 percent of the total amount of the loan repayments made for the taxable year in order to provide reimbursement for tax liability caused by the Program's loan repayments. The purpose of the CIR–LRP is the recruitment and retention of highly qualified health professionals conducting contraception and/or infertility research. Through this notice, the NICHD, NIH, announces changes in the eligibility criteria for participation in the CIR–LRP, and invites health professionals who meet the prescribed eligibility criteria to apply.

DATES: Interested persons who meet the eligibility requirements may request information about the CIR–LRP beginning on March 1, 1998. Applications for participation in the CIR–LRP can be submitted at any time after April 1, 1998.

ADDRESSES: Information regarding the CIR–LRP may be obtained by contacting: Dr. Louis V. DePaolo, Coordinator, Contraception and Infertility Research Loan Repayment Program, Center for Population Research, National Institute of Child Health and Human Development, NIH, Building 61E, Rm. 8B01, Bethesda, Maryland 20892–7510 (Voice: 301/496–6515; FAX: 301/496–0692; E-Mail: 1d38p@nih.gov).

Applications can be submitted at any time after April 1, 1998 to: Contraception and Infertility Research Loan Repayment Program, Center for Population Research, National Institute of Child Health and Human Development, NIH, Building 61E, Rm. 8B01, Bethesda, Maryland 20892–7510. For courier deliveries, the following address should be used: Contraception and Infertility Research Loan Repayment Program, Center for Population Research, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 8B01, Rockville, Maryland 20851.

SUPPLEMENTARY INFORMATION: The NIH Revitalization Act of 1993 (Pub. L. 103–43) was enacted on June 10, 1993, adding section 487B of the PHS Act (42 U.S.C. 288–2). Section 487B authorizes the Secretary of Health and Human Services in consultation with the Director of NICHD to establish a program of entering into contracts with qualified professionals under which such health professionals agree to conduct contraception and/or infertility research in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $20,000 of the principal and interest of their outstanding graduate and/or undergraduate educational loans. The Secretary, in consultation with the Director of NICHD, has established a program to provide such loan repayments. This program is known as

the Contraception and Infertility Research Loan Repayment Program (CIR–LRP). In return for these loan repayments, applicants must agree to participate in contraception and/or infertility research for a period of obligated service of not less than two years. Selected applicants become participants in the CIR–LRP only upon the signing of a written contract by the Director, NICHD, the Secretary's designate.

On March 24, 1997, the NICHD, NIH published a notice in the **Federal Register** announcing the availability of educational loan repayment under the CIR–LRP (62 FR 13892). In that notice, the NICHD, NIH announced the initial implementation of the program would be limited to employees of the three NICHD Contraception Research Centers and two NICHD Infertility Research Centers due to limited availability of funds. The NICHD, NIH is modifying that original eligibility criteria to read as follows:

Eligibility Criteria

Qualified health and allied health professionals including, but not limited to, physicians, Ph.D.-level scientists, nurses and physician assistants, as well as graduate students and postgraduate research fellows training in the health professions are eligible to apply provided that they will be or are engaged, at the time of participation in the CIR–LRP, in employment/training at an NICHD intramural laboratory or one of the following NICHD-supported extramural sites: (1) A Cooperative Specialized Contraception or Infertility Research Center; (2) a Cooperative Specialized Research Center in Reproduction Research; (3) a Women's Reproductive Health Research Career Development Center; or (4) a Reproductive Medicine Unit identified as a clinical site for the National Cooperative Reproductive Medicine Network. As such, applicants will be expected to participate in research relating to infertility and/or contraception. For purposes of the CIR–LRP, infertility research is defined as research whose long-range objective is to evaluate, treat or ameliorate conditions which result in the failure of couples to either conceive or bear young, and contraception development is defined as research whose ultimate goal is to provide new or improved methods of preventing pregnancy.

In order to be considered for selection into the CIR–LRP, an applicant meeting the above eligibility requirements must submit a completed and signed application form. In addition, the individual must: (1) Sign and submit a CIR–LRP contract by which he/she agrees to serve the obligated minimum period of two years conducting contraception or infertility research at an NICHD intramural laboratory or an eligible NICHD-supported extramural site approved by the Director, NICHD; (2) have completely satisfied any other service obligation for health professional service which is owed under an agreement with the Federal Government, State Government or other entity prior to beginning the period of service under the CIR–LRP, and (3) certify that he/she is not delinquent on any amounts which are owed to the Federal Government.

Participants must be U.S. citizens, nationals or permanent residents. Individuals who are fulfilling internship, residency or other advanced primary-care training requirements are not eligible to participate.

Applicaiton Procedure and Selection Process

Submission of applications for participation in the CIR–LRP by eligible individuals will be made to NICHD on behalf of the applicant by the extramural grantee institution or the NICHD for intramural employees/affiliates. The application will include: (1) Institutional assurance of future employment/affiliation with the NICHD intramural laboratory or eligible NICHD-supported extramural site (e.g., contract between individual and institution) of not less than two years from the anticipated effective date of the CIR–LRP contract between the individual and NICHD; (2) a description of the applicant's proposed role in the scientific research on contraception and/or infertility being conducted in the NICHD intramural laboratory or eligible NICHD-supported extramural site, and (3) a brief statement addressing the applicant's long-range career plan for engaging in contraception or infertility research. The application will be reviewed by the CIR–LRP Panel (Panel), chaired by the Deputy Director, NICHD, and comprised of representatives of the NICHD's Office of Administrative Management, the respective Program Officers of the Center for Population Research, and special consultants as required. The Panel will review and select applications for approval based upon the credentials of the applicant and other criteria the Secretary deems appropriate such as the scientific merit of the research and the nature of the applicant's career plan focus. Priority will be given to applicants with a clear career focus in the specialized areas of contraception and/or infertility research over those engaging in general reproductive sciences research. In addition to this review, the CIR–LRP will determine whether the educational loan debt qualifies for loan repayment assistance under this Program (see below). All selections are subject to final approval by the Director, NICHD. The NICHD will notify the applicant of the outcome of the review. It is anticipated that the selection process will take approximately six to eight weeks following receipt of the application.

Program Administration

The applicant is required to submit: (1) a completed and signed CIR–LRP contract, and (2) a copy of an institutional assurance of employment/affiliation with an NICHD intramural laboratory or eligible NICHD-supported extramural site for no less than a two-year period from the anticipated effective date of the CIR–LRP contract. Neither the applicant nor the Federal Government is bound by this contract until: (1) the applicant has submitted and had approved by the Director, NICHD, a complete, accurate application as required by this program announcement, (2) the contract is signed by the Director, NICHD, and (3) authorized funds are available to the NICHD to carry out the contract.

The effective date of the contract will be the date it is signed by the Director or the date employment/training begins at the NICHD intramural laboratory or eligible NICHD-supported extramural site, whichever is later. Initial contracts will be executed to cover a two-year service period. Following conclusion of this initial contract, participants may be considered for one-year renewal contracts, subject to approval of the Panel, for up to two additional years. Graduate students must maintain full-time enrollment (as determined by the academic institution of study), and be in good academic standing (as determined by the academic institution of study) while participating in the CIR–LRP.

Program Benefits for Participants

The CIR–LRP will pay up to $20,000 of the principal and interest of a participant's preexisting, nondelinquent qualified (see below) educational (graduate and/or undergraduate) loan balance for each year of obligated service that is fulfilled by the applicant.

The CIR–LRP's payments to lenders on behalf of the participants represent taxable income to the participant. The CIR–LRP reports each year to the Internal Revenue Service the payments it makes to all participants. Section 338B of the Public Health Service Act (42 U.S.C. 2541–1), incorporated by reference in section 487B, provides,

however, that in addition to the loan payments made to lenders, the CIR–LRP will also pay to the participants an amount equal to 39 percent of the total amount of the loan repayments made for the taxable year. Participants should note that this payment is also considered taxable income by the Internal Revenue Service and many State and local taxing authorities.

The CIR–LRP will make quarterly payments to the lenders. Payment is made by a U.S. Treasury check shortly after the end of each full quarter of satisfactory service. Since the first payment to lenders will not be made until after the end of the first quarter of obligated service, participants should continue to make monthly loan payments for the first three months of his/her service to avoid defaulting on his/her loans and affecting his/her credit ratings.

Loan Documentation and Qualification

A copy of the promissory note for each outstanding loan must be submitted with the application. (This usually may be obtained upon request to the lenders.) the CIR–LRP will determine if the loans were reasonably necessary to meet the costs of education, in terms of each individual loan and in terms of each applicant's total educational loan debts. Loans **qualifying** for repayment include preexisting loans obtained by the participant for:

(1) Undergraduate and graduate tuition expenses;

(2) All other reasonable educational expenses including fees, books, supplies, educational equipment and materials required by the school, and laboratory expenses; and

(3) Reasonable living expenses including the costs of room and board, transportation, commuting and other costs incurred during an individual's attendance at school as determined by the Secretary.

Applicants must complete a lender verification form for each loan. The most current balance of each loan—principal plus interest plus loan expenses (such as the required insurance premiums on the unpaid balances of some loans)—should be determined as accurately as possible and reported by the applicant on each form. This enables the CIR–LRP to reserve adequate funds for loan repayments under the contract should the applicant become a CIR–LRP participant. The CIR–LRP will send the loan verification forms to each lender for verification. If the CIR–LRP is unable to obtain adequate loan verification from the lender, the applicant may be asked to submit other document, such as copies of the original loan application, to document that the loan (or a stated portion of the loan) was obtained for the education purposes stated previously.

Financial obligations **not qualifying** for repayment include:

(1) Physician Shortage Area Scholarship Program;

(2) Public Health Service and National Health Service Corps Scholarship Programs;

(3) Armed Forces (Army, Navy or Air Force) Health Professions Scholarship Programs;

(4) Indian Health Service Scholarship Program;

(5) National Research Service Award Program;

(6) Loans for which contemporaneous documentation is not available;

(7) Loans or ''scholarship'' arrangements which impose financial obligations upon the applicant if service is not performed;

(8) Loans without a promissory note made when the loan was given;

(9) Loans that are delinquent, defaulted, or in any manner not in a current payment status as determined by the lender;

(10) Loans, or those parts of loans, obtained for educational or living expenses while at school, which exceed the ''reasonable'' level, as determined by a review of the school's standard school budget or additional contemporaneous documentation for the year in which the loan was made, as determined by the CIR–LRP;

(11) Loans which have been paid in full;

(12) Loans not obtained from a Government entity or commercial or other charter lending institution, such as loans from friends and relatives or other private individuals;

(13) Loans for graduate studies obtained following entry into the CIR–LRP.

Breach of the Loan Repayment Agreement

In the event that the participant fails to begin or complete the two-year minimum period of obligatory participation in contraception or infertility research at an NICHD intramural laboratory or eligible NICHD-supported extramural site as set forth in the contract, and payments have been rendered to the lenders on behalf of the individual, he/she is in breach of the contractual agreement, and is liable to pay monetary damages to the United States Government. Participants who leave during the first year of the initial contract are liable for amounts already paid by the Program plus an amount equal to $1,000 multiplied by the number of months of the original obligation. Participants who leave during the second year of the contract are liable for (a) the total of the amounts the Program paid the lenders, plus (b) an ''unserved obligation penalty'' of $1,000 for each month unserved. If a participant completed the two-year minimum obligatory period, but cannot complete additional obligatory periods, no obligation penalties will be levied, but the participant will owe the United States for any payments the CIR–LRP made to the lenders for which service by the participant was not performed unless, in the opinion of the CIR–LRP Panel, they continue to participate in contraception and/or infertility research during the additional obligatory periods. If a participant must terminate employment/training at an NICHD intramural laboratory of NICHD-supported extramural site for reasons beyond his/her control, and transfers to a site other than an NICHD intramural laboratory or eligible NICHD-supported extramural site, payments will cease upon transfer. He/she may not be liable for monetary damages as described above, if, in the judgement of the CIR–LRP Panel, he/she continues to participate in contraception and/or infertility research. However, if he/she transfers to another NICHD intramural laboratory or eligible NICHD-supported extramural site and participates in contraception and/or infertility research with the approval of the Director, NICHD, the contract will be amended and the participant will still be considered bound by the ongoing contract obligations, and the lenders will continue to receive payments on behalf of the participant according to schedule.

Additional Program Information

This Program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This Program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1995. A Request for OMB Review and Approval of information collection associated with the Program is being prepared by the NIH and will be sent to OMB for review and approval prior to implementation of the CIR–LRP.

The Catalog of Federal Domestic Assistance number for the CIR–LRP is 93.209.

Dated: April 7, 1998.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 98–10872 Filed 4–22–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of the Methadone/LAAM Treatment Program Accreditation Project—New—SAMHSA's Center for Substance Abuse Treatment (CSAT), in conjunction with other Federal Agencies, is involved in planning and developing accreditation processes for methadone/LAAM treatment programs (MTPs). This project will evaluate the process, costs, and administrative and clinical impacts of the accreditation process, and will estimate the costs of national implementation of an accreditation system. In collaboration with accreditation and technical assistance contractors, evaluation activities will be conducted at a sample of treatment sites, with a control group of treatment sites. Measures will include program structure and operation, costs, clinical practice, staff appraisal, patient satisfaction and treatment outcomes. The estimated annualized burden for the three-year data collection period is summarized below.

Instrument	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden hours	Annualized burden hours
Site Survey	180	2	1.5	540	180
Cost Survey [1]	(180)	2	3.5	1,260	420
Activity Log [1]	(135)	13	0.5	877.5	292.5
Treatment Staff Questionnaires	1,800	2	0.33	1,188	399
Treatment Staff [2] (Focus Groups)	(1,080)	1	1.5	1,620	540
Patient Questionnaire	14,400	1	0.25	3,600	1,200
Total	16,380			9,085.5	3,031.5

[1] Site level response by participating sites.
[2] Focus group respondents are a subset of the treatment staff.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 16, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–10786 Filed 4–22–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

State Treatment Needs Assessment Studies—New—SAMHSA's Center for Substance Abuse Treatment (CSAT), as part of its State Treatment and Needs Assessment Program (STNAP), awards contracts to States to conduct studies for the purpose of determining the need and demand for substance abuse treatment within each State. In order to receive funds from the Substance Abuse Prevention and Treatment Block Grant, States must submit in their annual block grant applications an assessment of service needs Statewide, at the sub-state level, and for specified population groups (as required by Section 1929 of the Public Health Service Act). Most States plan to conduct an adult telephone household survey to collect information on needed treatment for substance abuse/dependence. In addition, many States plan to conduct a variety of more focused studies which will collect data on treatment need in special populations, including adolescents, pregnant women, injecting drug users, American Indians, arrestees and other criminal justice populations. The estimated annualized burden for the State needs assessment studies over the next three years is presented below.

	Total Number of respondents	Number of responses/respondent	Hours/response	Total burden hours	Annualized burden hours[1]
Adult Household Telephone Surveys	92,499	1	0.51	48,177	16,059
Adolescent Surveys	99,500	1	0.52	51,391	17,130
Criminal justice populations	10,800	1	.84	8,425	2,808
Medicaid recipients	10,460	1	0.72	7,252	2,417
Other population groups	13,050	1	.66	7,649	2,550

	Total Number of respondents	Number of responses/ respondent	Hours/response	Total burden hours	Annualized burden hours[1]
Treatment providers	255	1	1.5	384	128
Total				123,278	41,093

[1] Burden is annualized over the three-year period for which approval is requested.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 16, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–10787 Filed 4–22–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Reassessment of the Interim Wolf Control Plan for the Northern Rocky Mountains for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft reassessment of the 1988 Interim Wolf Control Plan for the Northern Rocky Mountains. The Service solicits review and comment from the public on this draft information.

DATES: Comments on the draft reassessment must be received on or before May 26, 1998 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft reassessment may obtain a copy by contacting the Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, 100 North Park, Suite 320, Helena, Montana 59604. Written comments and materials regarding this information should be sent to the Recovery Coordinator at the address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, Wolf Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 449–5225, extension 204.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's (Service) endangered species program. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

Under the provisions of the Endangered Species Act of 1973 (Act) as amended (16 U.S.C. 1531 *et seq.*), the Northern Rocky Mountains wolf population was listed as endangered, and the Service approved the Wolf Recovery Plan for the Northern Rocky Mountains in 1987. The Recovery Plan recognized that, where ranges of wolves and livestock overlap, some livestock would be killed by wolves. In order to address this issue the Recovery Plan identified the need ''to delineate recovery areas and identify and develop conservation strategies and management plan(s) to ensure perpetuation of the Northern Rocky Mountain wolf.'' To respond to this need a task was included to develop and implement a wolf control/contingency plan for dealing with wolf depredations. An interim wolf control plan for Montana and Wyoming was approved by the Service's Regional Director on August 5, 1988. The plan includes criteria for determining problem wolves, criteria for their disposition, and protocols and techniques for control actions.

The Service conducts control of problem wolves through its section 10 permit authority. Under section 10(a)(1)(A) of the Endangered Species Act. ''The Secretary (of the Interior) may permit, under such terms and conditions as he may prescribe—, (A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species.'' The Service conducts control of problem wolves under the terms and conditions of the section 10 permit which is consistent with the guidance of the Interim Wolf Control. Since issuance of the permit in 1988, the wolf population in Northwest Montana has been reproducing and growing toward recovery levels.

The Interim Wolf Control Plan has been in place for 10 years. It is time for an assessment of the plan's operation to see if it is achieving its goal of facilitating recovery of the Northern Rocky Mountain endangered wolf population. The assessment also will identify recommendations for improvements or other actions to increase the plan's effectiveness.

Public Comments Solicited

The Service solicits written comments on the draft reassessment of the interim wolf control plan described above. All comments received by the date specified in the **DATES** section above will be considered prior to finalization of the information. Appropriate portions of the information will be appended to, and become part of, the reassessment.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 13, 1998.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 98–10297 Filed 4–22–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–033–98–1230–OHV1]

Temporary Closure of Public Lands: Nevada, Carson City District

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of certain public lands in Lyon, Storey, Churchill, Douglas and Mineral Counties on and adjacent to several Off Highway Vehicle race courses. Races are conducted at various times from May through October 1998:

1. May 9–10, 1998: Virginia City Grand Prix—Permit Number NV–030–96–008

2. May 24, 1998: Yerington 300 Desert Race—Permit Number NV–030–96–10A
3. June 20, 1998: Top Gun 300 Desert Race—Permit Number NV–030–96–10B
4. July 25, 1998: Top Gun Twilight Race—Permit Number NV–030–96–10C
5. September 6, 1998: Yerington to Fallon and Back—Permit Number NV–030–96–10D

SUMMARY: The Assistant District Manager, Non-Renewable Resources announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety and to protect adjacent resources.

EFFECTIVE DATES: May 9, 10 and 24, 1998; June 20; July 25; September 6, 1998.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City District, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 98701, Telephone: (702) 885–6161.

SUPPLEMENTARY INFORMATION: Bureau lands to be closed to public use include the width and length of those roads and trails identified as the race route by colorful flagging and directional arrows attached to wooden stakes. A map of each closure area may be obtained at the contact address. The event permittees are required to clearly mark and monitor the event routes during the closure periods. Spectators and support vehicles may drive on existing accessory roads only. Spectators may observe the races from safe locations as directed by event officials and BLM personnel.

Exemptions

Closure restrictions do not apply to race officials, medical/rescue, law enforcement and agency personnel monitoring the event.

Authority: 43 CFR 8364 and 43 CFR 8372.

Penalty

Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 USC 3571, or both.

Event Specific Information

1. Virginia City Grand Prix Motorcycle Race—May 9 and 10, 1998. Western States Racing Association—Permit Number NV–030–98008. This closure will be in effect from 6 a.m. May 9 through 4 p.m. May 10, 1998. In addition to the race route closure, camping and target shooting on public lands within the direct vicinity of the race shall be prohibited. The event is a multiple lap motorcycle race conducted on dirt roads and trails near Virginia City, Storey County, Nevada within T16N R21E and T17N R21E, M.D.M.

2. Yerington 200 Desert Race—May 24, 1998—Valley Off-Road Racing Association—Permit Number NV–030–96–10A. This closure will be in effect from 6:00 a.m. until 8:00 p.m. for a 300 mile, multiple-lap OHV race on dirt roads and drainages near Yerington, Lyon County, Nevada within T12N R24E; T13N R24E; T14N R24E; T15N R24E; T16N R24E; T13N R25E; T15N R25E; T16N R25E; T17N R26E, M.D.M. The race route closure affects portions of the following commonly used roads: Singatse Pass, Churchill Canyon, Gallagher Pass and Adrian Valley. Spectators may best view the race at the Start/Finish gravel pit near Yerington and certain points along Gallagher Pass and Churchill Canyon Roads.

3. Top Gun 300 Desert Race—June 20, 1998—Valley Off Road Racing Association—Permit Number NV–030–96–10B. This closure will be in effect from 6:00 a.m. until 8:00 p.m. for a 300 mile, multiple lap OHV race conducted on dirt roads and drainages near Fallon, Churchill County, Nevada within T15N R31E; T15N R32E; T16N R30E; T16N R31E; T16N R32E; T17N R30E; T17N R31E, M.D.M. The race route closure affects portions of the following commonly used roads: Simpson Pass, Four-mile Canyon, Arterial Canyon, GZ Canyon, Salt Wells and Sand Springs. Spectators may view the race from the Start/Finish area at Top Gun Drag Strip located south of Fallon on Highway 95 and at certain Check Points selected by race and BLM officials.

4. Top Gun Twilight Race—July 25, 1998—Valley Off Road Racing Association—Permit Number NV–030–96–10C. This closure will be in effect from noon until midnight for a 250 mile, multiple lap OHV race conducted on dirt roads and drainages near Fallon, Churchill County, Nevada within T16N R25E; T16N R26E; T16N R27E; T16N R28E; T16N R29E; T17N R26E; T17N R27E, M.D.M. The race route closure affects portions the following commonly used roads: Simpson Pass near Hooten Well, Wildhorse Basin. Spectators are welcome at the Start/Finish area at Top Gun Drag Strip and at certain Check Points as directed by BLM and race officials.

5. Yerington to Fallon and Back—September 6, 1998—Valley Off Road Racing Association—Permit Number NV–030–96–10D. This closure will be in effect from 6:00 a.m. until 8:00 p.m. for a point-to-point OHV race conducted over dirt roads and drainages between Yerington and Fallon, Lyon and Churchill Counties, Nevada within T13N R24E; T13N R25E; T14N R24E; T15N R24E; T16N R24E through 31E; T17N R30E; T17N R31E; T18N R30E, M.D.M. Portions of the following commonly used roads will be affected by the race route closure: Singatse Pass, Churchill Canyon, Adrian Valley, Eightmile and Bass Flat. Spectators are welcome at the Start/Finish area near Yerington and the one near Fallon plus certain Check Points designated by race and BLM officials.

Dated: April 7, 1998.

Clifford D. Ligons,

Assistant District Manager, Non Renewable Resources.

[FR Doc. 98–10763 Filed 4–22–98; 8:45 am]

BILLING CODE 4310–HC–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notification of Availability of the Monetization Field Manual

AGENCY: U.S. Agency for International Development.

ACTION: Notice of document availability.

SUMMARY: The Office of Food for Peace (FFP), within the Bureau for Humanitarian Response (BHR), U.S. Agency for International Development (USAID), hereby announces the availability of its Monetization Field Manual. The Monetization Field Manual sets out the Office's policy and guidelines for Cooperating Sponsor sales of P.L. 480 Title II commodities. Interested parties are invited to provide written comments on the manual within 30 days of publication of this notice.

AVAILABILITY: The Monetization Field Manual is available on USAID's web site at:

http://www.info.usaid.gov/hum__response/ffp/ffp.htm

Requests for hard copies must be faxed to the attention of Mr. James F. Thompson at 202–216–3042.

ADDRESSES: Comments on the Monetization Manual should be sent to: Mr. James F. Thompson, U.S. Agency for International Development, 1300 Pennsylvania Avenue, N.W.—Room 7.06–111, Washington, DC 20523.

Comments can also be faxed to Mr. Thompson's attention at 202–216–3042.

Jeanne Markunas,

Acting Director, Office of Food for Peace, Bureau for Humanitarian Response, U.S. Agency for International Development.

[FR Doc. 98–10833 Filed 4–22–98; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Policy; Agency Information Collection Activities: Proposed Collection; Comment Request; the National Agricultural Workers Survey Questionnaire Form

AGENCY: Office of the Assistant Secretary for Policy (OASP), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently the Office of the Assistant Secretary for Policy is soliciting comments concerning the questionnaire used by the National Agricultural Workers Survey (NAWS). This survey has been conducted under the Office of Management and Budget (OMB) clearance since October 1988. It has up to this time conducted on average 2,500 interviews per year. The focus has been on demographic, employment and health data. The NAWS information collection request will consist of two parts. The first part is the continued approval of the traditional NAWS survey questions for the 2,500 respondents for the three year period. The second part, the NAWS will conduct for one year only, a pilot test of an enlarged sample size of 4,500 and will utilize an enhanced survey form which includes additional in-depth questions on occupational health. The sampling frame and estimation procedures will not be altered by the pilot. Furthermore, the survey format, though enlarged, will be in large measure the same as the traditional NAWS survey form.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper functioning of government agencies charged with protecting the well being of the farmworker population, 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.

DATE: Written comment must be submitted by June 22, 1998.

ADDRESSES: Comments are to be submitted to the U.S. Department of Labor, Room S–2312, (200 Constitution Ave. NW, Washington, D.C. 20210, telephone (202) 219–6197. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 219–9216.

FOR FURTHER INFORMATION: Contact Richard Mines, Economist and Program Officer for the National Agricultural Workers Survey, Office of the Assistant Secretary of Labor, U.S. Department of Labor, Room S–2312, 200 Constitution Ave., NW, Washington, D.C. 20210. Telephone: (202) 219–6197. Copies of the referenced information collection request are available for inspection and copying and will be mailed to persons who request copies by telephoning Richard Mines at (202) 219–6197. For more information about the NAWS, consult the NAWS home page at: http://www.dol.gov/dol/asp/public/programs/agworker/naws.htm.

SUPPLEMENTARY INFORMATION:

I. Background

The NAWS began surveying farmworkers in 1988, it has collected information from over 22,000 workers. The survey samples all crop farmworkers in three cycles each year in order to capture the seasonality of the work. The NAWS locates and samples workers at their work sites, avoiding the well-publicized undercount of this difficult-to-find population. During the initial contact, arrangements are made to interview the respondent at home or at another convenient location.

What Information Does the NAWS Collect?

- *Household and Family Composition.* The NAWS interview contains a family grid that asks basic demographic information for all household members, and records information about each person's education level and migration patterns.
- *Additional Demographics.* The NAWS collects a more comprehensive demographic profile of the farmworker himself including language ability, contacts in non-agricultural jobs, and parental involvement in agriculture.
- *Employment History.* The NAWS compiles a full year of information on the employment and geographic movement of the farmworker. This history covers the occupation, including task and crop if employed in agriculture, type of non-agricultural work if employed off the farm, periods of unemployment and periods abroad, and the worker's location for every week of the year preceding the interview.
- *Wages, Benefits and Working Conditions.* The NAWS collects information on payment method (piece or hourly) and wages, on health insurance, on workers compensation and unemployment insurance, and on other benefits and working conditions.
- *Health, Safety and Housing.* The NAWS gathers information on medical history, use of medical services, participation in pesticide training, and on the worker's housing arrangements.
- *Income and Assets, Social Services and Legal Status.* The NAWS questionnaire has a series of questions on personal and family income, assets held in the United States and abroad, use of social services, and legal or immigration status.

II. Current Actions

This action requests continued OMB approval of the paperwork requirements in the NAWS survey form. It also requests OMB approval to conduct a one year pilot with a larger sample size and an enhanced focus on occupational health. OMB approval is necessary to continue collecting information needed by federal programs mandated by Congress to monitor and serve the farmworker population. These include among others the National Agricultural Statistical Service of the USDA, the Office of Migrant Education of the Department of Education, the Migrant Health Program, the Migrant Head Start Program and the National Institute of Occupational Health of the Department of Health and Human Services, the Farmworker Adult Training Program (JTPA 402) of Department of Labor and

the Pesticide Division of the Environmental Protection Agency. The pilot project is necessary to fulfill the Congressionally mandated charge to collect better information about farmworker occupational health.

Type of Review: Revision of a currently approved collection.

Agency: Office of the Assistant Secretary for Policy.

Title: The survey form of the National Agricultural Workers Survey.

OMB Number: 1225–0044.

Affected Public: Farmworkers and farm employees.

Total Respondents: 6000 respondents (4,500 farmworkers receiving a full interview and 1,500 employers who will be briefly interviewed to ascertain the location of the potential worker respondents).

Frequency: Annually (The survey is administered in three 10–12 week cycles each year, beginning in October, February and May. Approximately, one third of the 4,500 farmworker respondents are interviewed each cycle. And, approximately 500 employers are approached to make interviewee contacts each cycle.)

Total Responses: 6,000 including both interviewed farmworkers and employers.

Average Time per Response: Time per response for employers is approximately 20 minutes and for farmworker interviewees approximately one hour.

Estimated Total Burden Hours: 5,000 hours (4,500 hours of this burden time will be incurred by workers and 500 by farm employers).

Total Annualized capital/startup costs: 0.

Total initial annual costs: (operating/maintaining systems or purchasing services): 0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: April 18, 1998.

Authorized Official in the Office of the Assistant Secretary for Policy.

Richard Mines,

Economist.

[FR Doc. 98–10837 Filed 4–22–98; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act (JTPA) Standardized Program Information Reporting (SPIR) System; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed revision and extension of the Job Training Partnership Act (JTPA) individual-level reporting system: Standardized Program Information Reporting (SPIR). A copy of the proposed information reporting system can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 20, 1998. The Department 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 the use of appropriate electronic reporting mechanisms.

ADDRESSEE: U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, Rm. N5637, 200 Constitution Ave, N.W., Washington, D.C. 20210, ATTN: Douglas Scott, Telephone: (202) 219–5487 ex. 111, fax: (202) 219–5455 (these are not toll-free numbers), Internet: ED.SCOTTD@DOLETA.GOV

SUPPLEMENTARY INFORMATION:

I. Background

The JTPA at Section 165 requires that all state and local agencies operating programs funded under Titles II–A (services to disadvantaged adults), II–C (services to disadvantaged youth), Section 204(d) (services to older workers) and Title III (services to dislocated workers) of the Act maintain standardized participant records and report this information in a manner prescribed by the Secretary. States report on participants' demographic and labor force characteristics, services received, and educational and labor force status before and after program participation. Uniform data are maintained on those who have participated in JTPA programs during a given year and who have left the programs. This information is used for public information and program evaluation, as well as to monitor program performance and to assess regulatory compliance.

The complete SPIR data base allows the Department to set levels for national performance standards required in the law. The Department also uses these data to provide States with regression-based local adjustment factors and models for setting benchmarks and assessing how well local programs achieve good results in a broad range of employment-related and skill enhancing outcomes. SPIR data are necessary for the Department's performance monitoring consultations with local and State JTPA programs. The data also support requirements in the Government Performance and Results Act requiring federal agencies to evaluate the impact and results of government investment in job training and employment programs.

Reinstatement will enable DOL to continue this reporting system and to enhance it to accommodate changes and developments in the employment and training system that have occurred since the SPIR data base was originally established. Enhancements will also allow States to use administrative data (earnings records) currently collected by the Unemployment Insurance (UI) program to track the labor force experience of program participants in order to gauge program results more accurately and efficiently. Further enhancements are to clarify the linkages

between enrollees in JTPA programs and other programs, such as the new Welfare-to-Work program and Worker Profiling and Reemployment Services, and to implement technical corrections, such as the expansion of date fields to accommodate Year 2000 reporting.

II. Current Actions

The SPIR data base provides standardized information on job training and placement programs operated by all States and 640 sub-state service delivery organizations. The SPIR data base serves a number of essential functions required by JTPA and other laws and regulations. For example, data in the SPIR system are used by the Department to evaluate State and local program operations in relation to performance standards established by the Department in consultation with its partners. Local programs which are exceeding standards are eligible to receive monetary performance incentives, and programs which do not meet standards are subject to corrective action, including technical assistance.

The SPIR data base is an integral part of the national JTPA program. The purposes of changes and enhancements proposed in this submission are to:

1. Enhance the ability of the data base system to track participants who are also receiving services under other programs;

2. To identify individuals who were referred to JTPA through integrated workforce development programs operated at the State or local level;

3. To allow States to track the post-program experience of individuals through the use of administrative data (earnings records) collected by State UI programs;

4. To increase the frequency of data transfers from yearly to quarterly in order to improve the timeliness of program information; and

5. To implement technical requirements such as the revision of certain program names, and changing the format of date fields to be Year 2000 compliant.

Type of Review: Reinstatement with changes.

Agency: Employment and Training Administration.

Title: Standardized Program Information Reporting (SPIR).

OMB Number: 1205–0321.

Affected Public: State governments, local service delivery areas (SDAs), and local sub-state areas (SSAs).

Cite/Reference/Form/etc.: Authority to collect this information is provided in three Sections of the JTPA legislation:

Section 106—Performance Standards

This Section directs the Secretary to prescribe standards for adult programs under the Titles included in the SPIR system. Establishing standards and monitoring performance requires data on performance levels. This Section also makes provision for Governors to vary standards for local-level programs with reference to local economic factors, the characteristics of the population being served, and the types of services being provided.

Section 165—Reports, Record keeping, and Investigations

This Section requires federal grant recipients to maintain records and report information regarding program performance and fiscal management as specified by the Secretary. It also specifically requires recipients ''to maintain standardized records for all individual participants and provide to the Secretary a sufficient number of such records to provide for an adequate analysis.''

Section 169—Administrative Provisions

The Secretary is directed at (d)(1) to submit an annual report to Congress summarizing the achievements of the program. This report includes data on program performance.

The collection instrument is the Standardized Program Information Reporting (SPIR) instructions and report format specifications. The SPIR itself is an electronic computer file in a specified form which is submitted by respondents via diskette, modem, electronic tape, or the Internet.

Total Respondents: 52—the States, District of Columbia and Puerto Rico.

Frequency: Quarterly.

Total Responses: We receive one data set from each of the 52 reporting units. Each of these sets contains one record for each individual who has terminated from participation in a JTPA program included in SPIR reporting requirements during the reporting period. Thus, the number of records in each set varies depending on the number of individuals served under JTPA. The total report submission for the most recent reporting period (Program Year 1996) consisted of 589,806 individual records.

The following table documents changes in the burden hours associated with the proposed SPIR revisions. (Note: the most recent SPIR authorization referenced a burden hours estimate of 20,140 hours. This was, in fact, the increase over the original SPIR authorization bringing the authorized burden hours to 439,365. For this reason the table used the 439,365 estimate as the departure point for burden hours estimates.)

CHANGE IN BURDEN HOURS.—FIRST INTERIM YEAR OF REVISION

Activity	Affected respondents	Average hours per year	Average burden hours (national)
Currently Authorized	.....	.....	439,365
Change in Record Volume +11%	52	310	455,485
Move to Quarterly Reporting	52	30	457,045
New and Revised Data Elements	52	80	461,205
Start-up Requirements for Wage Records	5	100	461,705
Routine Data Gathering for Wage Records	5	50	461,955
Decrease in Reporting Burden Associated with Move to Wage Records	5	−1203	455,940

Net Change in Reporting Burden, 1st Year: +16,575.

Burden hours calculation refers to the first year after implementation of changes. For example, if the increase over the three year period in volume of records is 11%, then 439,365 hours will increase to 487,695 hours—a net increase of 48,330 hours attributable to change in volume of records processed. This is an average increase of 16,110 per year, as reflected in the table.

Average Time per Response: 8,768 total hours per reporting unit (State) to compile and transmit electronic records for JTPA terminees included in the data transfer. The actual time per response varies widely depending on the number

of individuals served in the State's programs.

Total Burden Cost (capital/startup): All respondents are currently operating production-status SPIR reporting systems. Estimated average marginal costs to implement changes described in this Notice: $7,500.

Total Burden Cost (operating/maintaining): All respondents maintain management information systems required to operate their JTPA programs. Satisfying SPIR reporting requirements is one of a number of functions these systems perform. The costs of operating and maintaining these systems vary widely, ranging from States with only a single Service Delivery Area (e.g., Delaware) to California which has 52 Service Delivery Areas within the State.

Estimated Total Burden Hours: 455,940.

Change from Prior Authorization: Increase of 16,575 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 15, 1998.

Gerri Fiala,

Director, Office of Policy and Research.

[FR Doc. 98–10838 Filed 4–22–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

The ''Significant and Substantial'' Phrase in Sections 104 (d) and (e) of the Federal Mine Safety and Health Act of 1977; Suspension of Interpretative Bulletin

On February 5, 1998 (63 FR 6012), the Mine Safety and Health Administration (MSHA) issued an Interpretative Bulletin which set forth the Agency's interpretation of the statutory phrase ''* * * significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard * * *'' and which announced that MSHA would challenge an interpretation of that language by the Federal Mine Safety and Health Review Commission.

In response to concerns raised by the mining industry, on February 20, 1998 (63 FR 8692), the Agency announced a 60-day comment period on the implementation and impact of the interpretation of that phrase. During the comment period, the mining industry presented views that the approach set out in the Interpretative Bulletin would be overly-inclusive, resulting in an application that would classify virtually all violations as S&S. This was not MSHA's intent.

The Agency's purpose was to seek an application of the phrase that would recognize that serious hazards which have a real possibility of causing death or serious injury or illness should properly be classified and addressed as S&S violations.

Upon consideration of the views presented to date, the Agency believes that further dialogue on the application of the statutory phrase ''significant and substantial'' would better serve all segments of the mining community. By this notice, MSHA is hereby suspending the Interpretative Bulletin and the applicable provisions of the Program Information Bulletin issued on February 5. MSHA will continue to accept written comments on this matter.

Dated: April 20, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–10911 Filed 4–21–98; 10:23 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Request for nominations.

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health requests nominations for membership on the National Advisory Committee on Occupational Safety and Health. The Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

Nominations will be accepted by the Secretary of Labor for 8 vacancies occurring in the following categories: two public representatives; two management representatives; two labor representatives and two safety representatives. Four additional members for the Committee will be recommended by the Secretary of Health and Human Services: two occupational health representatives and two public representatives. The terms for six members will be for one year and the terms for the remaining six members will be for two years. Any interested person or organization may nominate one or more qualified persons for membership. The category which the candidate would represent should be specified and a resume of the nominee included. In addition, the nomination should state that the nominee is aware of the nomination and is willing to serve as a committee member for a two year term.

DATES: Nominations must be submitted no later than June 5, 1998.

ADDRESSES: Nominations should be submitted to Frank Frodyma, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC this 17th day of April, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–10839 Filed 4–22–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical 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 Astronomical Sciences (1186).

Date and Time: May 15, 1998, 8:30 am–5:00 pm.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Seth L. Tuttle, Program Manager, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/306–1820.

Purpose of Meeting: To provide advice and recommendations on proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate proposals submitted to the AST/MRI Program.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10816 Filed 4–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering & Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering & Environmental Systems.

Date & Time: May 12, 1998; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Contact Person: Dr. Edward H. Bryan, Program Director, Environmental Engineering Program, Division of Bioengineering & Environmental Systems, Room 565, NSF, 4201 Wilson Blvd., Arlington, VA 22230, 703/306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Major Research Instrumentation (MRI) 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: April 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10813 Filed 4–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences.

Date and Time: May 13, 14, and 15, 1998, 8:00 am–5:00 pm each day.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open—(see Agenda, below).

Contact Person: Dr. Scott Collins, Division of Environmental Biology, Room 640, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1483.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access of privileged materials.

Agenda

Closed: May 13 and May 14 from 8:00 am–5:00 pm each day—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of the Ecological Studies Cluster in the Division of Environmental Biology.

Open: May 15 from 8:00 am–5:00 pm—To assess the results of NSF program investments in the Division of Environmental Biology. This shall involve a discussion and review of results focused on NSF and grantees outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: April 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10818 Filed 4–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the month of May 1998, the Special Emphasis Panel will be holding a Major Research Instrumentation Panel to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Name: Special Emphasis Panel in Chemical and Transport Systems

Date and Time: May 12, 1998, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230, (703) 306–1371.

Type of Meeting: Closed.

Contact: Dr. Raul Miranda, Program Director, Division of Chemical and Transport Systems (CTS), Room 525 (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division 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: April 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10812 Filed 4–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the month of May 1998, the Special Emphasis Panel will be holding a Major Research Instrumentation Panel to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Name: Special Emphasis Panel in Chemical and Transport Systems.

Date and Time: May 11, 1998, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230, (703) 306–1371.

Type of Meeting: Closed.

Contact: Dr. Ashley Emery, Program Director, Division of Chemical and Transport Systems (CTS), Room 525 (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division 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 from 56 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10815 Filed 4–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; 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 and Committee Code: Advisory Committee for Engineering (#1170).

Date and Time: May 12, 1998/10:00 a.m.–6:00 p.m.; May 13, 1998/8:30 a.m.–12:00N.

Place: May 12 and 13, Room 1235 (National Science Board Meeting Room), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Joseph Hennessey, Acting Assistant Director for Engineering, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1301.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

Dated: April 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10817 Filed 4–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: May 13–15, 1998.

Time: 5:00 p.m.–8:30 p.m., Wednesday, May 13; 8:30 a.m.–5:30 p.m., Thursday, May 14; 8:30 a.m.–2:30 p.m., Friday, May 15, 1998.

Place: Room 1235, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Dr. G. Michael Purdy, Director, Division of Ocean Sciences, National Science Foundation, Suite 725, 4201 Wilson Boulevard, Arlington, Virginia 22230, 703–306–1580.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

Scientific Trends and Opportunities in the Geosciences
Scientific Planning for the New Millenium
Facilities Long-Range Planning
GEO Education Strategy
GPRA Strategic Planning and NSF Budget Development

Note: A detailed agenda will be posted on the NSF Homepage approximately one week prior to the meeting on:

http://www.geo.nsf.gov/adgeo/advcomm/start.htm

Dated: April 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10814 Filed 4–22–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; 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 Polar Programs (1209).

Date and Time: May 11, 1998, 8:30 am to 5:00 pm.

Place: Florida State University, Tallahassee, FL.

Type of Meeting: Closed.

Contact Person: Dr. Scott Borg, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To site visit the activities of the Antarctic Marine Geology Research Facility (AMGRF).

Reason for Closing: The proposal 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: April 20, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10811 Filed 4–22–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49 issued to Northeast Nuclear Energy Company (the licensee) for operation of Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut.

The proposed change to Technical Specification 3/4.4.3, Pressurizer, would replace the pressurizer maximum water inventory requirement with a pressurizer maximum indicated level requirement. The proposed amendment would also make editorial changes and modify the associated Bases section.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Northeast Nuclear Energy Company (NNECO) has reviewed the proposed revision in accordance with 10 CFR 50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed Technical Specification provides added restrictions on pressurizer level to ensure that the pressurizer will not overfill or empty in a transient and that RCS [reactor coolant system] pressure control will

be maintained. The proposed Technical Specification requires pressurizer level to be maintained at the programmed level. The programmed level is a curve that varies linearly from 28% at no load T_{ave} to 61.5% at full power T_{ave}. This is more restrictive than the current upper limit of 92% of volume and provides added assurance that pressurizer overfill will not occur for those events where prevention of overfill is a criterion and that the pressurizer would not empty due to a transient. In addition, it assures that there is enough steam space available to prevent RCS overpressurization in a transient. This requirement also applies to manual operation to ensure that pressurizer level is maintained in a band around the programmed level of +/−6% of full scale. A two hour restriction on operation with pressurizer level not within programmed level +/−6% of full scale has been added. This will provide added assurance that operator error in pressurizer level control will not result in a transient. Based on the above, the changes do not negatively impact the probability of occurrence of the previously evaluated accidents.

For Modes 1 and 2, the Chapter 15 FSAR [Final Safety Analysis Report] accident analysis assumes that pressurizer level is being maintained by the automatic control system at the programmed level. For most of the accident analysis, pressurizer level is assumed to be at 61.5% for power conditions and 28% for hot zero power. For events where pressurizer level overfill is a concern, initial pressurizer level is assumed to be 6% over the nominal value of 61.5% at full power. This bounds the automatic control system uncertainty as documented in WCAP 14353. Thus, the proposed Technical Specification LCO [Limiting Condition for Operation] for Modes 1 and 2 is consistent with the Chapter 15 FSAR accident analysis. When pressurizer level is being maintained by manual operator action, a 6% operating band is specified. This band is consistent with the 6% error assumed for the pressurizer overfill events, but it does not take into account instrument uncertainty. Because of the infrequent use of manual operation combined with the multiple main board indications and the randomness associated with instrumentation uncertainty, it is unnecessary to apply instrument uncertainty effects on top of the operating band. As such, the 6% band is bounded by the current Chapter 15 FSAR analysis. Thus, it is concluded that the proposed Technical Specification is consistent with analysis assumptions.

With regard to Mode 3 operation, an evaluation has been performed for those events analyzed in Chapter 15 for Mode 3. The only accident analysis provided in Chapter 15 of the FSAR for Mode 3 is the boron dilution event. Pressurizer level has no impact on the results. As stated in the evaluation, the other events either would not occur, or the plant response would be extremely slow or not meaningful without power generation.

For Inadvertent Operation of ECCS [emergency core cooling system] that Increases Reactor Coolant Inventory, the MP3 [Millstone Unit 3] FSAR Section 15.5.1 clearly identifies this transient as an event evaluated at Power Operation. This is consistent with SRP [Standard Review Plan] Section 15.5.1–15.5.2 where the initial power condition is specified as the licensed core thermal power with allowance for measurement uncertainty. Thus, the current licensing basis does not require analysis of this event for the shutdown modes, including Modes 3 and 4.

Thus, the current specification which assures that a steam bubble exists in Mode 3 is sufficient [ ] to ensure consistency with the accident analysis assumptions.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The Technical Specification changes provide tighter restrictions on pressurizer level to ensure that pressurizer level will be controlled as intended. The Bases change better reflects what assures the validity of the accident analyses assumptions and the bases for the maximum level. A two hour restriction on operation with pressurizer level not within +/−6% (full scale) has been added. This provides added assurance that pressurizer level will be maintained consistent with the accident analysis initial condition assumption. The changes provide added assurance that RCS pressure control will be maintained and reduces the likelihood of pressurizer emptying or overfill. These changes modify neither accident mitigation nor system response post-accident.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The Technical Specification changes provided are consistent with the initial condition assumed in the Chapter 15 accident analysis by placing tighter restrictions on pressurizer level. The Chapter 15 FSAR accident analysis assumes that pressurizer level is being maintained by the automatic control system at the programmed level. For most of the accident analysis, pressurizer level is assumed to be at 61.5% for power conditions and 28% for hot zero power. For events where pressurizer overfill is a concern, initial pressurizer level is assumed to be 6% above the nominal value of 61.5% at full power. This bounds the automatic control system uncertainty as documented in WCAP 14353. Thus, the proposed Technical Specification LCO for Modes 1 and 2 is consistent with the Chapter 15 FSAR accident analysis. When pressurizer level is being maintained by manual operator action, a 6% operating band is specified. This band is consistent with the 6% error assumed for the pressurizer overfill events, but it does not take into account instrument uncertainty. Because of the infrequent use of manual operation combined with the multiple main board indications and the randomness associated with instrumentation uncertainty, it is unnecessary to apply instrument uncertainty effects on top of the operating band. As such, the 6% band is bounded by the current Chapter 15 FSAR analysis. For Mode 3, the current specification which assures that a steam bubble exists in Mode 3 is sufficient to assure consistency with the accident analysis assumptions. The Bases are modified to reflect the proposed changes and define the consistency with the Chapter 15 accident analysis. Therefore, the change does not reduce the margin of safety.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received

may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 26, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut, 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 7, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 17th day of April 1998.

For the Nuclear Regulatory Commission.

Daniel G. McDonald Jr.,

Senior Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10843 Filed 4–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company Inc.; Alabama Power Company; Joseph M. Farley Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–2 and NPF–8, issued to Southern Nuclear

Operating Company, Inc. (SNC), et al. (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

Envrionmental Assessment

Identification of the Proposed Action

The proposed action would allow SNC to increase the maximum reactor core power level for facility operation from 2652 megawatts-thermal (MWt) to 2775 MWt, which is approximately a 4.6 percent increase in rated core power.

The proposed action is in accordance with SNC's application for amendments dated February 14, 1997, as supplemented by letters dated June 20, August 5, September 22, November 19, December 9, December 17, and December 31, 1997, January 23, February 12, February 26, March 3, March 6, March 16, April 3, April 13, and two letters on April 17, 1998.

The Need for the Proposed Action

The proposed action is needed to allow SNC to increase the electrical output of each Farley unit by approximately 25 megawatts-electric and, thus, provide additional electrical power to service domestic and commercial areas of the licensee's grid.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that no significant change in the environmental impact can be expected for the proposed increase in power.

The original Final Environmental Statement (FES) considered a maximum thermal output of 2774 MWt for each Farley unit. The proposed power uprate will increase the maximum thermal output to 2775 MWt, which represents 0.036 percent increase over the original FES. The staff considers this increase over that previously assessed in the FES to be of minimal impact.

As part of the Farley power uprate review, SNC performed and completed an environmental impact evaluation in January 1997, as required by Section 3.1 of the Farley Nuclear Plant Environmental Protection Plan (EPP). Section 3.1 requires that the licensee prepare and record an evaluation of activities that may significantly affect the environment and determine if an unreviewed environmental question exists prior to engaging in additional construction or operational activities. SNC compared the proposed power uprate values and the values in the FES, June 1972, and the current operating conditions in order to assess environmental impact. This evaluation identified discrepancies between the current cooling tower operating parameters and the original design parameters, upon which the conclusions of the FES, June 1972, are based. An administrative noncompliance with Section 3.1 of the EPP was identified and reported in the 1996 Annual Environmental Operating Report. The staff's review of SNC's evaluation of environmental impacts is discussed below.

Radiological Environmental Assessment

SNC evaluated the impact of the proposed power uprate amendments to show that the applicable regulatory acceptance criteria relative to radiological environmental impacts will continue to be satisfied for the uprated power conditions. In conducting this evaluation, SNC considered the effect of the higher power level on source terms, onsite and offsite doses, and control room habitability during both normal operation and accident conditions.

The solid, liquid, and gaseous radwaste activity is influenced by the reactor coolant activity, which is a function of the reactor core power. The licensee performed evaluations of the existing design of the radwaste systems and concluded that plant operations at the proposed uprated power level will not have a significant impact on the radwaste systems.

The licensee performed calculations of the anticipated offsite releases at the proposed power uprate of 2775 MWt. The results of these calculations were then utilized to evaluate conformance with 10 CFR Part 20 and Appendix I of 10 CFR Part 50. The licensee concluded that there exists sufficient radwaste equipment to maintain releases within the limits of 10 CFR Part 20, Appendix B and the resulting offsite doses to the most exposed individual meet the limits of Appendix I of 10 CFR Part 50 and docket RM–50–2. Consequently, the licensee concluded that the power uprate requires no changes to the radwaste system design and/or operation and that no significant changes in actual offsite gaseous and liquid releases and doses are expected. The staff reviewed the licensee's assessment and concluded that the power uprate would have a small impact upon the quantity of offsite releases. The staff also concluded, based upon past plant effluent release reports, that the existing radwaste equipment should be sufficient to maintain offsite releases within the requirements of Appendix B to 10 CFR Part 20 and Appendix I to 10 CFR Part 50.

SNC has concluded that no changes or additions to structures, equipment, or procedures are necessary to provide adequate radiation protection for the operators and for the public during normal or post-accident operations to support the uprate. The existing structures, systems, and components can safely handle the changes in post-accident source terms and releases from the uprate conditions, and resulting onsite and offsite doses are less than the guidelines in 10 CFR 100.11 and are within the Standard Review Plan guidelines.

The staff has assessed those accidents for which the power uprate would have an impact upon the offsite and control room operator doses contained in Chapter 15 of the Final Safety Analysis Report. The staff's results demonstrate that, for those accidents that are impacted by the power uprate, the doses would not exceed the dose guidelines presently contained in the Standard Review Plan, 10 CFR Part 100 or General Design Criterion 19 of 10 CFR Part 50, Appendix A for either offsite locations or control room operators. Therefore, the staff finds that there are no significant adverse impacts on the environment.

The change will not increase the probability or consequences of accidents or normal effluents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

Nonradiological Environmental Assessment

The proposed power uprate will result in an increase in cooling tower duty of approximately 381 MMBtu/hr over the current operating condition, with a corresponding increase in evaporation, makeup, and cooling tower blowdown temperature. The power uprate will result in an increase in cooling tower blowdown temperature of approximately 0.2°F over the current operating condition. This increase in discharge temperature from 96.4°F to 96.6°F will produce an increase in river temperature of approximately 0.56°F above ambient river temperature during extreme temperature and flow conditions. The FES concluded that the approximately 0.5°F increase in river temperature associated with operation of Farley at extreme temperature and flow conditions did not result in significant adverse environmental

impact. SNC concluded that the additional heat load to the Chattahoochee River associated with power uprate does not significantly impact the conclusions of the FES relative to thermal impact. Cooling tower makeup, which comes from the service water pond, has increased from 17,077 gallons per minute (gpm) to 18,093 gpm. This represents an approximate 1.6 percent increase over the FES value of 17,800 gpm. This corresponds to a increase in river water withdrawal for both units from 67,504 gpm to 69,536 gpm, which is bounded by the two-unit river water withdrawal of 90,000 gpm in the FES. Cooling tower evaporation has increased from 12,808 gpm to 13,570 gpm. This represents an approximate 20 percent increase over the FES value of 11,340 gpm and approximately a 6 percent increase over the present operating condition. The FES concluded that the potential for fogging associated with cooling tower operation was not significant and should merely augment the normal fogging situation by a relatively small amount. SNC has stated that studies conducted during the first year of operation confirmed this conclusion. No fogging problems have been noted to date and no significant impact associated with fogging is expected for the uprated condition. The staff expects that operation of the plant at uprated condition will result in only a minimal increase in the natural fog over that discussed in the FES. Cooling tower flowrate (692,000 gpm) does not change as a result of power uprate. However, the flowrate is approximately 9 percent higher than the FES value (635,000 gpm). This increase was a result of pump modifications to improve efficiency. Cooling tower drift, which is a function of flowrate, also does not change. SNC uses a chemical treatment program for the cooling towers in order to minimize microbial and fungal attacks. The bulk water is sampled for microbiological activity on a periodic basis to evaluate the effectiveness of the program. SNC has stated that no environmental problems associated with microorganisms have been noted since the beginning of plant operation. In addition, the effects of airborne pathogens in the cooling towers has been reviewed and a program is in place to ensure protection of workers performing work in the cooling towers. The change in heat load to the cooling towers associated with power uprate is not expected to have significant impact relative to environmental effects from microorganisms or airborne organisms.

In addition to the FES, SNC evaluated the thermal impact associated with power uprate relative to the Farley Nuclear Plant National Pollutant Discharge Elimination System (NPDES) permit issued by the Alabama Department of Environmental Management. A renewed permit was issued in 1995 based on a 1990 thermal study conducted in support of the renewal, and contains no limits for temperature. The slight increase in final discharge falls within the acceptance range determined in the 1990 study. No additional monitoring requirements or other changes relative to the NPDES permit are required as a result of power uprate. SNC has also indicated that implementation of the power uprate will not require laydown areas that would affect land use, erosion control, endangered species, or historic land sites.

SNC has concluded that, with the exception of the parameters mentioned above, the operating parameters evaluated with regard to potential for environmental impact associated with power uprate either retain the same values as the original values in the FES or are bounded by those values and do not result in significant adverse environmental impact.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts and would reduce the operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Joseph M. Farley Nuclear Plant, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on February 26, 1998, the staff consulted with the Alabama State official, Kirk Whatley of the Office of Radiation Control, Alabama Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 14, 1997, as supplemented on June 20, August 5, September 22, November 19, December 9, December 17, and December 31, 1997, January 23, February 12, February 26, March 3, March 6, March 16, April 3, April 13, and two letters on April 17, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 17th day of April 1998.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10844 Filed 4–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Corporation (Three Mile Island Nuclear Generating Station, Unit 1); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50, issued to GPU Nuclear Corporation (GPU, the licensee), for operation of the Three Mile Island Nuclear Generating Station, Unit 1 (TMI–1), located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Facility Operating License No. DPR–50

and the Technical Specifications (TS) appended to Facility Operating License No. DPR–50 for the TMI–1 plant. Specifically, the proposed action would amend the license to reflect the change in the legal name of the operator from GPU Nuclear Corporation to GPU Nuclear, Inc. and to reflect the registered trade name of GPU Energy under which the owners of TMI–1 are now conducting business. In addition, the TMI–1 TSs would be revised to reflect the new legal name of the operator of TMI–1.

The proposed action is in accordance with the licensee's application for amendment dated December 16, 1996, as supplemented September 11, 1997 and March 25, 1998.

The Need for the Proposed Action

The proposed actions are necessary because on or about August 1, 1996, the owners of TMI–1 registered to do business under the trade name of GPU Energy. Also on or about August 1, 1996, the legal name of the operator of TMI–1 was changed from GPU Nuclear Corporation to GPU Nuclear, Inc.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action. As stated by the licensee,

> The corporate existence of all three Owners and the operator of TMI–1 continues uninterrupted, and all legal characteristics remain the same. The name changes do not alter the state of incorporation, registered agent, registered office, directors, officers, rights or liabilities of the Owners of TMI–1 or the operator of TMI–1. Similarly, the name changes do not alter the function of either the Owners or the operator of TMI–1, or the way they do business. The Owner's financial responsibility for TMI–1 and their sources of funds to support the facility remain the same. These name changes do not impact the existing ownership of TMI–1 and do not alter any of the existing licensing conditions applicable to TMI–1. There is no change to GPU Nuclear, Inc.'s ability to comply with these licensing conditions or with any other obligation or responsibility under the license. Specifically, the Owners of TMI–1 remain regulated electric utilities. The funds accrued by the Owners continue to be available to fulfill all obligations related to TMI–1 as they were before the name changes.
>
> There will be no impact on the safe operation of TMI–1 as a result of the name changes. Access to funds necessary to safely operate TMI–1 to the end of the license is unaffected. Access to decommissioning trust funds to ensure that TMI–1 can be decommissioned in accordance with NRC regulations remains as it was prior to the name changes.

In light of the foregoing, the Commission concludes that the change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there will be no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action is administrative in nature and does not involve any physical features of the plant. Thus, it does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the TMI–1 plant.

Agencies and Persons Consulted

In accordance with its stated policy, on March 16, 1998, the staff consulted with the Pennsylvania State official, Mr. Stan J. Maingi, of the Bureau of Radiation Protection, Pennsylvania Department of Environmental Resources, regarding the environmental impact of the proposed action. The State Official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's submittals dated December 16, 1996, September 11, 1997 and March 25, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the LAW/Government Publications Section, State Library of Pennsylvania, (Regional Dispository) Walnut Street and Commonwealth Avenue, P.O. Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 17th day of April 1998.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10845 Filed 4–22–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance, Irradiator Licenses; Availability of Draft NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of and requesting comment on draft NUREG–1556, Volume 6, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about 10 CFR Part 36 Irradiator Licenses,'' dated March 1998.

NRC is using Business Process Redesign (BPR) techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This draft NUREG report is the sixth program-specific guidance developed to support an improved materials licensing process.

It is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel. It combines and updates the guidance for applicants and licensees previously found in Draft Regulatory Guide DG–0003, ''Guide for the Preparation of Applications for Licenses for Non-Self-Contained Irradiators,'' dated January 1994, and the guidance for licensing staff previously found in NMSS Policy and Guidance Directive, FC 84–23, ''Standard Review Plan for Licenses for

the Use of Panoramic Dry Source-Storage Irradiators, Self-Contained Wet Source-Storage, and Panoramic Wet Source-Storage Irradiators,'' dated December 27, 1984. In addition, this draft report also contains pertinent information found in Technical Assistance Requests and Information Notices.

This draft report is for public comment only, and is NOT for use in preparing or reviewing applications for 10 CFR Part 36 irradiators until it is published in final form. It is being distributed for comment to encourage public participation in its development.

DATES: The comment period ends July 22, 1998. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to DLM1@NRC.GOV.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 6, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Sally L. Merchant, Mail Stop TWFN 8F5, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to SLM2@NRC.GOV. A copy of draft NUREG–1556, Volume 6, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 8–F5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7874; electronic mail address: SLM2@NRC.GOV.

Electronic Access

Draft NUREG–1556, Vol. 6 is also available electronically by visiting NRC's Home Page (http://www.nrc.gov/NRC/nucmat.html).

Dated at Rockville, Maryland, this 17th day of April, 1998.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–10846 Filed 4–22–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39878; File No. SR–Amex–98–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Elimination of Fixed Percentage Tests for Trading Halts in Index Options

April 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 10, 1998, the American Stock Exchange, Incorporated (the ''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 918C to eliminate certain fixed percentage tests that presently apply to the decision to halt trading in index options as well as the decision to resume trading after such a halt. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Exchange Rule 918C, ''Trading Halts or Suspensions,'' to eliminate certain fixed percentage tests that presently apply to the decision to halt trading in index options as well as the decision to resume trading after such a halt.

a. Trading halts. Currently, under Exchange Rule 918C, one of the enumerated factors that the designated Exchange officials may consider in deciding whether to halt trading in an index option is whether trading has been halted or suspended in underlying stocks whose weighted value represents ''20% or more of the current index group value.'' The Exchange is concerned that by including a fixed percentage test among those factors that ''may be considered,'' the present rule may imply that it would be improper for the designated Exchange officials to consider trading interruptions in underlying stocks whose weighted value represents less than 20% of the index value.

The Exchange believes such an interpretation would conflict with the purpose of Exchange Rule 918C, which grants designated Exchange officials the discretion to halt index option trading whenever they ''deem such action appropriate in the interest of a fair and orderly market or to protect investors.'' Because Exchange Rule 918C(b) sets forth a non-exclusive list of factors that Exchange officials may consider in exercising that discretion, the Exchange contends it would be inappropriate to prohibit those officials from considering trading disruptions in underlying stocks that fall below a predetermined level. Accordingly, the proposed rule change would clarify that Exchange officials, in evaluating whether to halt trading in index options, are not limited to situations in which 20% of the underlying stocks have halted, but rather may consider ''the extent to which'' trading is not occurring in the underlying stocks.

In addition, the proposed rule change would provide Exchange officials with the flexibility to consider not only whether trading in underlying stocks has been ''halted or suspended,'' but also whether such trading is ''not occurring.'' The term ''halted or suspended'' indicates that Exchange authorities have taken formal action to discontinue trading in a stock. However, in deciding whether to continue trading a derivative instrument like an index

option, Exchange officials should be able to consider the full extent to which underlying stocks are not trading, whether trading is not occurring because of formal exchange action, systemic problems, market emergencies, or other cause. The proposed rule change would clarify that in determining whether to halt index option trading, Exchange officials may consider the extent to which ''trading is not occurring'' in the underlying stocks, without limiting that consideration to formal halts or suspensions.

The Exchange also believes that Exchange Rule 918C may imply that the Exchange is required to calculate, on an ongoing basis, the extent to which stocks underlying a subject index are trading. The Exchange contends that such calculations would be difficult to perform on a real time basis for those indexes comprised of a large number of stocks (*e.g.*, the S&P MidCap 400 Index, which consists of 400 stocks). The removal of the fixed percentage tests from Exchange Rule 918C is expected to rectify any misperception regarding the Exchange's duty to maintain and calculate trading information for stocks underlying an index on which options are traded.

b. Resumption of trading after trading halts. Currently, trading may resume when the designated Exchange officials determine that (i) the conditions that led to the halt no longer are present; (ii) underlying securities constituting 50% or more of the stock index value are not subject to halt or suspension in the primary market for the trading of such underlying securities; and (iii) two floor governors in consultation with a senior executive officer of the Exchange conclude in their best judgment that the interests of a fair and orderly market are served by a resumption of trading. The proposed rule change would eliminate the provision in Exchange Rule 918C(b)(ii) that makes trading in a fixed percentage of stocks underlying an index a prerequisite to the resumption of index options trading after a trading halt.

The Exchange will continue its practice of assessing the extent to which underlying stocks are trading in deciding whether to resume trading after an index options trading halt. However, the Exchange believes it is inappropriate to delay the resumption of trading until the level of trading in stocks underlying an index has reached a predetermined, fixed level, particularly since it often may be difficult to make a precise determination of trading activity for indexes with a large number of constituent stocks.

Accordingly, the proposed rule change would eliminate the 50% fixed test and instead would specify that one of the factors that Exchange officials may consider in determining whether the ''interests of a fair and orderly market are served by a resumption of trading'' is ''the extent to which trading is occurring in stocks underlying the index.''

The proposed rule change would enable the Exchange to resume trading as soon as conditions warrant, without interposing an artificial barrier that might result from a fixed percentage test. The Exchange believes the proposed rule change continues to provide Exchange officials with the opportunity to give appropriate weight to the extent to which underlying stocks are trading.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[1] in general, and furthers the objectives of Section 6(b)(5),[2] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change is based on substantively identical rules governing halting and resumption of trading in index options in place at the Chicago Board Options Exchange, Inc. (See Securities Exchange Act Release No. 39480 (December 22, 1997) 62 FR 68327 (December 31, 1997) and: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from April 10, 1998, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(e)(6)[4] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–Amex–98–18 and should be submitted by May 14, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10753 Filed 4–22–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78f(b).

[2] 15 U.S.C. 78f(b)(5).

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(e)(6).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39879; File No. SR–CBOE–98–03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Allocation Procedures

April 16, 1998.

I. Introduction

On January 22, 1998, 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[2] thereunder, a proposed rule change to codify the Exchange's process for allocating securities to market-maker trading crowds and designated primary market-makers (''DPMs'').

The proposed rule change, as modified by amendments,[3] was published for comment in the **Federal Register** on March 12, 1998.[4] No comments were received on the proposal. This order approves the proposed rule change, as amended.

II. Description

The Exchange's Board of Directors has delegated to the Exchange's Allocation Committee and Special Product Assignment Committee the authority to allocate the securities traded on the Exchange. Each security traded on the Exchange is allocated either to a market-maker trading crowd or to a DPM.[5] To codify the process the Exchange uses to make those allocations, the CBOE proposes to adopt new CBOE Rule 8.95, ''Allocation of Securities and Location of Trading Crowds and DPMs.'' CBOE Rule 8.95 will consist of seven subparagraphs, (a) through (g), and contain two interpretations.

Proposed CBOE Rule 8.95(a) provides that the Allocation Committee shall be responsible for determining for each equity option class traded on the Exchange (i) whether the option class should be allocated to a trading crowd or to a DPM and (ii) to which trading crowd or DPM the option class should be allocated. Similarly, proposed CBOE Rule 8.95(a) provides that the Special Product Assignment Committee shall be responsible for determining for each security traded on the Exchange other than an equity option (i) whether the security should be allocated to a trading crowd or to a DPM and (ii) to which trading crowd or DPM the security should be allocated. Securities other than equity options that are traded on the Exchange include index options and securities traded pursuant to Chapter XXX, ''Stocks, Warrants and Other Securities,'' of the Exchange's Rules, such as structured products.

Proposed CBOE Rule 8.95(a) further provides that the Allocation Committee shall be responsible for determining the location on the Exchange's trading floor of each trading crowd, each DPM, and each security traded on the Exchange. For example, this provision permits the Allocation Committee to place a large trading crowd or DPM operation in a trading floor location that is large enough to accommodate the crowd or DPM. As another example, if a DPM operate as a DPM at more than one trading station, this provision permits the Allocation Committee to determine the station, and the location within each station, at which the securities allocated to the DPM will trade.

Proposed CBOE Rule 8.95(b) describes the criteria that may be considered by the Allocation Committee and Special Product Assignment Committee in making security allocation determinations and by the Allocation Committee in making location determinations. The factors to be considered may include, but are not limited to, any one or more of the following: performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness, environment in which the security will be traded, expressed preferences of issuers, and recommendations of other Exchange committees.

The following are some examples of the many ways in which these criteria may be applied. For example, in considering performance, the appropriate Allocation Committee (*i.e.*, the Allocation Committee or Special Product Assignment Committee, as applicable) might look at the market performance ranking of the applicable trading crowds or DPMs, as established by market performance reviews that are conducted by the Exchange's Market Performance Committees and Modified Trading System (''MTS'') Appointments Committee.[6] In considering volume, the appropriate Allocation Committee might look at the anticipated trading volume of the security and the trading volume attributable to the applicable trading crowds or DPMs in determining which trading crowds or DPMs would be best able to handle the additional volume. Similarly, in considering capacity, operational factors, and efficiency, the appropriate Allocation Committee might look to criteria such as the number of market-makers or DPM personnel, the ability to process order flow, and the amount of trading crowd or DPM capital in determining which trading crowds or DPMs would be best able to handle additional securities. In considering market performance commitments, the appropriate Allocation Committee might look at the pledges a trading crowd or DPM has made with respect to how narrow its bid-ask spreads will be and the number of contracts for which it will honor its disseminated market quotations beyond what is required by the Exchange's Rules. In considering competitiveness, the appropriate Allocation Committee might look at percentage of volume attributable to a trading crowd or DPM in allocated securities that are traded on more than one exchange. In considering the environment in which the security will be traded, the appropriate Allocation Committee might seek a proportionate distribution of securities between the market-maker system and the DPM system and across individual trading crowds and DPMs. Also, in considering expressed preferences of issuers, the appropriate Allocation Committee might give consideration to the views of the issuer of a security traded pursuant to

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 23, 1998, the CBOE filed a technical amendment to the filing, clarifying that the Exchange's Board of Directors had approved the proposed rule change in February 1997 (Amendment No. 1).

On February 12, 1998, the CBOE filed Amendment No. 2 to the proposal. Amendment No. 2 deletes CBOE Rules 8.80(a) and 8.80(b)(7) and inserts an inadvertently omitted part of the Federal Register notice. *See* Letter from Arthur Reinstein, Assistant General Counsel, CBOE, to Joshua Kans, Attorney, Division of Market Regulation (''Division''), Commission, dated February 12, 1998 (Amendment No. 2).

On March 4, 1998, the CBOE filed Amendment No. 3 to the proposal. Amendment No.3 clarifies the basis for deleting CBOE Rule 8.80(b)(7). Amendment No. 3 also notes that the CBOE is in the process of comprehensively amending CBOE Rule 8.80. *See* Letter from Arthur Reinstein, CBOE, to Joshua Kans, Division, Commission, dated March 4, 1998 (Amendment No. 3).

[4] Securities Exchange Act Release No. 39725 (March 5, 1998), 63 FR 12119.

[5] As part of this rule change, the Exchange is deleting existing CBOE Rules 8.80(a) and 8.80(b)(7). *See* Amendment Nos. 2 and 3, *supra* note 3.

[6] The Exchange has three committees that perform market performance functions, including the evaluation of market performance. The Exchange's Market Performance Committee performs market performance functions with respect to all trading crowds, market-makers (other than DPMs), and floor brokers that trade in securities other than DJX, NDX, OEX, and SPX index options; the Index Market Performance Committee performs market performance functions with respect to the trading crowds, market-makers (other than DPMs), and floor brokers that trade DJX, NDX, OEX, and SPX index options; and the MTS Appointments Committee performs market performance functions with respect to all DPMs.

Chapter XXX with respect to the allocation of that security or to the licenser of an index on which an index option is based with respect to the allocation of that index option. Similarly, the appropriate Allocation Committee might consider the recommendations of other Exchange committees, particularly those that evaluate trading crowd and DPM market performance.

Proposed CBOE Rule 8.95(c) provides that the appropriate Allocation Committee may remove an allocation and reallocate the applicable security during the first six months following its allocation to a trading crowd or DPM if the trading crowd or DPM fails to adhere to any market performance commitments made by the trading crowd or DPM in connection with receiving the allocation. The Allocation Committees typically request that trading crowds and DPMs make market performance commitments as part of their applications to receive allocations of particular securities. As described above, these commitments may relate to pledges to keep bid-ask spreads within a particular width or to make disseminated quotations firm for a designated number of contracts beyond what is required by Exchange Rules. Proposed CBOE Rule 8.95(c) permits the appropriate Allocation Committee to remove an allocation if these commitments are not met and gives trading crowds and DPMs incentive to abide by these commitments. Following the initial six month period after an allocation is made, all the responsibility for monitoring market performance with respect to that security is vested in the appropriate Market Performance Committee or MTS Appointments Committee, which continually evaluate trading crowd and DPM market performance, as applicable, and are authorized pursuant to CBOE Rule 8.60, CBOE Rule 8.80, and other Exchange rules to take remedial action for failure to satisfy minimum market performance standards.

Proposed CBOE Rule 8.95(c) also provides that the appropriate Allocation Committee may change an allocation determination or change a location determination, if in concludes that doing so is in the best interest of the Exchange based on operational factors or efficiency. For example, if, due to market conditions, the trading volume in a security greatly increased over a short time frame and the trading crowd or DPM allocated the security could not handle the order flow, it may become necessary for the appropriate Allocation Committee to reallocate the security to a trading crowd of DPM with the capacity to do so. Similarly, if the trading volume at a trading crowd or DPM post greatly increased and the number of crowd members or DPM personnel grew along with the increase in volume, it may become necessary for the appropriate Allocation Committee to relocate the trading crowd of DPM to a larger trading post.[7]

Proposed CBOE Rule 8.95(d) provides that prior to taking any action to remove an allocation or to change a location, the appropriate Allocation Committee shall generally give the affected trading crowd or DPM prior notice of the contemplated action and an opportunity to be heard concerning the action. The only exception to this requirement would be in those unusual situations when expeditious action is required due to extreme market volatility or some other situation requiring emergency action. Specifically, except when expeditious action is required, proposed CBOE Rule 8.95(d) requires that prior to taking any action to remove an allocation or to change a location, the appropriate Allocation Committee shall notify the trading crowd or DPM involved of the reasons the committee is considering taking the contemplated action, and shall either convene or more informal meetings of the committee (or a committee panel) with the trading crowd or DPM to discuss the matter, or provide the trading crowd or DPM with the opportunity to submit a written statement to the committee concerning the matter. Due to the informal nature of the meetings provided for under proposed CBOE Rule 8.95(d) and to encourage constructive communication between the committee and the affected trading crowd or DPM at those meeting, ordinarily neither counsel for the committee nor counsel for the trading crowd or DPM shall be invited to attend these meetings and no verbatim record of the meetings shall be kept.

As with any decision made by the Allocation Committee and the Special Product Assignment Committee, any person adversely affected by a decision made by the appropriate Allocation Committee to remove an allocation or change a location may appeal the decision to the Exchange's Appeals Committee under Chapter XIX, ''Hearing and Review,'' of the Exchange's Rules. The appeal procedures in Chapter XIX provide for the right to a formal hearing concerning any such decision and for the right to be accompanied, represented, and advised by counsel at the stages of the proceeding. In addition, any decision of the Appeals Committee may be appealed to the Exchange's Board of Directors pursuant to CBOE Rule 19.5, ''Review.''

Proposed CBOE Rule 8.95(e) provides that the allocation of a security to a trading crowd or DPM and the location of a trading crowd or DPM on the Exchange's trading floor does not convey ownership rights in the allocation or in the order flow associated with the allocation or location. Proposed CBOE Rule 8.95(e) is intended to make clear the trading crowds and DPMs may not buy, sell, or otherwise transfer an allocation or location to another party, and that instead, it is the Exchange that has the sole authority to determine allocations and locations on the Exchange's trading floor. Notwithstanding proposed CBOE Rule 8.95(e), Exchange rules will continue to permit the transfer of DPM appointments pursuant to CBOE Rule 8.80(b)(3), which provides for the transfer of appointments with the approval of the MTS Appointments Committee.

Proposed CBOE Rule 8.95(f) is intended to reflect the current restrictions that are in place with respect to the allocation of securities to DPMs. Proposed CBOE Rule 8.95(f) reiterates the provision currently contained in CBOE Rule 8.80(a) that no option classes opened for trading prior to May 1, 1987, shall be allocated to a DPM, except to the extent authorized by a membership vote.[8] In addition, proposed CBOE Rule 8.95(f) modifies the foregoing provision, which was approved pursuant to an Exchange membership vote taken in November 1989. Under this modification, if a trading crowd indicates that it no longer wishes to trade an option class opened for trading prior to May 1, 1987, the option class may be reallocated to another trading crowd or to a DPM giving priority to trading crowd applications over DPM applications,

[7] Under the proposal, when CBOE Rule 8.95(c) becomes effective, the CBOE would delete existing CBOE Rule 8.80(b)(7).

CBOE Rule 8.80(b)(7)(i) states that the MTS Appointments Committee may discontinue the use of a DPM in an option class if the trading activity in that class exceeds a predetermined volume. That provision is not superfluous because the CBOE membership voted in December 1993 to advise the MTS Appointments Committee not to exercise that authority. *See* Amendment 2, *supra* note 3.

Existing CBOE Rule 8.80(b)(7)(ii) permits the MTS Appointments Committee to discontinue use of a DPM in an option class if it determines that trading would be better accommodated by using a market-maker system without a DPM. Proposed CBOE Rule 8.95(c) would give similar authority to the appropriate Allocation Committee. *See* Amendment Nos. 2 and 3, *supra* note 3.

[8] Proposed CBOE Rule 8.95(f) supersedes CBOE Rule 8.80(a). Accordingly, the CBOE proposes to delete CBOE Rule 8.80(a). *See* Amendment No. 2, *supra* note 3.

provided that the trading crowd's commitment to market quality is competitive and that operational considerations are satisfied.

Proposed CBOE Rule 8.95(g) provides that in allocating and reallocating securities to trading crowds and DPMs, the appropriate Allocation Committee shall act in accordance with any limitation or restriction on the allocation of securities that is established pursuant to another Exchange rule. For example, the appropriate Market Performance Committee or the MTS Appointments Committee may take remedial action against a trading crowd or DPM pursuant to CBOE Rule 8.60, ''Evaluation of Trading Crowd Performance,'' and CBOE Rule 8.80(b)(10) for failing to satisfy minimum market performance standards, and such action may involve a restriction related to the allocation of securities to that trading crowd or DPM. Similarly, the MTS Appointments Committee may restrict a DPM's ability to receive or retain allocations of securities pursuant to various provisions of CBOE Rule 8.80, ''Modified Trading System,'' including as a condition of appointment as a DPM (CBOE Rule 8.80(b)(3)), due to failure to perform DPM functions (CBOE Rule 8.80(b)(4)(i)), or due to a material, financial, operational, or personnel change (CBOE Rule 8.80(b)(4)(ii)). Proposed CBOE Rule 8.95(g) is intended to clarify that the appropriate Allocation Committee must act in accordance with any such restrictions in making allocation and location determinations.

Proposed CBOE Rule 8.95, Interpretation .01 generally provides that it shall be the responsibility of the appropriate Allocation Committee to reallocate a security if it is removed from a trading crowd or DPM pursuant to another Exchange rule or if for some other reason the trading crowd or DPM to which the security has been allocated no longer retains the allocation. For example, as described above, CBOE Rules 8.60 and 8.80 authorize the Market Performance Committees and the MTS Appointments Committee to take remedial actions against trading crowds and DPMs in specified circumstances, including the removal of an allocation. Proposed CBOE Rule 8.95, Interpretation .01 is intended to clarify that if the appropriate Market Performance Committee or the MTS Appointments Committee removes an allocation pursuant to CBOE Rule 8.60 or CBOE Rule 8.80, it is the responsibility of the appropriate Allocation Committee (and not the committee that took the action to remove the allocation) to reallocate the security pursuant to proposed CBOE Rule 8.95. The only exception to this provision is that the MTS Appointments Committee is authorized, pursuant to CBOE Rule 8.80(b)(6), to allocate to an interim DPM on a temporary basis a security that is removed from another DPM, until the appropriate Allocation Committee makes a final allocation of the security.

Finally, proposed CBOE Rule 8.95, Interpretation. 02 provides that it shall be the responsibility of the Allocation Committee to relocate a trading crowd or DPM in the event that the trading crowd or DPM is required to be relocated pursuant to another Exchange rule. As has been discussed, CBOE Rule 8.60 and CBOE Rule 8.80(b)(10) permit the Market Performance Committees and the MTS Appointments Committee to take remedial actions against trading crowds and DPMs in specified circumstances, including requiring that a trading crowd or DPM be relocated. Like proposed Interpretation .01, proposed Interpretation .02 is intended to clarify that if the appropriate Market Performance Committee or the MTS Appointments Committee requires the relocation of a trading crowd or DPM pursuant to CBOE Rule 8.60 or CBOE Rule 8.80(b)(10), it is the responsibility of the Allocation Committee (and not the Committee that took the action to require the relocation) to relocate the trading crowd or DPM.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] Specifically, The Commission believes that the proposal is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest. Moreover, the proposal is consistent with the requirement of section 6(b)(5) of the Act that the rules of an exchange not be designed to permit unfair discrimination between brokers or dealers or issuers.

The Commission believes that the proposed rule change is appropriate because it codifies the Exchange's procedures for allocating securities between trading crowds and DPMs and determining where those trading crowds or DPMs should be located.[11] Moreover, the Commission believes that the proposed provisions should help to ensure that securities traded by the Exchange are allocated in an equitable and fair manner, giving all trading crowds and DPMs a fair opportunity to obtain allocations.

Specifically, the Commission believes that the CBOE's proposed Rule 8.95(a)—which provides that the Exchange's Allocation Committee and the Special Product Assignment Committee are responsible for allocating option classes among trading crowds and DPMs, and which provides that the Allocation Committee is responsible for determining the location on the Exchange floor of each trading crowd, DPM and security—sets forth a fair and reasonable method of apportioning the responsibility for allocating securities and assigning space on the Exchange floor.

The Commission further believes that the OBOE's proposed Rule 8.95(b), which describes the information that the Allocation Committee and Special Product Assignment Committee may consider when making determinations under Rule 8.95(a), will give those committees the flexibility to consider all appropriate factors while putting the Exchange membership on notice of several of the important factors that may be considered in making such a determination.

The Commission also believes that the CBOE's proposed Rule 8.95(c), regarding removing allocations made under proposed Rule 8.95(a), provide a reasonable means of ensuring that the Allocation Committee and the Special Product Assignment Committee retain the ability to take actions to promote fair and efficient trading of the securities at issue. This provision also appropriately allocates responsibility between those two committees and the appropriate Market Performance Committee of MTS Appointments Committee.

The Commission believes that the CBOE's proposed Rule 8.95(d), which provides that, unless expeditious action is required, the affected trading crowd or DPM will receive notice of a potential action under proposed Rule 8.95(c), and will have the opportunity to participate in an informal meeting with the appropriate committee or submit a written statement concerning the matter, provides a fair and reasonable means of making expeditious decisions regarding allocation and location while protecting the interest of the affected trading crowd

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] Teleconference between Arthur Reinstein, CBOE, Yvonne Fraticelli, Attorney, Commission and Joshua Kans, Commission, January 29, 1998.

or DPM. In making this determination, the Commission notes that any person adversely affected by a decision made under proposed Rule 8.95(c) has the right to a formal hearing, with the assistance of counsel, before the Exchange's Appeals Committee. Moreover, decisions of the Appeals Committee may be appealed to the Exchange's Board of Directors.

The Commission believes that the CBOE's proposed Rule 8.95(e)—which provides that the allocation of security to a trading crowd or a DPM, or the assignment of a trading crowd's or a DPM's location on the Exchange's floor, does not convey ownership rights in the allocation or location or associated order flow—merely reiterates the limited nature of those allocations, and highlights that the Exchange retains the authority to determine allocations and locations.

The Commission believes that the CBOE's proposed Rule 8.95(f), which provides special rules for option classes opened for trading prior to May 1, 1987, merely reflects existing practices that are consistent with the will of the Exchange's membership.

The Commission believes that the CBOE's proposed Rule 8.95(g), which states that in allocating and reallocating securities the Allocation Committee and the Special Products Assignment Committee shall act in accordance with restrictions and limitations established pursuant to other Exchange rules, ensures that proposed Rule 8.95 does not cause any inconsistencies with existing Exchange rules, and that other Exchange committees are not hindered in the exercise of their own responsibilities.

The Commission believes that the CBOE's proposed Rule 8.95, Interpretation .01, which provides that the Allocation Committee and the Special Products Assignment Committee are responsible for reallocating securities that are removed from a trading crowd or DPM pursuant to another rule, or when the trading crowd or DPM for some other reason no longer retains the allocation, subject to Rule 8.80(b)(6), clarifies in a reasonable and efficient way the respective responsibilities of those two committees and other Exchange committees such as the MTS Appointments Committee.

The Commission believes that the CBOE's proposed Rule 8.95, Interpretation .02, which provides that the Allocation Committee is responsible for relocating a trading crowd or DPM which is required to be relocated pursuant to another Exchange rule, clarifies the respective responsibilities of the Allocation Committee and other Exchange committees.

Finally, the Commission believes that eliminating CBOE Rules 8.80(a) and 8.80(b)(7) current with the effectiveness of proposed CBOE Rule 8.95 will help avoid redundancies that may otherwise cause confusion. The Commission notes that Rule 8.80(b)(8) is made redundant by the elimination of Rule 8.80(b)(7), but the Exchange has stated that it is in the process of proposing to update and reorganize CBOE Rule 8.80, a process which will include the deletion of CBOE Rule 8.80(b)(8).[12]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–98–03), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[12] *See* Amendment No. 3, *supra* note 3.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39880; File No. SR–NASD–98–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Mandatory Arbitration of Claims Involving Exempted Securities

April 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 27, 1998,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] The NASD filed amendments to the proposed rule change on February 11, and March 31, 1998, the substance of which is incorporated into this notice. *See* letters from Elliott R. Curzon, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated February 6, 1998 (''Amendment No. 1'') and March 30, 1998 (''Amendment No. 2'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to change the interpretation of the NASD's Code of Arbitration Procedure (''Code'') such that claims relating to transactions in exempted securities, including government and municipal securities, may be submitted to the Office of Dispute Resolution (''Office'') for arbitration under the Code without limitation. Accordingly, when such claims arise involving public customers, Rule 10301 of the Code will require member firms and associated persons to arbitrate them at the request of the customer. In addition, when such claims arise between members and other members or associated persons, Rule 10201 (which governs intra-industry disputes) will require them to be arbitrated at the request of one of the parties. Finally, when such claims arise between a member firm and a customer, customers may be required under the terms of a predispute arbitration agreement to arbitrate the claims.

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 self-regulatory organization 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 self-regulatory organization 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

Background. Since at least 1989, the Office has declined to accept claims for mandatory[2] arbitration involving transactions in exempted securities[3] naming member firms that were

[2] ''Mandatory'' arbitration is when one party to a dispute is compelled to submit the claim to arbitration by rule or contract. For example, Rule 10201 of the Code requires members and associated persons to arbitrate claims at the request of another member or associated person, and Rule 10301 requires members and associated persons to arbitrate claims at the request of a customer.

[3] The term ''exempted securities'' is defined in Section 3(a)(12) of the Act, 15 U.S.C. 78c(a)(12), to mean government securities, municipal securities, and several other types of securities classified as exempted for specific purposes under the Act.

registered solely under Section 15C of the Act.[4] The Office will, however, accept claims where both parties agree to submit the claim to arbitration. If the claim involves a municipal securities transaction by a member firm,[5] the Office will accept the claim for arbitration, but will ask the claimants if they want the claim referred to the Municipal Securities Rulemaking Board (''MSRB'') for arbitration.[6] Finally, if a claim involves a government securities transaction by a general securities broker/dealer member firm, the Office will accept the claim for mandatory arbitration.

Until recently, NASD Regulation had limited regulatory jurisdiction over member firm activities in connection with government securities and no jurisdiction over firms that engaged only in exempted securities activities. The policy with respect to accepting or rejecting claims for mandatory arbitration was based on the view that the subject matter jurisdiction of NASD Regulation's arbitration forum should not be significantly different from the regulatory jurisdiction of the NASD.

With the broadening of NASD Regulations's regulatory jurisdiction over government securities as a result of the Government Securities Act Amendments of 1993, and the recent adoption of amendments of the NASD's rules in recognition of the broader jurisdiction,[7] NASD Regulation has revisited the policy. NASD Regulation believes it would be appropriate to include claims involving exempted securities by members engaged exclusively in exempted securities activities within the scope of those claims that are subject to mandatory arbitration under the Code.

Discussion. Rule 10101 of the Code provides that disputes ''arising out of or in connection with the business of any member'' are eligible for submission to arbitration under the Code. The definition of ''investment banking or securities business'' in Article I, paragraph (l) of the By-Laws means ''the business carried on by a broker, dealer, or municipal securities dealer * * *, or government securities broker or dealer * * *.'' Rule 10301(a) provides that eligible disputes ''arising in connection with the business of [a] member or in connection with the activities of [an] associated person'' *must* be arbitrated pursuant to any enforceable arbitration agreement or upon the demand of a customer. While these rules (and the definition) sweep in a very broad range of disputes, Rule 10301(b) permits the Office to decline to arbitrate certain matters.

In reliance on Rule 10301(b), and the NASD's limited regulatory jurisdiction over government securities-only member firms, the Office has for many years declined to accept for arbitration claims that involved transactions in government securities by member firms engaged only in activities involving government securities unless both parties voluntarily agreed to submit the claim. The Office's position means that these claims cannot be compelled into arbitration under either a demand for arbitration or a predispute arbitration agreement. Members engaged in municipal securities transactions have been required to arbitrate their claims because they are either general securities broker/dealers that are otherwise required to arbitrate all of their other claims, or because they voluntarily became NASD members. The Office's decision to decline to mandate arbitration of government securities claims was based on the following rationale: (1) The NASD only regulated the exempted securities activities of member firms to the limited extent permitted in Section 15A(f)(2) of the Act; and, (2) the subject matter jurisdiction of the arbitration forum should not be significantly different from the NASD's regulatory jurisdiction over its members and associated persons.

In response to the passage of the Government Securities Act Amendments of 1993, which amended Section 15A(f)(2) of the Act and granted the NASD the authority to regulate broadly the business practices of members with respect to government securities,[8] NASD Regulation amended its rules to consolidate the Government Securities Rules it had adopted pursuant to Section 15A(f)(2) of the Act with its more generally applicable Conduct Rules. NASD Regulation now regulates the activities of members engaged in government securities activities that are both general securities broker/dealers and limited purpose government securities broker/dealers.

NASD Regulation believes that with its broad new authority to regulate the government securities business of its members, it is appropriate to open its arbitration forum to disputes involving transactions in all kinds of securities, including exempted securities, consistent with the plain language of the Code and the By-Laws. While the subject matter jurisdiction of the arbitration forum now extends to municipal securities activities that are not strictly within the regulatory scope of NASD Regulation, such activities are ''business'' within the definitions of the By-Laws and the meaning of the Code. Moreover, NASD Regulation does not believe that there should be unreasonable barriers to customers seeking relief in arbitration for claims relating to the business of members. Therefore, compelling NASD members to arbitrate municipal securities claims would be consistent with the intent of the MSRB's rule filing.[9]

Under this policy, a member that is registered solely as a government securities broker/dealer and that has a dispute with a customer over a transaction in exempted securities shall be required to submit the dispute to arbitration upon the demand of the customer.[10] Such disputes also may be compelled to arbitration pursuant to a valid predispute arbitration agreement. Intra-industry disputes involving exempted securities also will be subject to mandatory arbitration upon the request of one of the parties.

NASD Regulation also believes the policy should permit any claim involving exempted securities to be submitted for arbitration without regard to when the transaction occurred;

[4] Section 15C of the Act, 15 U.S.C. 78*o*–5, governs the registration of government securities broker/dealers. Since 1986, when Section 15C was adopted under the Government Securities Act, government securities broker/dealers have been required to become members of an exchange or the NASD.

[5] Section 15B of the Act, 15 U.S.C. 78*o*–4, governs the registration of municipal securities dealers. Municipal securities dealers are not required to become members of an exchange or the NASD. Nevertheless, some NASD members which are engaged in a general securities business are registered as municipal securities dealers, and some firms which are exclusively municipal securities dealers have become members of the NASD.

[6] Rule 10301(c) of the Code permits claims ''which arise out of a readily identifiable market'' to be referred to the arbitration forum for that market if the claimant consents. Since this provision was adopted, the Office will ask the claimants in a case involving municipal securities if they want their case referred to the MSRB. No cases have been referred, and the Commission recently approved an MSRB proposed rule change that terminates the MSRB's arbitration program and requires the financial institutions that are subject to its rules to submit to arbitration in the NASD's forum as if they were NASD members. *See* Securities Exchange Act Release No. 39378 (December 1, 1997), 62 FR 64417 (December 5, 1997).

[7] In Notice to Members 96–66, published in October 1996, the NASD announced the consolidation of its Government Securities Rules into the Conduct Rules, ending the regulatory distinction between the activities of general securities broker/dealers and government securities broker/dealers.

[8] The NASD is still barred from establishing regulations covering the municipal securities activities of broker/dealers; that authority is reserved to the MSRB.

[9] *See* footnote 6, *supra*.

[10] NASD Regulation notes that few government securities claims involving public customers have been filed or attempted to be filed with the Office. Most of the claims involving government securities have involved member-to-member claims.

however, if more than six years have elapsed from the transaction, occurrence, or event giving rise to the claim, under Rule 10304 of the Code, the claim will not be eligible for submission to arbitration.[11] All claims involving general securities broker/dealers will continue to be accepted for arbitration consistent with past practice. Claims previously submitted that the Office has already declined to arbitrate under the old policy cannot be resubmitted under the policy being announced herein.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[12] in that eliminating a barrier to the arbitration of disputes involving exempted securities, public customers and members will have access to a fair, efficient, and cost-effective forum for the resolution of such disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate 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 were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–04 and should be submitted by May 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10754 Filed 4–22–98; 8:45 am]

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[11] NASD Regulation notes that it has a proposed amendment to Rule 10304, rule filing SR–NASD–97–44, pending approval with the SEC. Under the proposed rule change all claims are presumed to be eligible; however, the presumption can be overcome if the respondent challenges the claim on the basis that more than six years have elapsed since the act or occurrence giving rise to the claim.

[12] 15 U.S.C. 78–3.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39883; File No. SR–NASD–97–69]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change, as Amended, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Tape Recording of Conversations

April 17, 1998.

I. Introduction

On September 12, 1997, the National Association of Securities Dealers, Inc. (''NASD''), through its regulatory subsidiary NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] In this filing, NASD Regulation proposed amendments to Rule 3010 to require the tape recording of conversations where members hire more than a specified percentage of registered persons from certain firms that have been expelled or that have had their broker/dealer registration revoked for violations of sales practices rules. The proposed rule change also includes a conforming rule change to Rule 9610. Notice of this proposed rule change was published in the **Federal Register** on December 5, 1997 (as amended, the ''Notice'').[3] The Commission received one comment letter, which expressed concerns about using tape recording as a method of supervision, in response to the Notice.[4] On March 9, 1998, NASD Regulation filed Amendment No. 2 with the Commission.[5] This order approves the rule change, as amended, and grants accelerated approval of Amendment No. 2 to the rule change.

II. Background

At its meeting in July 1996, the NASD Regulation Board of Directors authorized the staff to issue a Notice to Members soliciting comment on proposed changes to NASD supervisory Rule 3010 to require the tape recording of telephone conversations of registered representatives in certain circumstances. The Rule was developed both to respond to concerns expressed in the *Joint Regulatory Sales Practice Sweep (''Sweep'') Report*[6] regarding the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39361 (November 26, 1997), 62 FR 64422 (File No. SR–NASD–97–69). Amendment No. 1 to the proposed rule filing was filed on November 12, 1997. The changes contained in this amendment were included in the Notice. *See* Letter from Mary N. Revell, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (November 17, 1997).

[4] *See* Letter from R. Gerald Baker, Securities Industry Association (''SIA''), to Jonathan G. Katz, Secretary, Commission, dated February 11, 1998.

[5] *See* letter from Mary N. Revell, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Office of Market Supervision, Division of Market Regulation (March 9, 1998). In Amendment No. 2, NASD Regulation: (1) Applies the proposal to firms that have a work force comprised of a specified number of registered persons who were employed by a ''disciplined firm'' within the last three years instead of two years; (2) requires firms to establish special procedures to supervise the telemarketing activities of registered persons instead of registered representatives; (3) amends the definition of registered persons to include those persons who register as municipal securities principals or representatives pursuant to Municipal Securities Rulemaking Board Rule G–3; and (4) provides guidance on what would constitute ''reasonable procedures for reviewing the tape recordings made pursuant to the requirements of'' the taping rule in a Notice to Members announcing approval of the rule.

[6] Staffs of the NASD, New York Stock Exchange (''NYSE''), North American Securities Administrators Association (''NASAA''), and the Office of Compliance Inspections and

need for heightened supervision of certain registered representatives with troubled regulatory and compliance records and also to address the particular problems that occur when a firm hires a larger number of individuals who formerly worked at a firm that has been expelled or has had its registration revoked (a ''Disciplined Firm'') where they were inadequately supervised and trained.

NASD Regulation stated in its filing that one of the key findings of the Sweep Report concerned the willingness of some firms to employ registered representatives with a history of disciplinary actions or customer complaints.[7] Based on this finding, the Working Group collectively recommended that firms that hire registered representatives with a recent disciplinary history involving sales practice abuse or other customer harm should implement special supervisory procedures tailored to the individual registered representative, which include a heightened level of scrutiny of the registered representative's activities by his or her supervisor, for a period of time.[8] The Sweep Report recommended that, if firms fail to establish such special supervisory procedures, the self-regulatory organizations (''SROs'') should consider revising their rules to specifically require that registered representatives with a recent history of disciplinary actions involving sales practice abuse or other customer harm be placed under special supervision by the firm for a period of time.

NASD Regulation and the NYSE have issued a memorandum discussing the Sweep Report and providing guidance on actions firms could take to provide heightened supervision of problem registered representatives.[9] While the special procedures designed to provide a heightened level of supervision recommended by the Sweep Report and described in the NASD/NYSE memorandum may provide adequate supervision of associated persons in most circumstances, NASD Regulation proposes to adopt specific procedures in certain situations in order to provide the level of supervision required by Rule 3010.

NASD Regulation proposes to amend NASD Rule 3010 to require firms that hire a specified number of individuals from Disciplined Firms to tape-record telephone conversations between their registered persons and existing and potential customers. The proposed Rule would apply when a firm hires a substantial number of registered persons from a firm or firms that have been expelled or had their registrations revoked for sales practice abuse. The measures are designed to prevent a reoccurrence of sales practice abuse or other customer harm that caused the Disciplined Firm to be expelled or have its registration revoked. The proposal is similar to an interpretation adopted by the National Futures Association (''NFA'') in 1993 to combat abusive cold calling.[10] The NFA's interpretation is discussed below.

A. Notice to Members 96–59 and Original Proposal

In its filing with the Commission, NASD Regulation described Notice to Members 96–59 (''NTM 96–59''), which contained the original proposed Rule (''original proposal'' or ''original Rule'').[11] NASD Regulation's original proposal captured a broader swath of firms. It would have been triggered whenever a significant portion of a member's work force was comprised of associated persons who formerly were employed by a Disciplined Firm or firms or when the firm itself was a Disciplined Firm. The original proposal defined a Disciplined Firm, for purposes of the Rule, as one that had been disciplined (*e.g.*, expelled, suspended, or enjoined) by a regulatory entity, an SRO, or a court within the previous five years for telemarketing or sales-practice abuses in connection with the solicitation, offer, or sale of securities.

NASD Regulation's original proposal also stated that if more than 20 percent of a member's sales force of associated persons previously were employed by a Disciplined Firm, the member would have been required to adopt special written procedures to supervise the telemarketing activities of its associated persons. Firms that were themselves Disciplined Firms also would have been required to adopt these procedures. The procedures would have required, at a minimum, that the employer member tape record all telephone conversations between all of its associated persons and both existing and potential customers, and maintain these procedures for two years. For each firm that was itself a Disciplined Firm, at the end of the two-year period, NASD Regulation would have conducted an evaluation to determine whether, and for how long, the firm would continue to be subject to the requirements of the Rule. The Rule also would have required firms subject to the taping requirement to review the tapes periodically to ensure compliance with securities laws and NASD rules, to submit reports to NASD Regulation on their supervision of telemarketing activities, and to retain and index the tapes.

B. Comments and Response on the Original Proposal

NASD Regulation received 42 comment letters in response to its initial Notice to Members.[12] Of the 42

Examinations, SEC, *Joint Regulatory Sales Practice Sweep: A Review of the Sales Practice Activities of Selected Registered Representatives and the Hiring, Retention, and Supervisory Practices of the Brokerage Firms Employing Them* (March 1996). The Sweep was an initiative involving the staffs of the NASD, the SEC, the NYSE, and representatives of the NASAA (collectively, the ''Working Group'') to review the sales practice activities of selected registered representatives and the hiring, retention, and supervisory practices of the brokerage firms employing them in order to identify possible problem registered representatives, review their sales practices, and assess whether adequate hiring, retention, and supervisory mechanisms are in place. The Sweep Report was released on March 18, 1996.

[7] The current proposal focuses on the disciplinary history of the firm that formerly employed the registered representative.

[8] *Id.* at ii, iv.

[9] NASD Notice of Members 97–19 (April 1997); NYSE Information Memo 97–20 (April 15, 1997).

[10] *See* Letter from Lynn K. Gilbert, Deputy Director, Commodity Futures Trading Commission, to Daniel J. Roth, General Counsel, NFA (January 19, 1993).

[11] *See* Notice to Members 96–59 (September 1996).

[12] NASD Regulation received the following comment letters: (1) Letter from Brian C. Underwood, A.G. Edwards & Sons, Inc. (''Edwards''), dated October 31, 1996; (2) Letter from Kevin P. Howe, American Express Financial Advisors (''AEFA''), dated October 31, 1996; (3) Letter from G. Thomas Mitchell, Aurora Insurance and Securities, Inc. (''Aurora''), dated October 10, 1996; (4) Letter from Jerome Snyder, Barington Capital Group, L.P. (''Barington''), dated October 23, 1996; (5) Letter from Leslie D. Smith, Berthel Fisher Company (''Berthel''), dated October 25, 1996; (6) Letter from Walter I. Miller, Capital Growth Planning, Inc. (''Capital''), dated September 24, 1996; (7) Letter from Sanford D. Greenberg, Chatfield Dean & Co. (''Chatfield Dean''), dated October 31, 1996; (8) Letter from Neil Lawrence Lane, Citicorp Investment Services (''CIS''), dated October 31, 1996; (9) Letter from David J. Master, Coastal Securities (''Coastal''), dated October 31, 1996; (10) Letter from John Polanin, Jr., Cowen & Company (''Cowen''), dated November 7, 1996; (11) Letter from Richard L. Sandow, Cullum & Sandow Securities, Inc. (''Cullum''), dated October 17, 1996; (12) Letter from Gregg Thaler, Duke & Company, Inc. (''Duke I''), dated October 10, 1996; (13) Letter from William Rotholz, Duke & Company, Inc. (''Duke II''), dated October 29, 1996; (14) Letter from Shannon Braymen, Duncan-Smith Securities, Inc. (''Duncan-Smith''), dated October 22, 1996; (15) Letter from James H. Pyle et al., E.E. Powell & Company, Inc., dated October 21, 1996; (16) Letter from Nancy K. Port, Equity Services, Inc. (''ESI''), dated October 30, 1996; (17) Letter from Rick Fetterman, Fetterman Investments, Inc., dated October 1, 1996; (18) Letter from Herbert O. Sontz, GKN Securities (''GKN''), dated October 31, 1996; (19) Letter from Lawrence E. Wesneski, Hoak Breedlove Wesneski & Co. (''Hoak''), dated October 21, 1996; (20) Letter from Cabell B. Birdsong, Investors Security Company, Inc. (''ISC''), dated October 22, 1996; (21) Letter from David A. Rich, Jefferies & Company, Inc., dated November 8, 1996; (22) Letter from Thomas P. Koutris, John Hancock Distributors, Inc., dated September 23, 1996; (23) Letter from A.E. Monahan, Keystone Capital Corporation (''Keystone''), dated October 7, 1996;

Continued

comment letters, 39 were opposed to the proposal, including those filed by the Securities Industry Association, Lehman Brothers, Merrill Lynch, Morgan Stanley, and Smith Barney. NASD Regulation stated that most of the commenters supported the NASD's objective in proposing the taping Rule and agreed that firms should be discouraged from recruiting groups of registered persons from a Disciplined Firm, however, they did not believe that tape recording of conversations was an appropriate regulatory requirement and feared that regulators will require even more comprehensive tape recording in the future.

The definition of a Disciplined Firm is too broad: NASD Regulation stated that many of the commenters believe the definition of a Disciplined Firm in the original Rule was too broad. For example, the original definition would have included a firm that was the subject of an injunction for a technical or inadvertent violation of state law or as the result of a consensual injunction involving only a fraction of the firm's business and employees. NASD Regulation responded by narrowing the definition of a Disciplined Firm to include firms that have been expelled from membership in a securities industry SRO or that have had their registration revoked by the SEC due to telemarketing or sales practice abuses.

The Rule is too broad with respect to the individuals included in the percentage calculation and the time frame: NASD Regulation stated that commenters complained the Rule was too broad in several respects. First, commenters said the Rule would target firms and individuals for the actions of other firms and individuals of which they had no knowledge or control [13] Second, the commenters criticized the Rule's application to all individuals that had ever been employed by a Disciplined Firm in the calculation of the percentage that would trigger the special supervisor procedures.[14] Finally, NASD Regulation stated that commenters believed the Rule should be limited to personnel who have contact with customers, such as registered representatives, and should exclude clerical and ministerial employees from both the 20% calculation and the taping requirement.[15]

In response, NASD Regulation narrowed the scope of the original Rule to apply only to firms that hire a specified percentage of individuals who were employed at a Disciplined Firm within the last three years. NASD Regulation also limited the individuals calculated in the percentage to register persons, leaving out clerical and ministerial personnel. Also, NASD Regulation limited the persons subject to the taping requirement to registered representative in conversations with both existing and potential customers.

The Rule does not achieve the stated purpose: NASD Regulation noted that several commenters questioned whether the original Rule goes beyond the scope of the Sweep Report and would be effective in achieving the Sweep Report recommendations because taping is not an effective means of supervising sales efforts.[16]

NASD Regulation responded by emphasing that the taping requirement is being restricted to particularly egregious situations. They stated their concern that when a firm hires high percentages of employees from firms that have been expelled by an SRO or that have had their registration revoked by the Commission, these groups of employees are unlikely to have been trained or supervised adequately. In addition, NASD Regulation stated its belief in the *in terrorem* effect of recording telephone conversations to deter sales practice abuses. Finally, the NASD believes the Rule directly addresses the issues raised when a firm hires a high percentage of individuals who were employed by a Disciplined Firm where they were inadequately trained and supervised.

The costs of the Rule are too great: The NASD noted that some commenters expressed concerns that the costs of the original Rule would be too high, considering the limited benefits of the Rule. The commenters also stated that the Rule would have a disproportionate effect on small firms.[17]

The NASD stated that its narrowing of many aspects of the Rule would result in lower compliance costs. Specifically, in the revised proposal, the NASD exempted firms with five or fewer registered persons from the Rule and tiered the structure for determining the percentage of employees that trigger the taping requirement so that smaller firms would have to hire 30% or more of their registered persons from Disciplined Firms before they would trigger the requirement. In addition, the NASD stated that by narrowing the definition of a Disciplined Firm, fewer firms will be subject to the taping requirement.[18] Finally, with respect to certain practical compliance difficulties, the NASD agreed to provide firms with all the relevant information they need to determine whether they are in compliance with the Rule.

Privacy concerns: The NASD stated that many commenters felt the original Rule would invade the privacy of both a firm's customers as well as the firm's registered representatives, which would be unfair to both firms and registered representatives that did not have disciplinary histories. Commenters also believe that the Rule would conflict with federal and state wiretapping laws. Finally, they are concerned that the

(24) Letter from Paul B. Uhlenhop, Lawrence, Kamin, Saunders & Uhlenhop ("Lawrence, Kamin"), dated October 29, 1996; (25) Letter from Kathryn S. Reinmann, Lehman Brothers Inc. ("Lehman"), dated October 31, 1996; (26) Letter from Kenneth S. Spirer, Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), dated November 14, 1996; (27) Letter from Jack G. Levin, Montgomery Securities ("Montgomery"), dated January 16, 1997; (28) Letter from Frederick W. Bogdan, Morgan Stanley & Co., Incorporated ("Morgan Stanley"), dated October 30, 1996; (29) Letter from Dennis S. Kaminski, Mutual Service Corporation ("MSC"), dated October 29, 1996; (30) Letter from Richard Berenger, Nathan & Lewis Securities, Inc. ("Nathan & Lewis"), dated October 18, 1996; (31) Letter from Douglas L. Dunahay, Neidiger/Tucker/Bruner Inc. ("Neidiger"), dated October 29, 1996; (32) Letter from Edward T. Borer, Philadelphia Corporation ("PC"), dated October 17, 1996; (33) Letter from Michael Flannigan, Protective Group Securities Corporation ("PGSC"), dated September 24, 1996; (34) Letter from Robert A. Fitzner, Jr., RAF Financial Corporation ("RAF"), dated October 29, 1996; (35) Letter from Glen F. Hackmann, Robert W. Baird & Co., Incorporated ("Baird"), dated October 31, 1996; (36) Letter from Douglas F. Schofield, Schofield Investments, Inc., dated September 18, 1996; (37) Letter from Richard O. Scribner, Allen B. Holeman, and C. Evan Steward, SIA, dated November 4, 1996; (38) Letter from Dov S. Schecter, Smith Barney Inc. ("Smith Barney"), dated October 31, 1996; (39) Letter from Patrick G. Haayes, Stratton Oakmont, Inc. ("Stratton"), dated October 30, 1996; (40) Letter from Walter H. Schlobohm, dated February 10, 1997; (41) Letter from John Maceranka, The Windmill Group, Inc., dated September 28, 1996; and (42) Letter from Stanley J. Allen Jr., Yee, Desmond, Schroeder & Allen, Inc. ("Yee"), dated October 28, 1996.

[13] *See, e.g.,* letters from Lehman and Morgan Stanley.

[14] *See, e.g.,* letters from Edwards, Morgan Stanley, Nathan & Lewis, PC, SIA, and Stratton.

[15] *See, e.g.,* letters from Edwards, Barington, Chatfield Dean, Cullum, Duke II, ESI, ISC, Morgan Stanley, Baird, and Stratton.

[16] *See, e.g.,* letters from CIS, Duke II, ESI, Lehman, Merrill Lynch, MSC, Nathan & Lewis, and SIA.

[17] The commenters stated that small firms would be disproportionately effected both in the cost of taping and in the numbers of firms likely to become subject to the threshold percentage of 20%. *See* letters from Capital, Cowen, Duncan-Smith, Hoak, SIA, and Yee.

[18] The NASD revised the definition of Disciplined Firm to include only expelled and revoked firms in order to focus, at least initially, on the most egregious cases with the greatest supervisory and disciplinary problems. For the two-year period 1995–1996, 14 firms met the definition of Disciplined Firm: 4 firms were expelled from SRO membership and 10 had their registrations revoked. This approach is similar to the one taken by the NFA, and will allow the NASD to gain experience with the implementation of the Rule before it considers expanding the definition of Disciplined Firm to include firms that have been suspended from SRO membership or from SEC registration.

Rule does not restrict the accessibility and manner in which the tapes may be used.[19]

As stated above, because the Rule has been revised to address only the most egregious situations, the impact on privacy will be minimized. Also, upon approval, NASD Regulation will inform NASD members that, in complying with this Rule, they must also comply with federal and state civil and criminal statutes governing the tape recording of conversations. This is the same approach the NFA has taken with respect to this issue.[20]

Each state has a statute governing wiretapping; there also is a federal statute governing wiretapping and electronic surveillance.[21] The federal statute and the majority of the state statutes permit taping of telephone conversations with the consent of one party (''one-party statutes''),[22] a minority of state statutes require the consent of all parties to the conversation (''two-party statutes'').[23] Three issues arise from the proposed Rule: what is necessary to comply with one-party statutes; what is necessary to comply with two-party statutes; and how to comply where a conversation occurs between a person in a one-party state and a person in a two-party state. The NASD has left compliance with the state statutes on wiretapping and privacy for each broker-dealer.

C. Proposed Rule

As revised and filed with the Commission, the proposed Rule would apply whenever a specified percentage of a member firm's sales force is comprised of registered persons who were employed within the last three years by a firm that has been expelled from membership in a securities industry SRO or has had its registration as a broker/dealer revoked by the SEC. The requisite percentage varies depending on the size of the firm, from 40 percent for a small firm to 20 percent for a larger firm. The firm must establish the required supervisory procedures within 30 days of receiving notice from NASD Regulation or obtaining actual knowledge that it is subject to the provisions of the Rule.

Under the proposed Rule, if the requisite percentage of a member's sales force previously was employed by a Disciplined Firm, the member would be required to adopt special written procedures to supervise the telemarketing activities of all of its registered persons. The procedures would require, at a minimum, that the member tape record all telephone conversations between all of its registered persons and both existing and potential customers for a period of three years, and maintain these supervisory procedures for two years. The Rule would require firms to ensure that they tape record all regularly used means of telecommunications, including cellular phones. The Rule also would require firms subject to the taping requirement to establish reasonable procedures for reviewing the tape recordings to ensure compliance with securities laws and NASD rules, to submit reports to the NASD on their supervision of telemarketing, and to retain and catalog the tapes.

While each firm is responsible for complying with the Rule, NASD Regulation will provide firms with all of the information that they need to determine if they are subject to the requirements of the Rule. NASD Regulation believes that firms should be able to rely on the accuracy of the information provided to them by the NASD. Therefore, the NASD anticipates that a firm will be disciplined for failure to comply with the Rule only if it has actual knowledge of information that would make the firm subject to the Rule that is inconsistent with the information provided by NASD Regulation to the firm that indicated that the firm was not subject to the Rule.

NASD Regulation will compile and maintain several lists that firms will be able to review on a quarterly basis to assist them to determine if they are in compliance with the Rule. The primary list that will be prepared will be a list of firms that meet the definition of Disciplined Firm. Two additional lists will be prepared that should be helpful. One list will contain an alphabetical listing of all registered persons who had worked for Disciplined Firms within the last three years. Another list will be compiled containing the same list of people grouped according to the firm for which they currently work. In order to alert firms that they are approaching the percentage that would make them subject to the requirements of the Rule, the second list will contain a computation of the percentage of all registered persons at the firm represented by registered persons who had been employed at a Disciplined Firm within the last three years.

The Rule is thus very similar to an NFA interpretation concerning supervision of telemarketing activity.[24] NFA member firms subject to the requirements of the interpretation must tape record all sales solicitations. The NFA interpretation applies to firms that meet criteria relating to the percentage of the firm's associated persons who formerly were employed at a firm that was closed down and barred from the industry through enforcement actions for deceptive telemarketing practices.[25] These firms are required by the NFA interpretation to tape record sales solicitations. An NFA member subject to these procedures may seek a waiver of the taping requirement upon a satisfactory showing that its current supervisory procedures provide effective supervision over its employees, including enabling the member to identify potential problem areas before customer abuse occurs. The NFA has rarely granted such waivers. In one instance, a waiver was granted to a firm that did not engage in telemarketing and had only institutional customers. In two other instances, partial waivers were granted to firms that hired outside consultants. NFA informed NASD Regulation that they were not satisfied with the work performed by the outside consultants and would not grant such waivers in the future.[26] In response to commenter requests, NASD Regulation has included a waiver provision in the proposed Rule, and also has proposed a

[19] *See, e.g.,* letters from AEFA, Duke II, Lawrence, Kamin, Lehman, Morgan Stanley, MSC, Neidiger, Montgomery, SIA, and Smith Barney.

[20] *See* Interpretive Notice to NFA Compliance Rule 2–9, *Supervision of Telemarketing Activity,* 9021 (February 18, 1997).

[21] 18 U.S.C. §§ 2519 *et seq.*

[22] In one-party statute states, the only issue is whether the registered representative knows of and consents to the tape recording. Since the recording requirement would run to the firm, and the equipment would be the firm's, it might be argued that the firm, and not the representative, is doing the recording. Therefore, it would be necessary for the firm to insure that the representative has notice and consents to the tape recording of his or her telephone conversations. This could be accomplished through a clause in an employment agreement or employee handbook or other written notice to the representative.

[23] In two-party statute states, it would be necessary to insert on the firm's telephone line a recording stating that all telephone conversations are being taped, similar to customer service lines in other industries. Some states require a system of beeps or buzzers that sound throughout the conversation. Another possibility is to insert a clause into the customer agreement notifying customers that their calls will be tape recorded. Some states also have a ''business use exception'' to the two-party statute consent requirement, but it is worded and applied differently in each state.

[24] *See* Interpretive Notice to NFA Compliance Rule 2–9, *Supervision of Telemarketing Activity,* ¶ 9021 (February 18, 1997).

[25] In early 1997, 44 firms met the NFA definition of Disciplined Firm. *See* Interpretive Notice to NFA Compliance Rule 2–9, *Supervision of Telemarketing Activity,* ¶ 9021 (February 18, 1997).

[26] Telephone conversation between Mary N. Revell, Associate General Counsel, NASD, and Daniel Driscoll, Vice President, Compliance, NFA (February 26, 1997).

conforming change to the Rule 9600 Series.[27]

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and the regulations thereunder applicable to registered securities associations, in particular the requirements of Section 15A(b)(6) of the Act.[28] Among other things, Section 15A(b)(6) of the Act requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

In particular, the Commission believes that the proposed rule change will discourage the revival of disciplined firms that have been barred by the industry or that have had their registrations revoked by the Commission. In essence, firms that decide to hire significant numbers of employees from disciplined firms will be required to ensure a proper supervisory environment that protects investors and prevents fraudulent and manipulative telemarketing acts and practices. The monitoring of registered persons' telephone conversations will help to provide additional supervision of individuals who formerly worked at a disciplined firm where they were inadequately trained and supervised.

In the Notice, the Commission requested comments on all aspects of the proposal, as well as the need to inform investors that their calls are being taped. The Commission received one comment letter concerning the proposal. The SIA expressed general concerns about tape recording conversations as a method of supervision. While the Commission recognizes the limitations of this form of supervision, the Commission believes that if registered persons know their phone calls are being taped then they are more likely to avoid making false or exaggerated representations. In addition, compliance officals will have another tool to monitor persons who worked previously at firms with significant sales practice problems. Moreover, the fact that tapes of the telephone conversations will be available to persons who have disputes with broker-dealer firms will spur firms with a substantial percentage of representatives from an expelled firm to take extra measures to supervise these persons.

No comments were received concerning the issue of notice to investors that their calls are being taped. NASD Regulation has indicated its belief that the issue of notification is addressed by state privacy laws and that firms will be required to independently determine that state laws are satisfied. The Commission believes that the best practice would be for member firms to notify their registered persons and customers that their telephone calls are being tape recorded.

The Commission expects the NASD to monitor the Rule and assess its effectiveness. For example, the NASD should monitor the number of firms that become subject to the Rule as well as firms that hire representatives from disciplined firms but do not trigger the taping requirement to see if there is a need to adjust the percentages. Also, the NASD should monitor the number of firms exempt from the Rule because they have five or fewer employees to determine if this is an effective exclusion. Furthermore, the NASD should make sure firms comply with state laws on notification.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 2 applies the proposal to member firms with a work force comprised of a specified number of registered persons who were employed by a ''disciplined firm'' within the last three years instead of two years.[29] In the Notice, the Commission requested comment on whether the original two-year time frame was appropriate. Although no comments were received on this issue, NASD Regulation and the Commission believe that a three-year time frame will better capture registered persons who worked at disciplined firms during a period of inadequate training, supervision, and sales practice abuses. Therefore, the Commission believes that granting accelerated approval to Amendment No. 2 is appropriate and consistent with Section 15A of the Act.[30]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments,′ all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–69 and should be submitted by May 15, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–NASD–97–69), including Amendment No. 2 thereto, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10796 Filed 4–22–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39881; File No. SR–PCX–98–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc., Relating to Communication Devices on the Trading Floor

April 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 1998, the Pacific Exchange, Inc. (''PCX''

[27] *See, e.g.,* letters from Edwards, Barington, Cullum, Duke I, Duke II, Duncan-Smith, GKN, Hoak, Morgan Stanley, Baird, and Montgomery.

[28] 15 U.S.C. § 78*o*–3(b)(6).

[29] Amendment No. 2 also makes several technical amendments which clarify the application of the previously noticed changes to Rules 3010 and 9610.

[30] 15 U.S.C. § 78*o*–3.

[31] 15 U.S.C. § 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On April 16, 1998, the Exchange filed Amendment No. 1 to the proposal with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt new Rule 4.22 relating to telephone and electronic communications on the trading floors of the Exchange.

Text of Proposed Rule Change.[4]

¶38 Communications to and on the Floor

Rule 4.22 No Member of Member Organization may establish or maintain any telephonic or electronic communication between the Floor and any other location, or between locations on the Floor, without the prior approval of the Exchange

[OFPA F–3 ¶7803 Subject: Communication Access To and From the Options Trading Floor Pursuant to Rule XVII, prior approval by the Exchange will be required before the installation of any form of direct private communication devices, including PT&T and Western Union voice lines and teletype or similar hard copy wire connections. Such approval will be granted only if the connection from the Options Trading Floor terminates in one of the following manners: (1) At an office of a PSE member organization. (2) At a floor facility of a PSE member organization on the Options Trading Floor of another national securities exchange, subject to the approval of that exchange. (3) At either of the Equity Trading Floor of PSE. Approval will not be granted for connections terminating at any facility of a person or organization who or which is not a member organization of PSE. Standard (non-private, non-direct) telephones may be installed on the Options Trading Floor in member organizations assigned floor booths as desired but all requests for such installation must be directed to the Options Floor Manager for purposes of coordination. In making use of communications access to and from the Options Trading Floor members are reminded of the provisions of Section 12(k) of Rule I.]

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is making this proposed rule change as a housekeeping measure to assure that the Exchange's rules state expressly that Members and Member Organizations must obtain prior approval before establishing or maintaining telephonic or electronic communications between the Floor and other locations, or between locations on the Floor. The Exchange believes that the provision will improve upon its current rules, including Options Floor Procedure Advice F–3,[5] by providing its Members and Member Organizations with clear notice of the requirement for Exchange approval.

The Exchange is proposing to adopt new Rule 4.22, which provides that no Member or Member Organization may establish or maintain any telephonic or electronic communication between the Floor and any other location, or between locations on the Floor, without the prior approval of the Exchange.

The Exchange is also proposing to eliminate Options Floor Procedure Advice (''OFPA'') F–3 relating to communication access to and from the Options Trading Floor. The Exchange believes that proposed Rule 4.22 adequately replaces OFPA F–3, which is obsolete.

The Exchange notes that proposed Rule 4.22 is substantially similar to Rule 220 of the American Stock Exchange and Rule 6.23 of the Chicago Board Options Exchange.

2. Statutory Basis

The proposal is consistent with Section 6(b)[6] of the Act, in general, and Section 6(b)(5)[7] of the Act, in particular, in that it is designed to protect investors and the public interest and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the 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. 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

[3] *See* letter from Michael D. Pierson, Senior Attorney, PCX to David Sieradzki, Attorney, Commission dated April 13, 1998 (Amendment No. 1). In Amendment No. 1, the Exchange clarified the purpose section of the filing.

[4] Italics indicates text to be added and brackets indicates material to be deleted.

[5] The Commission notes that, as part of the current filing, the Exchange proposes to delete Options Floor Procedure Advice F–3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

the principal office of the Exchange. All submissions should refer to File No. SR–PCX–98–16 and should be submitted by May 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10750 Filed 4–22–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39882; File No. SR–Phlx–97–62]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., To Amend its By-Law Article X, Sections 10–16, 10–17 and 10–19 To Require That Each of its Trading Floor Committees Consult With Its Corresponding Quality of Markets Committee on All Matters of Policy and All Matters That Are To Be Presented to the Board

April 17, 1998.

I. Introduction

On December 29, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] In this filing, the Phlx proposed amendments to By-Law Article X, Sections 10–16, 10–17 and 10–19. Notice of the proposed rule change was published in the **Federal Register** on March 17, 1998.[3] The Commission received no comments on the proposal.

II. Description of the Proposal

Phlx By-Law Article X, Sections 10–16, 10–17 and 10–19 set forth the charters of the Exchange's various trading floor standing committees. The proposed amendments specify that each of the trading floor standing committees shall consult with its respective quality of markets committee on all matters of policy and all matters that are to be presented to the Phlx Board of Governors. The proposed amendments are intended to foster the sharing of views on policy and other matters between the various trading floor standing committees (Floor Procedure, Foreign Currency Options and Options) and corresponding quality of markets committees. The intended sharing of views on all policy matters is designed to bring the perspectives of the non-industry representatives of the various quality of markets committees to matters that may be referred to the Board of Governors by the various trading floor standing committees.

III. Discussion

The Commission believes the proposal is consistent with the Act in general, and in particular, with Section 6(b)(3) of the Act.[4] Section 6(b)(3) of the Act requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

Phlx By-Law Article X, Section 10–20 requires that the quality of markets committees have broad representation that shall be equally balanced between industry and non-industry committee members. Thus, by requiring that the Phlx's quality of markets committees participate in the Phlx's policy making process, the proposal should help to ensure that the Phlx's rules fairly represent the views of all of the Phlx's members and constituents, including investors. The Commission believes that by promoting the participation of non-industry representatives in the decision making process of the Phlx, the proposal is consistent with Section 6(b)(3) of the Act.

Accordingly, the Commission believes the proposed rule change is consistent with Section 6 of the Act[5] in general, and in particular, with Section 6(b)(3) in that it is designed to assure a fair representation in the administration of the Exchange's affairs.[6]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change SR–Phlx–97–62 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. 98–10751 Filed 4–22–98; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39472 (March 11, 1998), 63 FR 13082 (March 17, 1998). The notice of the rule change included the publication of a technical amendment to the proposal, which was filed with the Commission on March 10, 1998.

[4] 15 U.S.C. 78f(b)(3).

[5] 15 U.S.C. 78f.

[6] In approving the rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3076]

State of Alabama

As a result of the President's major disaster declaration on April 9, 1998, I find that Jefferson, St. Clair, and Tuscaloosa Counties in the State of Alabama constitute a disaster area due to damages caused by severe storms and tornadoes beginning on April 8, 1998 and continuing. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on June 8, 1998, and for loans for economic injury until the close of business on January 11, 1999 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Alabama may be filed until the specified date at the above location: Bibb, Blount, Calhoun, Etowah, Fayette, Greene, Hale, Pickens, Shelby, Talladega, and Walker.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	7.000
Homeowners without credit available elsewhere	3.500
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 307612 for physical damage and 983300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 14, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–10758 Filed 4–22–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9834]

State of California (and Contiguous Counties in Oregon)

The Counties of Alameda, Contra Costa, Del Norte, Humboldt, Los Angeles, Marin, Mendocino, Monterey, Orange, San Diego, San Francisco, San Mateo, San Luis Obispo, Santa Barbara, Santa Cruz, Sonoma, and Ventura together with the contiguous Counties of Fresno, Glenn, Imperial, Kern, Kings, Lake, Napa, Riverside, Sacramento, San Benito, San Bernardino, San Joaquin, Santa Clara, Siskiyou, Solano, Stanislaus, Tehama, and Trinity in the State of California, and Curry and Josephine Counties in the State of Oregon constitute an economic injury disaster area do to the effects of the warm water current known as El Nino beginning in June of 1997. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on January 13, 1999 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The economic injury number for Oregon is 983500.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 13, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–10761 Filed 4–22–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3069]

State of Georgia, Amendment #4]

In accordance with notices from the Federal Emergency Management Agency dated April 6, 7, 8, 9, 10, and 13, 1998, the above-numbered Declaration is hereby amended to include the following counties in the State of Georgia as a disaster area due to damages caused by severe storms and flooding beginning on March 7, 1998 and continuing: Baldwin, Bryan, Clayton, Cobb, DeKalb, Echols, Effingham, Forsyth, Fulton, Gordon, Gwinnett, Henry, Jones, Lanier, Liberty, Long, Lowndes, Newton, Spalding, Turner, and Twiggs.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Bartow, Chattooga, Fayette, Floyd, Hancock, Morgan, Murray, Putnam, Rockdale, Walker, Walton, and Whitfield Counties in Georgia, and Hamilton County, Florida. Any counties contiguous to the above-name primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 10, 1998 and for economic injury the termination date is December 11, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 14, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–10759 Filed 4–22–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3074]

State of Minnesota; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated April 8, 1998, the above-numbered Declaration is hereby amended to include Blue Earth and Nobles Counties in the State of Minnesota as a disaster area due to damages caused by severe storms and tornadoes that occurred on March 29, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Faribault, Pipestone, and Rock in Minnesota and Lyon and Osceola Counties in Iowa may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is May 31, 1998 and for economic injury the termination date is January 4, 1999.

The economic injury number for the State of Iowa is 983600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 14, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–10760 Filed 4–22–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Indianapolis International Airport, Indianapolis, Indiana

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces it's determination that the noise exposure maps submitted by Indianapolis Airport Authority for Indianapolis International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Indianapolis International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before October 12, 1998.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is April 15, 1998. The public comment period ends June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Airport Environmental Program Manager, 2300 East Devon Avenue, Des Plaines, Illinois 60018. [Telephone Number (847) 294–7538/Fax Number (847) 294–7046] Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Indianapolis International Airport are in compliance with applicable requirements of Part 150, effective April 15, 1998. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 12,

1998. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Indianapolis Airport Authority submitted to the FAA on February 18, 1998, noise exposure maps, descriptions and other documentation, which were produced during Indianapolis International Airport's FAR Part 150 Noise Compatibility Study, February 1998. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Indianapolis Airport Authority. The specific maps under consideration are the Existing Noise Exposure Map and 2002 Official NEM/NCP Noise Contours in the submission. The FAA has determined that these maps for Indianapolis International Airport are in compliance with applicable requirements. This determination is effective on April 15, 1998. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Indianapolis International Airport, also effective on April 15, 1998. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 12, 1998.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Chicago Airports District Office, Room 201, 2300 East Devon Avenue, Des Plaines, Illinois 60018

Indianapolis Airport Authority, Post Office Box 100, 2500 S. High School Road, Indianapolis International Airport, Indianapolis, Indiana 46241–4941.

Copies of the FAR Part 150 Noise Compatibility Program documents are also available for public review during normal business hours at the following locations:

Decatur Township Branch Library, 5301 Kentucky Avenue, Indianapolis, Indiana 46241

Marion County Public Library, 40 East St. Clair, Indianapolis, Indiana 46204

Mooresville Public Library, 220 W. Harrison Street, Mooresville, Indiana 46158

Plainfield Public Library, 1120 Stafford Road, Plainfield, Indiana 46208

Wayne Township Branch Library, 198 South Girls School Road, Indianapolis, Indiana 46214.

Aeronautics Section, Intermodal Division, Indiana Department of Transportation, Indiana Government Center North, Room N901, 100 North Senate Avenue, Indianapolis, Indiana 46204–2219.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, Illinois, on April 15, 1998.

Pené A. Beversdorf,

Acting Manager, Chicago Airports District Office, FAA Great Lakes Region.

[FR Doc. 98–10806 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29208]

Proposed Finding of No Significant Impact

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed finding of no significant impact; Notice.

SUMMARY: The FAA prepared an Environmental Assessment (EA), evaluating a Sea Launch Limited

Partnership (SLLP) proposal to construct and operate a mobile, floating launch platform in international waters in the east-central equatorial Pacific Ocean. After reviewing and analyzing currently available data and information on existing conditions, project impacts, and measures to mitigate those impacts, the Federal Aviation Administration's (FAA), Associate Administrator for Commercial Space Transportation (AST) proposes to determine that licensing the operation of the proposed launch activities is not a major Federal action that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an Environmental Impact Statement (EIS) would not be required and AST is proposing to issue a Finding of No Significant Impact (FONSI).

FOR A COPY OF THE SEA LAUNCH ENVIRONMENTAL ASSESSMENT CONTACT: Mr. Nikos Himaras, FAA, Associate Administrator for Commercial Space Transportation, Suite 331/AST–100, 800 Independence Ave., S.W., Washington, D.C. 20591; phone (202) 267–7926, or refer to the following Internet address: http://ast.faa.gov

DATES: There will be a thirty (30) day comment period before the FAA makes its final determination on the proposed FONSI. Interested individuals, Government agencies, and private organizations are invited to send comments on the proposed FONSI to the address set forth below by May 26, 1998 by mail.

ADDRESSES: Written comments should be sent to, Docket Clerk, Docket No. *29208*, Federal Aviation Administration, 800 Independence Ave., S.W., Room 915, Washington, D.C. 20591.

Proposed Action

If a foreign entity controlled by a U.S. citizen conducts a launch outside the United States and outside the territory of a foreign country, its launch must be licensed. 49 U.S.C. 70104(a)(3). The FAA determined that SLLP is a foreign entity controlled by a U. S. Citizen, Boeing Commercial Space Company. 49 U.S.C. 70102(1)(C); 14 CFR 401.5. Because it proposes to launch in international waters, outside the territory of the United States or a foreign country, SLLP must obtain an FAA license to launch. Licensing a launch is a Federal action requiring environmental analysis by the FAA in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* Upon receipt of a completed application, the Associate Administrator for Commercial Space Transportation must determine whether or not to issue a license to SLLP to launch. Environmental findings are required for a license evaluation. In this instance, the proposed action is the licensing by the FAA of all possible launches by the SLLP at the specified launch location.

SLLP proposes to conduct commercial space launch operations from a mobile, floating platform in international waters in the east-central equatorial Pacific Ocean. The SLLP is an international commercial venture formed to launch commercial satellites. It is organized under the laws of the Cayman Islands, BWI, and the partnership members are Boeing Commercial Space Company of the United States, RSC Energia of Russia, KB Yuzhnoye of the Ukraine, and Kvaerner Maritime a.s. of Norway.

The SLLP would use a launch platform (LP) and an assembly and command ship (ACS). A floating oil drilling platform is being refurbished in Norway to serve as the self-propelled LP. The ACS is being built in Scotland specifically for Sea Launch operations.

A Zenith–3 SL expendable launch vehicle fueled by Kerosene and liquid oxygen would be the only launch vehicle used at the Sea Launch facilities. In the first year of operation, SLLP intends to conduct two launches. Six launches are proposed for each subsequent year. The launches are proposed to occur at the equator in the vicinity of 154 degrees west to maximize inertial and other launch efficiencies. The distances from South America (over 7,000 km) and from the nearest inhabited island (340 km) are intended to ensure that stage one and stage two would drop well away from land and coastal populated areas.

The FAA evaluated open sea areas, the Kiribati Islands, the Galapagos Islands and the Home Port in Long Beach, California for environmental impacts from the proposed launch activities. The environmental study focused on Sea Launch activities conducted at the launch location, activities that may impact the launch range during nominal launches, and failed missions. Sea Launch payloads (i.e., commercial satellites) are not included in this evaluation because they will be fueled and sealed at the Home Port and will only become operational at an altitude of 35,000 km. The environmental study incorporates by reference an environmental assessment conducted by the Navy on the Home Port Facility which resulted in 1996 in a Finding of No Significant Impact. Potential environmental impacts of payloads are not discussed here except with regard to failed mission scenarios.

Environmental Impacts

Air Quality

Pre-launch activities that may impact air quality include LP and ACS positioning, final equipment and process checks, coupling of fuel lines to the integrated launch vehicle (ILV) prior to fueling, the transfer of kerosene and liquid oxygen (LOX) fuels, and decoupling of the fueling apparatus. Normal operations would result only in an incidental loss of kerosene and LOX. This loss of vapors would dissipate immediately and form smog. An unsuccessful ignition attempt would result in automatic defueling of the ILV. Defueling would release LOX vapor and approximately 70 kg of kerosene when the fuel line is flushed. The LOX would dissipate and the vapor and kerosene would evaporate, dissipate rapidly and degrade, thereby having little effect on the surrounding environment.

Potential environmental impacts from launch activities would include spent stages, residual fuels and combustion emissions released into the atmosphere and ocean from spent stages, combustion emissions, thermal energy and noise. During nominal launches, any impacts would be distributed across the east-central equatorial pacific region in a predictable manner. Kerosene released during descent of a failed launch attempt would evaporate within minutes. Any residual liquid oxygen would instantly evaporate without consequence.

The proposed launch location is relatively free of combustion source emissions. That fact coupled with the size of the Pacific Ocean and air space allows most launch emissions to dissipate rapidly. Launch effects on the boundary layer up to two thousand meters would be short term and cause minimal impacts. Emissions occurring in the boundary layer would be dispersed away from inhabited islands by prevailing easterly trade winds and local turbulence caused by solar heating. Because dispersion occurs within hours, the planned six missions per year would preclude any chance of cumulative effects.

All emissions to the troposphere would come from first stage combustion of LOX and kerosene. Photochemical reactions involving Sea Launch Zenit rocket emissions would form carbon dioxide (CO_2) and oxygenated organic compounds. Nitrogen oxide in the exhaust trail would form nitric and nitrous acids. Cloud droplets and atmospheric aerosols efficiently absorb

water-soluble compounds such as acids, oxygenated chemical compounds, and oxidants, thereby reducing impacts to insignificant levels.

Approximately 36,100 kg of carbon monoxide (CO) would be released into the troposphere during the first 55 seconds of flight resulting in an estimated CO concentration at Christmas Island of 9.94 mg/m3. This release is well below the Occupational Safety and Health Administration Permissible Exposure Limit (PEL) of 55 mg/m3, the Environmental Protection Agency level of concern of 175 mg/m3 and the industry Emergency Response Planning Guideline-2 of 400 mg/m3. Nitrogen compounds in the exhaust trail of liquid propellant rockets would cause a temporary reduction of ozone, with return to near background levels within a few hours. Models and measurement of other space systems comparable to Sea Launch indicate that these impacts would be temporary, and the atmosphere is capable of replacing by migration or regeneration the destroyed ozone within a few hours. The high-speed movement of the Zenit-3L rocket and the re-entry of the stages after their use may impact stratospheric ozone. The exact chemistry and relative significance of these processes are not known but are believed to be minimal.

Impacts to air quality would be minimal. Those impacts that do occur would be of short duration and would naturally reverse themselves over a short period of time.

Waste

Post-launch operations involve cleaning the launch platform for subsequent launches. Cleaning would result in particulate residues being washed from the LP with fresh water. Only a few kilograms of debris and residues would be generated. These materials would be collected and handled onboard as solid waste for later disposal at the Home Port.

Noise

Noise from a launch is calculated at approximately 150 decibels at 378 meters with the equivalent sound intensity in the water estimated at less than 75 decibels. Due to the small number of launches per year and scarcity of higher trophic level organisms, noise impacts are expected to be negligible.

Biological and Ecological Impacts

Pre-launch preparations include spraying fresh water from a tank on the LP into the LP's flame bucket, which would dissipate heat and absorb sound during the initial fuel burn. There would be minor impacts to the ecosystem because of the input of heated freshwater. However, the natural variation in plankton densities would ensure rapid and timely recolonization of plankton in the water surrounding the LP.

Launch and flight activities may impact the ocean environment by depositing spent stages and residual fuels. During nominal launches, these impacts would occur and be distributed across the east-central equatorial pacific region. It is unlikely that any falling debris would impact animals, although a small number of marine organisms would be impacted. Kerosene reaching the ocean would form a surface sheen covering several square kilometers. Over 95% of the kerosene sheen would evaporate from surface waters within hours with the remaining 5% dispersing or degrading in a few days. Plankton immediately beneath the kerosene slick would likely be killed. However, overall plankton mortality would be minimal as the population densities are greatest around 30 meters below the surface.

Two worst case scenarios were evaluated and determined to cause only minimal damage to the environment. The first case evaluated ILV failure and explosion on the LP with the ILV being fully fueled and ready for launch. This failure would result in an explosion of the ILV fuels scattering pieces of the LLV and LP up to 3 km away. Particulate matter from the smoke plume would drift downwind and be distributed a few kilometers before dissipating. Plankton and fish in the immediate area would be killed over the course of several days. Thermal energy would be deflected and absorbed by the ocean and 100% of the fuels would be consumed or released into the atmosphere through combustion or evaporation. Disruption to the atmosphere and the ocean would be assimilated and the environment would return to pre-accident conditions within several days.

The second scenario evaluated involved failure of the rocket's upper stage. Loss and re-entry of the upper stage and payload would result in materials and fuels being heated by friction and vaporizing. Remaining objects would fall into the ocean causing a temporary disruption as the warm objects cooled and sank. The risk of debris striking any populated areas or ecological habitats is very remote.

Socioeconomics

The SLLP launch activities would occupy the launch location for two to seven days during each launch cycle. Due to the brief period of time that the LP and the ACS will be present at the launch location, social and economic impacts to the Kiribati are considered negligible. The brief duration of launch activities, and the relative degree of isolation of the launch location provides a barrier between Sea Launch and the cultural and economic character of the Kiribati society. The baseline plan for operations does not include any use of facilities based on any of the Kiribati Islands. Impacts to the Islands, associated with employees transiting Christmas Island on an emergency basis, would be positive given that the expenditures would be an addition to the local economy.

Health and Safety

The FAA's licensing process will examine all safety-related aspects of the proposed launch operations. The SLLP adopted a common risk value, an upper limit of one in a million casualty expectations, as the population protection criteria. Public Safety assurance and analysis issues are discussed in the SLLP document ''Sea Launch System Safety Plan''. The launch location was shifted away from South America to ensure that stage one, the fairing, and stage two would drop well away from land and coastal commercial activity. The instantaneous impact point speed would increase over South America, decreasing the dwell time and potential risk as the rocket traverses land. The launch area, in the vicinity of 154 degrees west, was selected because it is located outside of the Kiribati 320 km exclusive economic zone and is roughly 340 km from the nearest inhabited island. The licensing process will evaluate these factors.

Threatened and Endangered Species

There are no known threatened and endangered species that will be impacted by the proposed launch activities.

Archeological and Cultural Resources

The launch activities, proposed to occur in the open ocean, will not impact archeological or cultural resources.

Cumulative Impacts

There are no other foreseeable planned developments in the area of the proposed launch location at this time; therefore, no cumulative impacts are expected. The Navy Mole facility is currently underutilized as compared to its historical level of operation and development. The Home Port facility may be the impetus for other development in the area.

Other Environmental Considerations

Home Port

The design, permitting, construction, and operation of the Home port would be managed under the jurisdiction of the state, regional, county, municipal, and port authorities of the Port of Long Beach, California. The Navy, as part of the California Environmental Quality Act Process, submitted the Mole EA to the California Coastal Commission for review, which determined the proposed Home Port activities were not inconsistent with the California Coastal Zone Management Program. The Port of Long Beach has approved the construction and operation of the Home Port through the Harbor Development Permit process. One of the standard conditions in the Harbor Development Permit is that SLLP will follow all applicable Federal, state, and local laws and regulations, including those pertaining to safety and the environment.

No Action Alternative

Under the No Action alternative the SLLP would not launch satellites from the Pacific Ocean and the Port of Long Beach would remain available for other commercial or government ventures. The goals of 49 U.S.C. Subtitle IX, ch. 701 Commercial Space Launch Activities, would not be realized. Predicted environmental impacts of the proposed launch activities would not occur and the project area would remain in its current state.

Determination

An analysis of the proposed action has concluded that there are no significant short-term or long-term effects to the environment or surrounding populations. After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(C) of NEPA. Therefore, an Environmental Impact Statement for the proposed action would not be required.

Issued in Washington, DC on April 17, 1998.

Manuel F. Vega,

Acting Deputy Associate Administrator for Commercial Space Transportation.

[FR Doc. 98–10748 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 98–04–C–00–BTM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bert Mooney Airport, Submitted by the Bert Mooney Airport Authority, Butte, Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Bert Mooney Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before May 26, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office; Federal Aviation Administration; 2725 Skyway Drive, Suite 2; Helena, Montana 59602–1213.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rick Griffith, Airport Manager, at the following address: Bert Mooney Airport, 101 Airport Road, Butte, Montana 59701.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Bert Mooney Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: David P. Gabbert, Manager; Helena Airports District Office; Federal Aviation Administration; 2725 Skyway Drive, Suite 2; Helena, Montana 59602–1213; Phone (406) 449–5271. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 98–04–C–00–BTM to impose and use PFC revenue at Bert Mooney Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 16, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Bert Mooney Airport Authority, Bert Mooney Airport, Butte, Montana, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 24, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: February 1, 2000

Proposed charge expiration date: January 31, 2002

Total requested for use approval: $215,040

Brief description of proposed project: Land acquisition in fee for Runway Protection Zone, approach and transition areas and land acquisition for security fence improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: On demand non-scheduled Air Taxi/Commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bert Mooney Airport.

Issued in Renton, Washington on April 16, 1998.

David A. Field,

Manager, Planning, Programming and Capacity Branch Northwest Mountain Region.

[FR Doc. 98–10807 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In March 1998, there were eight applications approved. This notice also includes

information on one application, approved in February 1998, inadvertently left off the February 1998 notice. Additionally, three approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of section 158.29.

PFC Applications Approved

Public Agency: Airport Authority of Washoe County, Reno, Nevada.

Application Number: 98–03–C–00–RNO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $22,855,013.

Earliest Charge Effective Date: May 1, 1998.

Estimated Charge Expiration Date: July 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Reno/Tahoe International Airport.

Brief Descripotion of Projects Approved for Collection and Use:

Passenger loading bridges.
Taxiway B design and reconstruction.
Terminal complex schematic design.
Terminal apron construction—phases I and II.
North perimeter road reconstruction/overlay.
Aircraft rescue and firefighting (ARFF) truck.
Terminal building doors.
Fire sprinkler system.
Taxiway A reconstruction and design.

Decision Date: February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Maryls Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of Tallahassee, Florida.

Application Number: 98–03–C–00–TLH.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in, This Decision: $5,988,942.

Earliest Charge Effective Date: June 1, 1998.

Estimated Charge Expiration Date: July 1, 2003.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Tallahassee Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Computerized airfield lighting control.
Terminal title roof (replacement).
Runway 9/27 erosion control.
Taxiway T relocation.
ARFF road improvements.
Miscellaneous airfield improvements.
T-hangar access taxiway.
ARFF storm water improvements.
Americans with Disabilities Act (ADA) accessibility ramps.
Part 150 noise mitigation/land acquisition (planning).
Disabled passenger lift (device).
Taxiway/apron improvements (design only).
Taxiway H and M widening.
Runway 18/36 lighting and shoulder improvements.
Terminal service/access road improvements (professional services).
Part 150 noise mitigation/land acquisition implementation.

Brief Description of Project Approved in Part for Collection and Use: PFC administration costs.

Determination: Partially and conditionally approved. Documents submitted to the FAA in support of this project were insufficient to establish that all project costs will be necessary for the preparation, administration, auditing and financial completion/close-out of the PFC application. Specifically, the costs for annual audits, staff labor, and miscellaneous expenses were not substantiated. In addition, the cost for microcomputer software acquisition was determined to be ineligible for PFC funding. Therefore, the FAA has only approved $15,000 of the public agency's request (of $87,000) for this project. The approved amount represents the consultant fees for preparation and financial completion/close-out of the PFC application and anticipated amendments.

Brief Description of Projects Withdrawn: Security gates/fencing system upgrades design only. Bond financing costs.

Determination: The public agency withdrew these projects by memorandum dated December 12, 1997. Therefore, the FAA did not rule on these projects in this decision.

Taxiway improvements—construction.
Apron improvements—construction.

Determination: By memorandum dated December 12, 1997, the public agency withdrew these projects until such time as the design of these projects is completed and pavement areas requiring rehabilitation are identified. Therefore, the FAA did not rule on these projects in this decision.

Terminal service road improvements—construction.
Terminal access road improvements—construction.

Determination: By memorandum dated December 12, 1997, the public agency withdrew these projects until such time as the design of these projects is completed. Therefore, the FAA did not rule on these projects in this decision.

Decision Date: March 3, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Owen, Orlando Airports District Office, (407) 812–6331.

Public Agency: City of Rhinelander and County of Oneida, Rhinelander, Wisconsin.

Application Number: 98–04–U–00–RHI.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $192,750.

Charge Effective Date: June 1, 1996.

Estimated Charge Expiration Date: January 1, 2001.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Terminal building improvements.

Decision Date: March 10, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy M. Nistler, Minneapolis Airports District Office, (612) 713–4250.

Public Agency: Metropolitan Airport Authority of Rock Island County, Moline, Illinois.

Application Number: 98–02–C–00–MLI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $5,128,404.

Earliest Charge Effective Date: November 1, 2008.

Estimated Charge Expiration Date: January 1, 2026.

Class of Air Carriers Not Required To Collect PFC's: Part 135 unscheduled air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Quad City International Airport.

Brief Description of Projects Approved for Use: North ramp replacement, phase V. Taxiways Delta, Echo, and Kilo improvements.

Brief Description of Projects Approved for Collection and Use:

Multiple user flight information display system.
Land reimbursement.
New entrance road and entrance road improvements; signage.
Equipment purchase: runway friction testing vehicle; broom/blower snow removal units; endloader.

Decision Date: March 12, 1998.

FOR FURTHER INFORMATION CONTACT: Mark McClardy, Chicago Airports District Office, (847) 294–7435.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 98–07–C–00–ORD.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $61,717,809.

Earliest Charge Effective Date: July 1, 2004.

Estimated Charge Expiration Date: April 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air taxi operators.

Determination: Approved. Based on the information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport.

Brief Description of Projects Approved for Collection and Use:

H5043—Guard Post 2—site improvements.
H6060—Runway 4L/22R rehabilitation.
H6069—Security enhancements at former military base.
H8001–97—Additional school soundproofing.
H1060—Upgrade of intergraph computer aided dispatch to Windows NT platform.
H1062—Identification badging system upgrade.

Brief Description of Projects Approved in Part for Collection and Use

H6059—Runway 4R/22L rehabilitation.

Determination: Partially approved. The City of Chicago had requested full PFC funding of this project; however, subsequent to submission of the application, the City received AIP funding to pay a portion of the costs. Therefore, the PFC amount was reduced.

H5048—Airport transit system improvements.

Determination: Partially approved. A portion of this project, acquisition of jacks, was ineligible for PFC funding because this equipment is for the performance of recurrent maintenance on the vehicles.

H9706—Acquisition of 1997 equipment.

Determination: Partially approved. The second fire pumper truck is ineligible for PFC funding in accordance with Program Guidance Letter 91–8.2. In addition, the noise office education vehicle was determined to be ineligible for PFC funding in accordance with paragraph 713(f) of FAA Order 5100.38A, AIP Handbook (October 24, 1989).

Brief Description of Disapproved Project: H1061—Global positioning system for O'Hare communications center.

Determination: Disapproved. The FAA has determined that this project is not eligible for PFC or AIP funding. The global positioning system for vehicles is currently only eligible for a specific number of ARFF vehicles required by Part 139 at airports having operations below 1,200 feet runway visual range. This project did not include any such eligible vehicles.

Decision Date: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7335.

Public Agency: Central West Virginia Airport Regional Authority, Charleston, West Virginia.

Application Number: 98–03–C–00–CRW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $662,687.

Earliest Charge Effective Date: November 1, 1998.

Estimated Charge Expiration Date: December 1, 1999.

Class of Air Carriers Not Required to Collect PFC's: Part 135 and Part 121 charter operators for hire to the general public.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Yeager Airport.

Brief Description of Projects Approved for Collection and Use

Replace portions of the main terminal roof.
Install commuter walkway system.
Replace perimeter fence.
Overlay asphalt apron in the general aviation area.

Brief Description of Projects Approved for Collection Only:

Repair slide area, taxiway C.
Rehabilitation of loop road.
Purchase and install baggage handling systems.
Rehabilitation of concrete portions of runway 5/23.

Brief Description of Projects Withdrawn:

Purchase quick dash truck.
Purchase new 1,500 gallon truck.
Purchase snow broom.

Determination: These projects were withdrawn by the public agency by letter dated January 21, 1998. Therefore, the FAA will not rule on these projects in this decision.

Decision Date: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Elonza Turner, Beckley Airports Field Office, (304) 252–6216.

Public Agency: City of Bismarck, North Dakota.

Application Number: 98–02–C–00–BIS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,474,422.

Earliest Charge Effective Date: June 1, 1998.

Estimated Charge Expiration Date: December 1, 2002.

Class of Air Carriers Not Required to Collect PFC's:

(1) All on demand air taxi/commercial operators filing FAA Form 1800–31 that enplane fewer than 500 passengers per year and do not have their base of operations at Bismarck Municipal Airport; and (2) all on demand air taxi commercial operators filing FAA Form 1800–31 which have their base of operations at Bismarck Municipal Airport.

Determination: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bismarck Municipal Airport.

Brief Description of Projects Approved for Collection and Use

Rehabilitate general aviation ramp.
Terminal building, ADA compliance.
Design and relocation of Airway Avenue (Yegen Road).

Reconstruct, widen, and extend runway 3/21.
PFC application preparation.
Improve existing airfield service road.
Preparation of plans and specifications for the rehabilitation of runway 13/31 and taxiway A.
Rehabilitate runway 13/31.
Rehabilitate runway 13/31 lighting.
Rehabilitate taxiway A.

Brief Description of Project Approved for Collection: Rehabilitate baggage claim area.

Decision Date: March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Irene R. Porter, Bismarck Airports District Office, (701) 250–4358.

Public Agency: County of Jefferson, Beaumont, Texas.

Application Number: 98–03–C–00–BPT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $667,020.

Earliest Charge Effective Date: August 1, 1998.

Estimated Charge Expiration Date: November 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: None

Brief Description of Projects Approved for Collection and Use: Airfield safety improvements: Rehabilitate runway 16/34, phase II; widen taxiways C, E, G, and H; install runway end identifier lights for runways 30 and 34; acquire airfield sweeper.
Airport entrance signs.
Widen taxiway D.
ARFF facility.
Ground level covered passenger walkway.
PFC application and administrative costs.

Decision Date: March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Kenton County Airport Board, Covington, Kentucky.

Application Number: 98–03–C–00–CVG.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $21,097,000.

Earliest Charge Effective Date: June 1, 1998.

Estimated Charge Expiration Date: April 1, 1999.

Class of Air Carriers not Required to Collect PFC's:

(1) Part 121 supplemental operators which operate at Cincinnati/Northern Kentucky International Airport without an operating agreement with the public agency and enplane less than 1,500 passengers per year; and (2) Part 135 on demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on the information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Cincinnati/Northern Kentucky International Airport.

Brief Description of Projects Approved for Collection and Use:
ARFF equipment (quick response truck).
Taxiway K and hold apron.
Taxiway S extension.
Field equipment.
Northwest environmental collection system.
North crossfield taxiway.
Runway 9/27 extension: clear, drain, and grade.
Field lighting to new tower.
Runway 9/27 extension: pave and light.
Taxiway S and tunnel extension.
Environmental impact statement (runway 18R/36L/master plan projects).
Part 150 study.
Taxiway M rehabilitation.

Decision Date: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Memphis Airports District Office, (901) 544–3495.

Amendments to PFC Approvals:

Amendment number city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge expired date	Amended estimated charge expired date
93–01–C–04–CRW Charleston, WV	02/26/98	$2,489,473	$2,504,316	11/01/09	11/01/98
94–01–C–04–CVG Covington, KY	03/25/98	43,267,000	37,146,000	09/01/00	06/01/98
95–02–C–01–CVG Covington, KY	03/25/98	111,930,000	85,441,000	09/01/00	06/01/98

Issued in Washington, DC, on April 16, 1998.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 98–10805 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety. The petition is hereinafter identified as DP98–003.

FOR FURTHER INFORMATION CONTACT: Dr. George Chiang, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–5206.

SUPPLEMENTARY INFORMATION: Ms. Lisa Smith of Newburgh, Indiana, submitted a petition dated February 24, 1998, requesting that an investigation be initiated to determine whether Model Year (MY) 1989 Chrysler minivans (Voyagers) contain a defect related to motor vehicle safety within the meaning of 49 U.S.C. Chapter 301. The petition alleges that MY 1989 Plymouth Voyagers have a defective automatic transmission that can fail early in the life of the vehicle and require a costly repair.

In her petition letter, Ms. Smith stated that ''I am filing this petition against the Chrysler Plymouth Corp. for their failure to produce a quality transmission in the 1989 minivans (Voyagers). Starting in 1989 model vans they installed a transmission that was faulty in its performance * * * I feel Chrysler is putting quantity before quality * * * I request you have a hearing on this costly issue. In the meantime I will be paying my repair bill for my 3rd transmission.''

Clearly, failure of her transmission with the high cost of its replacement is

frustrating to the petitioner. While frustrating, the type of transmission problem the petitioner described is not related to motor vehicle safety. The agency has no jurisdiction over non-safety defects, warranty, dealership, and remuneration matters.

Accordingly, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 98–10834 Filed 4–22–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33575]

State of North Carolina—Intracorporate Family Exemption—Merger of Beaufort and Morehead Railroad Company Into North Carolina Railroad Company

The State of North Carolina (the State), Beaufort and Morehead Railroad Company (B&M), and North Carolina Railroad Company (NCRR) have filed a verified notice of exemption to merge B&M, a Class III rail carrier wholly owned by the State (a noncarrier),[1] into NCRR, a Class III rail carrier controlled by the State.[2]

The proposed merger is an element of a financial restructuring, not subject to Board jurisdiction, related to the proposed buyout by the State of the private shareholders of NCRR.[3] *See North Carolina Railroad Company—Petition to Set Trackage Compensation and Other Terms and Conditions—Norfolk Southern Railway Company, Norfolk & Western Railway Company, and Atlantic and East Carolina Railway Company,* STB Finance Docket No. 33134 (STB served May 29, 1997).[4] The parties expected to consummate the merger on or after March 31, 1998.

This transaction is one within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33575, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, DC 20036; and Farhana Y. Khera, Hogan & Hartson L.L.P, 555 Thirteenth Street, N.W., Washington, DC 20004–1109.

Decided: April 15, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–10703 Filed 4–22–98; 8:45 am]

BILLING CODE 4915–00–P

[1] An agency of the State, the North Carolina Department of Transportation, owns 100% of the outstanding common stock of B&M.

[2] The State owns approximately 75% of the outstanding common stock of NCRR.

[3] The merger will allow NCRR to issue new preferred stock in exchange for B&M preferred stock. The preferred stock issuance will evidently preserve NCRR's Federal tax status as a real estate investment trust after the State acquires all of its common stock.

[4] There, a trackage compensation proceeding was held in abeyance to allow the State to negotiate a buyout of the private shareholders of NCRR whose dissension had precipitated the compensation dispute.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33572 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33572[1] to permit the trackage rights to expire, as they relate to the operation between Council Bluffs and Hastings, on July 16, 1998, and as they relate to the operation between Hastings and Northport, on October 1, 1998, in accordance with the agreement of the parties.[2]

DATES: This exemption is effective on May 23, 1998. Petitions to reopen must be filed by May 13, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33572 (Sub-No. 1) must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative, Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in

[1] On March 23, 1998, UP filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights over two segments of its line to UP: (1) between Council Bluffs, IA, at milepost 483.6 on BNSF's Bayard Subdivision (at a point which is equal to milepost 12.8 on BNSF's Omaha Subdivision) and Hastings, NE, at milepost 156.5 on BNSF's Hastings Subdivision, a distance of approximately 214.6 miles over a segment which extends from Council Bluffs through Omaha, NE, Ashland, NE, Lincoln, NE, Crete, NE, and Fairmont, NE, to Hastings, for the period March 30, 1998, through July 15, 1998; and (2) between Hastings, NE, at milepost 156.5 on BNSF's Hastings Subdivision and Northport, NE, at milepost 34.4 on BNSF's Angora Subdivision, a distance of approximately 387.7 miles over a segment which extends from Hastings though Holdredge, NE, Oxford, NE, Culbertson, NE, Wray, CO, East Brush, CO, Sterling, CO, and Sidney, NE, to Northport, for the period March 30, 1998, through September 30, 1998. The portion of the trackage rights operation between Council Bluffs, IA, and Hastings, NE, is scheduled to expire effective July 16, 1998. The portion of the trackage rights operation between Hastings and Northport, NE, is scheduled to expire effective October 1, 1998. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33572 (STB served Apr. 2, 1998). The exemption became effective on March 30, 1998, 7 days after the verified notice was filed.

[2] Trackage rights normally remain in effect unless discontinuance authority or approval of a new agreement is sought. *See Milford-Bennington Railroad Company, Inc.—Trackage Rights Exemption—Boston and Maine Corporation and Springfield Terminal Railway Company,* Finance Docket No. 32103 (ICC served Sept. 3, 1993).

the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Decided: May 10,1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–10849 Filed 4–22–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 15, 1998.

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, Pub. L. 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 May 26, 1998 to be assured of consideration.

Special Request

In order to conduct the surveys described below at the beginning of May 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by April 28, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 98–007–G.

Type of Review: Revision.

Title: 1998 941 TeleFile User and Non-user Customer Satisfaction Surveys.

Description: The purpose of the surveys is to obtain feedback from businesses on the IRS marketing effort, reasons why businesses used or did not use TeleFile, and receive suggestions on how the IRS can improve the 941 TeleFile system.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents:

941 TeleFile Non-user Customer Survey—1,400.

941 TeleFile User Customer Survey—1,350.

Estimated Burden Hours Per Response:

941 TeleFile Non-user Customer Survey—5 minutes.

941 TeleFile User Customer Survey—10 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 342 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–10766 Filed 4–22–98; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on April 22 in Room 600, 301 4th Street, S.W., Washington, D.C., from 8:00 a.m. to noon.

At 8:30 a.m. the Commission will participate in a USIS 2000 Video Conference with U.S. Embassy Rabat. Participants will include Ambassador Edward Gabriel; Public Affairs Officer Jim Bullock, USIS Rabat; Mr. Dan Campbell, Director, Office of Technology, USIA; and Mr. Carl Vesper, Chief, Network & Systems Support Division, USIA.

At 9:30 a.m. the Commission will hold a panel discussion on technology and diplomacy. The panelists are Dr. Jerry Mechling, Director, Strategic Computing and Telecommunications in the Public Sector, John F. Kennedy School of Government, Harvard University; Dr. Lloyd S. Etheredge, Director, International Scientific Networks Project, Yale Law School; and Captain Richard O'Neill, Deputy Director for Information Operations, Office of Assistant Secretary of Defense.

At 11:00 a.m. the Commission will discuss reorganization and technology with Ambassador Andrew Winter, Deputy Chief Information Officer for Operations, Department of State; and Mr. Dan Campbell, Director, Office of Technology, USIA.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: April 17, 1998.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 98–10767 Filed 4–22–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 63, No. 78
Thursday, April 23, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39288; File No. SR-NYSE-97-30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend and Make Permanent the Allocation Policy and Procedures Pilot Program

Correction

In notice document 97–29473 beginning on page 60297, in the issue of Friday, November 7, 1997, make the following correction:

On page 60299, in the third column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39349; File No. SR–NASD–97–76]

Self–Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Amend Its Rule 3230 Relating to Clearing Agreements

Correction

In notice document 97–31393, beginning on page 63589, in the issue of Monday, December 1, 1997, the docket line should appear as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39401; File No. SR-Phlx 97-48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Extension and Amendment of the Pilot Program for Equity and Index Option Specialist Enhanced Parity Splits

Correction

In notice document 97–32369 beginning on page 65300, in the issue of Thursday, December 11, 1997, make the following corrections:

1. On page 65300, in the second column, the docket number is corrected to read as set forth above.
2. On page 65302, in the second column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-39510; File No. SR-NASD-97-24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Supervision and Record Retention Rules

Correction

In notice document 98–418 beginning on page 1131, in the issue of Thursday, January 8, 1998, make the following correction:

On page 1134, in the second column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Jonathon G. Katz,

Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39646; File No. SR–Amex–97–44]

Self–Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Institutional Index Option Position Limits

Correction

In notice document 98–4257, beginning on page 8723 in the issue of Friday, February 20, 1998, the docket line should appear as set forth above.

BILLING CODE 1505-01-D

federal register

Thursday
April 23, 1998

Part II

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 563

Financial Management Policies, Financial Derivatives; Proposed Rule and Financial Management Policies; Notice

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 98–37]

RIN 1550–AB13

Financial Management Policies; Financial Derivatives

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to issue a regulation that would apply to all financial derivatives and would replace its existing regulations on forward commitments, futures transactions, and financial options transactions. The proposal would continue to permit a savings association to engage in transactions involving financial derivatives to the extent that these transactions are authorized under applicable law and are otherwise safe and sound. In addition, the proposed rule would describe the responsibilities of a savings association's board of directors and management with respect to financial derivatives. Elsewhere in today's **Federal Register**, OTS is seeking public comment on a proposed Thrift Bulletin which would, among other things, provide supplemental supervisory guidance on the use of financial derivatives. Finally, the Federal Financial Institutions Examination Council (FFIEC) is issuing additional guidance in a supervisory policy statement addressing this area that appears elsewhere in this issue of the **Federal Register**.

DATES: Comments must be received on or before June 22, 1998.

ADDRESSES: Send comments to: Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 98–37. These submissions may be hand-delivered to 1700 G Street, N.W., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755; or by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Anthony G. Cornyn, Director of Risk Management, (202/906–5727), Ed Irmler, Senior Project Manager, (202/906–5730), Jonathan D. Jones, Senior Economist (202/906–5729), Risk Management; or Vern McKinley, Senior Attorney (202/906–6241), Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS's current regulations on financial derivatives were first adopted over fifteen years ago.[1] These regulations have remained virtually unchanged, notwithstanding the development of new financial derivative instruments. Today, OTS is proposing a comprehensive revision of these outmoded regulations.

One of the goals of this proposed rule is to address the broad range of financial derivatives transactions in which thrifts may currently engage. The current regulations address three types of financial derivatives: forward commitments, futures transactions, and financial options transactions. *See* 12 CFR 563.173, 563.174, and 563.175. These regulations, thus, do not address all of the derivative instruments that have been developed over the past twenty years. Significantly, the current regulations do not address interest rate swaps, a derivative instrument thrifts commonly use to address interest rate risk. The proposed rule would continue to permit savings associations to use financial derivatives transactions to manage and control risk.

The overriding goal of this regulatory initiative is to ensure the safe and sound management of the risks associated with financial derivatives. Accordingly, the proposed regulation emphasizes that derivatives activities must be conducted in a safe and sound manner, and sets forth the responsibilities of the board of directors and management with respect to financial derivatives.

OTS is simultaneously issuing comprehensive proposed guidance regarding savings associations' risk management practices, including those pertaining to derivatives transactions. Elsewhere in today's issue of the **Federal Register**, OTS is issuing for comment Thrift Bulletin 13a (TB 13a) (''Management of Interest Rate Risk, Investment Securities, and Derivatives Activities''). One of the purposes of TB 13a is to provide specific guidance on how thrifts should implement the FFIEC's ''Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities'' (FFIEC policy statement).[2] The FFIEC policy statement provides general guidance on sound practices for managing the risks of investment securities and derivatives activities.

The proposed rule would also reduce regulatory burden consistent with statutory requirements for safe and sound operations. The current regulations at §§ 563.173, 563.174 and 563.175 impose many regulatory restrictions on forward commitments, futures transactions, and financial options transactions. After reviewing each of these existing regulatory requirements, OTS proposes to delete those requirements that it no longer considers essential for safety and soundness; to incorporate others into guidance; and to convert the remainder into broader and more flexible regulatory requirements for all types of financial derivative transactions. OTS's proposed approach, which relies more on guidance than detailed regulations, more closely resembles the bank regulatory agencies' approach with regard to banks' use of financial derivatives.[3]

II. Proposed Rule

Because OTS's concerns about the risks institutions incur from the various types of derivatives are not unique to one type of derivative, the proposed regulation would treat all financial derivatives within a common conceptual framework. Proposed § 563.172(a) would define a financial derivative as a financial contract whose value depends on the value of one or more underlying assets, indices or reference rates. This definition would specifically include the three types of financial derivatives addressed by the current rule (forward commitments, financial futures transactions, and financial options transactions), as well as swaps. The proposed definition is based on the Office of the Comptroller of the Currency definition of derivative contract. *See* 12 CFR Part 3, Appendix A, Section 1(a)(10) (1997). Under the proposed definition, a mortgage derivative security, such as a collateralized mortgage obligation or a real estate mortgage investment conduit, is not a financial derivative. To avoid any confusion, OTS has explicitly excluded mortgage derivative securities from the proposed definition.

[1] 44 FR 29870 (May 23, 1979) (Forward commitments); 46 FR 36832 (July 16, 1981) (Futures transactions); 47 FR 36625 (August 23, 1982) (Financial options).

[2] Published elsewhere in this issue of the **Federal Register**.

[3] *See e.g.,* OCC Banking Circular 277 (October 27, 1993).

Proposed § 563.172(b) would allow a federal savings association to engage in a transaction involving a financial derivative if the association is authorized to invest in the assets underlying the financial derivative, and the transaction is otherwise safe and sound. A state-chartered savings association may engage in a transaction involving a financial derivative to the extent that the transaction is authorized under its charter and applicable state law, and the transaction is otherwise safe and sound. However, institutions engaging in derivatives activities generally should do so to reduce their overall exposure to risk.

Proposed § 563.172(c) would address the responsibilities of the board of directors with respect to financial derivatives. Under the proposed rule, the board would be responsible for effective oversight of financial derivatives activities. The board would be required to establish written policies and procedures governing authorized financial derivatives before the association may engage in any transactions involving these instruments. In adopting these policies and procedures, the board should review and be guided by TB 13a and other applicable agency guidance on establishing a sound risk management program. The proposed rule would also require the board to periodically review compliance with its policies and procedures, and review the adequacy of the policies and procedures to ensure that they continue to be appropriate to the nature and scope of the savings association's operations and the existing market conditions. Finally, the proposed rule would require the board to ensure that management establishes an adequate system of internal controls for transactions involving financial derivatives.

Paragraph (d) of the proposed rule would address management's responsibilities with respect to financial derivatives. Management would be responsible for daily oversight and management of financial derivatives activities, including implementing the board's policies and procedures and establishing a system of internal controls. Generally, this system of internal controls must be designed to ensure safe and sound operations, reliable financial and regulatory reporting including periodic reporting to the board, and compliance with relevant law. Finally, management would be required to ensure that derivatives activities are conducted in a safe and sound manner, and should review TB 13a and other applicable agency guidance on implementing a sound risk management program.

Proposed § 563.172(e) would prescribe the recordkeeping requirements for financial derivatives transactions. Under the proposed rule, an association would be required to maintain records adequate to demonstrate compliance with the requirements in § 563.172, and compliance with the board's policies and procedures on financial derivatives.

As noted above, OTS is also issuing proposed TB 13a for public comment. Proposed TB 13a provides additional guidance on what OTS considers safe and sound risk management practices with regard to financial derivatives, and gives institutions more flexibility in addressing risk management concerns than the current regulations. Much of the proposed guidance addresses the evaluation of derivatives as a component of the institution's overall exposure to interest rate risk.

III. Proposed Disposition of Existing Regulations

OTS proposes to eliminate existing §§ 563.173 through 563.175. Instead, OTS would rely on the new rule on derivatives and on agency guidance. The section-by-section analysis below describes the topics addressed by the existing rules and the reasons OTS proposes to modify these rules.

Section 563.173 Forward Commitments

Section 563.173(a) defines various terms used in the regulation, and would be eliminated. As noted above, the proposed rule defines financial derivatives to include forward commitments. Proposed TB 13a would provide additional definitions implementing OTS guidelines regarding financial derivatives.[4]

Section 563.173(b) requires the board of directors of a savings association to include in the board minutes certain information regarding forward commitment transactions. Under the current rule, the minutes must identify thrift personnel that may engage in forward commitment transactions, set the limits of these employees' authority, identify the brokerage firms through which transactions may be conducted, and set a dollar limit on transactions that may be conducted with each brokerage firm.

OTS believes that institutions should continue to perform these functions. Under proposed § 563.172(c)(2), the board would be required to adopt policies and procedures governing authorized financial derivatives activities. In adopting these policies, the board should review and be guided by TB 13a, which addresses the content of the board's policies and procedures, including the matters specified in existing § 563.173(b). Specifically, proposed TB 13a states that an institution's policies and procedures should ''identify the staff authorized to conduct * * * derivatives activities, their lines of authority, and their responsibilities [and] * * * identify dealers, brokers, and counterparties that the board * * * has authorized the institution to conduct business with and identify credit exposure limits for each authorized entity.''[5]

Section 563.173(c) imposes restrictions on savings associations that engage in forward commitments. The regulation states a general requirement that forward commitments must be conducted in a safe and sound manner and includes examples of unsafe and unsound practices. This existing regulation also states that outstanding forward commitments plus short put options not exceed specified limits based on a percentage of total assets.

While the proposed rule at § 563.172(b) would continue to require that all financial derivative transactions must be safe and sound, OTS does not believe that a regulatory percentage of assets limit is appropriate. Instead, such transactions are best evaluated based upon how they affect the interest rate risk of an institution's total portfolio. Accordingly, the proposed rule would eliminate specific limitations on forward commitments as a percentage of assets. Instead, proposed § 563.172(b)(3) would state that an association should generally engage in a transaction involving a financial derivative to reduce risk exposure. Moreover, in establishing a sound risk management program, the board should review and be guided by TB 13a, which indicates that before engaging in a derivatives transaction, the savings association should evaluate the derivative's interest rate sensitivity in the context of the institution's overall exposure to interest rate risk.[6]

Section 563.173(d) requires recognition of all profit or loss upon disposal or modification of a forward

[4] *See* OTS Thrift Bulletin 13a, Part III, Section A and Appendix D.

[5] *See* OTS Thrift Bulletin 13a, Appendix B, Section B. This section also includes other relevant guidance. *e.g.*, the board's policies and procedures should ''[d]efine, where appropriate, position limits and other constraints on each type of authorized investment and derivative instrument, including constraints on the purpose(s) for which such instruments may be used.''

[6] *See* OTS Thrift Bulletin 13a, Part III, Section A.

commitment. Since this regulation was first enacted, OTS's accounting requirements have been significantly updated, removing the need for this specific requirement. OTS expects thrifts to compute gain and loss consistent with instructions to the Thrift Financial Report, which incorporates the requirements of generally accepted accounting principles and the regulatory reporting standards under 12 CFR Part 562.

Section 563.173(e) imposes detailed recordkeeping requirements on savings associations engaging in forward commitments. Under this provision, a savings association must maintain a contract register recording specific information on outstanding forward commitments and maintain documentation of its ability to fund all outstanding commitments when they are due. OTS believes that the level of detail specified in the existing regulation is unnecessary. Under proposed § 563.172(e), a savings association would be required to maintain records sufficient to demonstrate compliance with the regulation and with the board's policies and procedures. Proposed TB 13a would provide additional guidance on appropriate documentation,[7] including a contract register containing key information on all outstanding contracts and positions.[8]

Section 563.174 Futures Transactions

Section 563.175 Financial Options Transactions

Because §§ 563.174 and 563.175 address substantially the same subjects and impose many identical requirements on futures transactions and financial options transactions, these sections are discussed together below.

Sections 563.174(a) and 563.175(a) set forth definitions relevant to futures and financial options transactions, respectively. The proposed rule would specifically include futures and financial options within the definition of financial derivative. In addition, proposed TB 13a would provide appropriate additional definitions governing derivatives transactions. One of the existing definitions at § 563.175(a)(13) restricts who may be a permissible counterparty in financial options transactions. OTS believes it is more appropriate for the board to approve counterparties, as a part of its policies and procedures. Accordingly, proposed TB 13a states that the board should identify approved counterparties with which the institution may conduct business, as well as credit risk limits for each approved counterparty.[9]

Sections 563.174(b) and 563.175(b) detail permissible transactions for savings associations. Section 563.174(b) permits a savings association to engage in a futures transaction only to the extent that the transaction reduces net interest rate risk exposure and sets other limits on these transactions. Under § 563.175(b), a thrift may enter into a financial option that is a long position or short call without any limits, but may enter into short put options only on a limited basis. OTS does not propose to place specific limitations on the ability of institutions to enter into any positions in futures or options contracts. As discussed previously, the proposed rule stipulates that, in general, institutions engaging in derivatives activities should do so to reduce their overall risk exposure. The proposed TB 13a provides extensive guidance on the management of interest rate and other risks incurred by savings associations engaging in financial derivative transactions.

Sections 563.174(c) and 563.175(c) authorize savings associations to engage in futures and financial options transactions using contracts designated by the Commodity Futures Trading Commission (CFTC). Section 563.175(c) also authorizes savings associations to engage in financial options contracts approved by the Securities and Exchange Commission (SEC), or financial options contracts entered into with a permissible counterparty. OTS proposes to delete these requirements. The guidance in proposed TB 13a states that an institution should adequately evaluate the enforceability of its derivatives agreement before an individual transaction is consummated. As a part of this review, the institution should, among other things, ensure that the counterparty has authority to enter into the transaction and establish credit exposure limits for each counterparty.[10]

Sections 563.174(d) and 563.175(d) impose extensive requirements for board authorization of interest rate futures and financial options transactions. Under the existing rules, a savings association's board must authorize such activities before the savings association engages in any financial derivatives transactions. These sections also address implementation plans, written policies regarding these transactions, policy objectives regarding permissible transactions, and internal control procedures. Furthermore, the rule requires that board minutes must list limits for such transactions, identify personnel authorized to engage in such transactions, and specify the duties, responsibilities and limits of these personnel. The board must also review the institution's position at each regular board meeting.

The proposed rule would retain those requirements essential for developing and maintaining safe and sound risk management practices, but would provide institutions more flexibility in designing management systems for achieving safe and sound practices. As discussed above, proposed § 563.172(c) would continue to require the board to adopt policies and procedures before the association may engage in any financial derivatives transaction. This section would also require the board to monitor compliance with the policies and procedures and to ensure that management establishes an adequate system of internal control. Moreover, proposed TB 13a would provide guidance on the board's establishment of objectives, strategies and major policies,[11] as well as the other areas of board oversight addressed by the current regulation.[12]

Sections 563.174(e) and 563.175(e) require a savings association to notify the appropriate OTS Regional Director following board authorization to engage in financial futures and options transactions. Furthermore, § 563.175(e) requires counterparties engaging in over-the-counter financial options transactions with savings associations to notify the appropriate OTS Regional Director. Long over-the-counter financial options transactions with permissible counterparties in excess of a specified limit are subject to the prior approval of the Regional Director. These detailed requirements governing OTS notification and approval of

[7] *See* OTS Thrift Bulletin 13a, Part III, Section B. ''[F]or each type of financial derivative instrument authorized by the board of directors, the institution should maintain records containing: (a) the names, duties, responsibilities, and limits of authority (including position limits) of employees authorized to engage in transactions involving the instrument; (b) a list of approved counterparties with which transactions may be conducted; (c) a list showing the credit risk limit for each approved counterparty; and (d) a contract register containing key information on all outstanding contracts and positions.''

[8] *Id.* ''The contract registers should specify the type of contract, the price of each open contract, the dollar amount, the trade and maturity dates, the date and manner in which contracts were offset, and the total outstanding positions.''

[9] *See* OTS Thrift Bulletin 13a, Appendix B, Section B.

[10] *See* OTS Thrift Bulletin 13a, Appendix B and the FFIEC policy statement (Legal Risk).

[11] *See* OTS Thrift Bulletin 13a, Appendix B, Section A (addressing the board of directors' approval of broad objectives and strategies and major policies relating to interest rate risk management).

[12] *See* the discussion of existing § 563.173(b) above.

counterparties are not essential to safe and sound risk management. Accordingly, OTS proposes to delete this subsection. We note, however, that proposed TB 13a would state that institutions should establish a list of approved counterparties, as well as record-keeping requirements related to counterparties, including individual credit risk limits.[13]

Sections 563.174(f) and 563.175(f) require a savings association to maintain records of futures and financial options transactions, including a contract register containing specified information and other documentation. Section 563.174(f) specifically requires a savings association to retain documents and records for ten years. As discussed above, proposed § 563.172 would require a savings association to maintain records sufficient to demonstrate compliance with the regulation and with the board policy and procedures. Proposed TB 13a, which supplements this recordkeeping requirement includes, as an example of appropriate documentation, a contract register containing information on all outstanding contracts and positions.[14]

IV. Executive Order 12866

OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

V. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would reduce the burden of complying with detailed regulations and allow for more flexible treatment of derivatives activities for all institutions, including small institutions.

VI. Paperwork Reduction Act

The recordkeeping requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on all aspects of this information collection should be sent to Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503 with copies to the Office of Thrift Supervision, Regulations and Legislation Division, Chief Counsel's Office, 1700 G Street, NW., Washington, D.C. 20552.

The information collection requirements currently found in 12 CFR 563.173, 563.174, and 563.175 have been modified and moved to 12 CFR 563.172. The burden for these requirements would be reduced from 120,500 hours to 2,880 hours.

OTS invites comment on:

(1) Whether the proposed information collection contained in this proposed regulation is necessary for the proper performance of OTS's functions, including whether the information has practical utility;

(2) The accuracy of OTS's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(5) Estimate of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The information collection requirements contained in this regulation are found at 12 CFR 563.172. OTS requires this information for the proper supervision of interest rate risk for its regulated savings associations. The likely respondents/recordkeepers are OTS-regulated savings associations. The burden estimates found below reflect the burden found in 12 CFR 563.172:

Estimated average annual burden hours per recordkeeper: 36.

Estimated number of recordkeepers: 80.

Estimated total annual recordkeeping burden: 2,880.

Start up costs to respondents: None.

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed above, this proposed rule would reduce regulatory burden by eliminating unnecessarily restrictive regulations. OTS has, therefore, determined that the effect of the proposed rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision proposes to amend part 563, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 3806, 42 U.S.C. 4106.

§§ 563.173, 563.174, 563.175 [Removed]

2. Sections 563.173, 563.174, and 563.175 are removed.

3. Section 563.172 is added to read as follows:

§ 563.172 Financial derivatives.

(a) *What is a financial derivative?* A financial derivative is a financial contract whose value depends on the value of one or more underlying assets, indices, or reference rates. The most common types of financial derivatives are futures, forward commitments, options, and swaps. A mortgage derivative security, such as a collateralized mortgage obligation or a real estate mortgage investment conduit, is not a financial derivative under this section.

(b) *May I engage in transactions involving financial derivatives?* (1) If you are a federal savings association, you may engage in a transaction involving a financial derivative if you are authorized to invest in the assets underlying the financial derivative, the transaction is safe and sound, and you otherwise meet the requirements in this section.

(2) If you are a state-chartered savings association, you may engage in a transaction involving a financial derivative if your charter or applicable

[13] *See* OTS Thrift Bulletin 13a, Part III, Section B (recordkeeping) and Appendix B, Section B (identification of counterparties).

[14] *See* OTS Thrift Bulletin 13a, Part III, Section B.

state law authorizes you to engage in such transactions, the transaction is safe and sound, and you otherwise meet the requirements in this section.

(3) In general, if you engage in a transaction involving a financial derivative, you should do so to reduce your risk exposure.

(c) *What are my board of directors' responsibilities with respect to financial derivatives?* (1) Your board of directors is responsible for effective oversight of financial derivatives activities.

(2) Before you may engage in any transaction involving a financial derivative, your board of directors must establish written policies and procedures governing authorized financial derivatives. Your board of directors should review Thrift Bulletin 13a, ''Management of Interest Rate Risk, Investment Securities, and Derivatives Activities,'' (available at the address listed in § 516.1 of this chapter) and other applicable agency guidance on establishing a sound risk management program.

(3) Your board of directors must periodically review:

(i) Compliance with the policies and procedures established under paragraph (c)(2) of this section; and

(ii) The adequacy of these policies and procedures to ensure that they continue to be appropriate to the nature and scope of your operations and existing market conditions.

(4) Your board of directors must ensure that management establishes an adequate system of internal controls for transactions involving financial derivatives.

(d) *What are management's responsibilities with respect to financial derivatives?* (1) Management is responsible for daily oversight and management of financial derivatives activities. Management must implement the policies and procedures established by the board of directors and must establish a system of internal controls. This system of internal controls should, at a minimum, provide for periodic reporting to the board of directors and management, segregation of duties, and internal review procedures.

(2) Management must ensure that financial derivatives activities are conducted in a safe and sound manner and should review Thrift Bulletin 13a, ''Management of Interest Rate Risk, Investment Securities, and Derivatives Activities,'' and other applicable agency guidance on implementing a sound risk management program.

(e) *What records must I keep on financial derivative transactions?* You must maintain records adequate to demonstrate compliance with this section and with your board of directors' policies and procedures on financial derivatives.

By the Office of Thrift Supervision.

Dated: April 9, 1998.

Ellen Seidman,

Director.

[FR Doc. 98–9881 Filed 4–22–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 98–38]

Financial Management Policies

AGENCY: Office of Thrift Supervision.

ACTION: Notice and request for comment.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to adopt a Thrift Bulletin that provides guidance on the management of interest rate risk, investment securities, and derivatives activities. The proposed Bulletin also describes the guidelines OTS examiners will use in assigning the ''Sensitivity to Market Risk'' component rating.

DATES: Comments must be received on or before June 22, 1998.

ADDRESSES: Send comments on the proposed Thrift Bulletin to: Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 98–38. These submissions may be hand-delivered to 1700 G Street, N.W., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755; or by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Ed Irmler, Senior Project Manager, (202) 906–5730 or Anthony Cornyn, Director, Risk Management Division, (202) 906–5727.

SUPPLEMENTARY INFORMATION: The Office of Thrift Supervision is publishing for public comment the attached document, which it proposes to issue as Thrift Bulletin 13a (TB 13a), Management of Interest Rate Risk, Investment Securities, and Derivatives Activities. This proposed bulletin would provide guidance on a wide range of topics in the area of interest rate risk management, including several on which the Federal Financial Institutions Examination Council (FFIEC) has issued related guidance. OTS believes that adoption of the proposed bulletin would simultaneously improve its supervision of interest rate risk management and reduce regulatory burden on thrift institutions.

The proposed bulletin would update OTS's minimum standards for thrift institutions' interest rate risk management practices with regard to board-approved risk limits and interest rate risk measurement systems. The guidance in this bulletin would, thus, replace Thrift Bulletin 13 (Responsibilities of the Board of Directors and Management with Regard to Interest Rate Risk), Thrift Bulletin 13–1 (Implementation of Thrift Bulletin 13), and Thrift Bulletin 13–2 (Implementation of Thrift Bulletin 13). The proposed bulletin would make several significant changes. First, under TB 13a, institutions would no longer set board-approved limits or provide measurements for the plus and minus 400 basis point interest rate scenarios prescribed by the original TB 13. The proposed bulletin would also change the form in which those limits are expressed. Second, the bulletin would provide guidance on how OTS will assess the prudence of an institution's risk limits. Third, the proposed bulletin would raise the size threshold above which institutions would be responsible for calculating their own estimates of the interest rate sensitivity of Net Portfolio Value (NPV) from $500 million to $1 billion in assets. Fourth, the proposed bulletin would specify a set of desirable features that an institution's risk measurement methodology should utilize. Finally, the proposed bulletin provides an extensive discussion of ''sound practices'' for interest rate risk management.

The proposed TB 13a also contains guidance on thrifts' investment and derivatives activities. As described in the FFIEC's Supervisory Statement on Investment Securities and End-User Derivative Activities, published elsewhere in this issue of the **Federal Register**, the FFIEC-member agencies will be discontinuing use of the three-part test for suitability of investment securities. Accordingly, the proposed bulletin describes the types of analysis OTS would expect institutions to perform prior to purchasing securities or financial derivatives. The proposed bulletin also provides guidelines on the use of certain types of securities and financial derivatives for purposes other than reducing portfolio risk. The proposed regulation on financial derivatives, published elsewhere in this issue of the **Federal Register**, as supplemented by the guidance in proposed TB 13a, would replace existing regulations governing futures (12 CFR 563.173), forward commitments (12 CFR 563.174), and options (12 CFR 563.175). TB 13a would also replace guidance presently contained in Thrift Bulletin 52 (Supervisory Statement of Policy on Securities Activities), Thrift Bulletin 52–1 (''Mismatched'' Floating Rate CMOs), and Thrift Bulletin 65 (Structured Notes).

Finally, TB 13a would provide detailed guidelines for implementing part of the Announcement of the Revision for the Uniform Financial Institutions Rating System, published by the FFIEC on December 19, 1996. That publication announced revised interagency policies, that among other things, established the Sensitivity to Market Risk component rating (the ''S'' rating). TB 13a would provide quantitative guidelines for assessing an institution's level of interest rate risk, although examiners would have considerable discretion in implementing those guidelines. It would also provide guidelines detailing the factors examiners would consider in assessing the quality of an institution's risk management systems and procedures. Guidance on the topic of assigning the ''S'' rating is largely new, though TB 13a would replace the rather limited guidelines currently contained in New Directions Bulletin 95–10.

Request for Comment

OTS requests comments on all aspects of proposed TB 13a, including the following questions:

(1) The proposed Thrift Bulletin and the proposed regulation on financial derivatives are integral parts of OTS's approach to supervision of derivatives transactions. OTS does not intend to finalize one without the other. Do you support this approach?

(2) Does the revised format for the board of directors' limits on the interest rate sensitivity of net portfolio value (described in Part II.A.1) impose an unnecessary regulatory burden? Do you believe that specifying the limits in this form would cause more, or less, work for your institution?

(3) Should the discussion of prudent limits in Part II.A.3 and Appendix A be modified? Do you agree with the approach described in those sections?

(4) For institutions that will be responsible for producing their own NPV estimates, does your institution have the sophistication to meet the methodological guidelines described in Part II.B.2?

(5) Do you support the guidelines in Part II.B.3 regarding the integration of risk measurement and operations?

(6) Given the announced elimination of the FFIEC three-part test for investment security suitability, do the guidelines in Part III.A.1 regarding pre-purchase portfolio sensitivity analyses for any significant transactions in securities or financial derivatives provide a good balance between burden and regulatory prudence. Similarly, are

the guidelines, in Part III.A.2, calling for pre-purchase price analyses for complex securities and financial derivatives reasonable?

(7) Are the definitions of complex securities and financial derivatives understandable and adequate? Are the guidelines, in Part III.A.3(b), regarding the use of complex securities and financial derivatives reasonable?

(8) Is the use of explicit guidelines for assigning the Sensitivity to Market Risk component rating (described in Part IV) a sound approach for providing greater ratings consistency and transparency?

(9) Do the quantitative guidelines shown in Part IV.A.3 provide examiners an adequate starting point for assessing the level of interest rate risk? Do the guidelines described in Part IV.A.4, provide adequate opportunity for the use of institutions' internal results in the risk assessment?

(10) Do the criteria for assessing the quality of an institution's risk management practices (described in Part IV.B) provide an adequate framework for such an evaluation?

(11) Are the guidelines for the Sensitivity to Market Risk component rating (shown in Table 2 of Part IV.C) a reasonable implementation of the criteria described in the interagency Uniform Financial Institutions Rating System (see Appendix C)?

(12) Do the ''Sound Practices for Market Risk Management,'' listed in Appendix B, provide a sufficiently good frame of reference that examiners may evaluate an institution's risk management practices against them? Are any elements missing from that Appendix? Should any be deleted?

The proposed Thrift Bulletin is set forth below.

Proposed Thrift Bulletin 13a: Management of Interest Rate Risk, Investment Securities, and Derivatives Activities

Summary: This Thrift Bulletin provides guidance to management and boards of directors of thrift institutions on the management of interest rate risk, including the management of investment and derivatives activities. In addition, it describes the framework examiners will use in assigning the ''Sensitivity to Market Risk'' (or ''S'') component rating. Thrift Bulletin 13a replaces Thrift Bulletins 13, 13–1, 13–2, 52, 52–1, and 65, and New Directions Bulletin 95–10.

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Part I: Background

An effective interest rate risk (IRR) management process that maintains interest rate risk within prudent levels is important for the safety and soundness of any financial institution. This is especially true for thrift institutions, which by the nature of their business, are particularly prone to IRR. In recognition of that fact, 12 CFR 563.176 requires institutions to implement proper IRR management procedures. In January 1989, OTS issued Thrift Bulletin 13 (TB 13), Responsibilities of the Board of Directors and Management with Regard to Interest Rate Risk, to provide guidance in the area of IRR management. Since TB 13 was first issued, a great deal of progress has been made in the areas of IRR measurement technology and IRR management. The present Thrift Bulletin, TB 13a, updates the guidelines contained in the original TB 13. It also provides guidance implementing the Federal Financial Institutions Examination Council's Supervisory Policy Statement on Investment Securities and End-User Derivative Activities and OTS's proposed rule at Section 563.172, both of which are published elsewhere in this issue of the **Federal Register**. The following Thrift Bulletins are hereby rescinded:

TB 13: Responsibilities of the Board of Directors and Management with Regard to Interest Rate Risk;

TB 13–1: Implementation of Thrift Bulletin 13;

TB 13–2: Implementation of Thrift Bulletin 13;

TB 52: Supervisory Statement of Policy on Securities Activities;

TB 52–1: ''Mismatched'' Floating Rate CMOs; and

TB 65: Structured Notes.

Also rescinded is New Directions Bulletin 95–10, Interim Policy On Supervisory Action to Address Interest Rate Risk.

A. Definition and Sources of Interest Rate Risk

The term ''interest rate risk'' refers to the vulnerability of an institution's financial condition to movements in interest rates. Although interest rate risk is a normal part of financial intermediation, excessive interest rate risk poses a significant threat to an institution's earnings and capital. Changes in interest rates affect an institution's earnings by altering interest-sensitive income and expenses. Changes in interest rates also affect the underlying value of an institution's assets, liabilities, and off-balance sheet instruments because the present value of future cash flows (and in some cases, the cash flows themselves) change when interest rates change.

Savings associations confront interest rate risk from several sources. These include repricing risk, yield curve risk, basis risk, and options risk.

1. *Repricing Risk.* The primary form of interest rate risk arises from timing differences in the maturity and repricing of assets, liabilities, and off-balance sheet positions. While such repricing mismatches are fundamental to the business, they can expose a savings association's income and economic value fluctuations as interest rates vary. For example, a thrift that funded a long-term fixed rate loan with a short-term deposit could face a decline in both the future income arising from the position and its economic value if interest rates increase. These declines occur because the cash flows on the loan are fixed, while the interest paid on the funding is variable, and therefore increases after the short-term deposit matures.

2. *Yield Curve Risk.* Repricing mismatches can also expose a thrift to changes in both the slope and shape of the yield curve. Yield curve risk arises when unexpected shifts of the yield curve have adverse effects on an institution's income or economic value. For example, suppose an institution has variable-rate assets whose interest rate is indexed to the 1-year Treasury rate and which are funded by variable-rate liabilities having the same repricing date but indexed to the 3-month Treasury rate. A flattening of the yield curve will have an adverse impact on the institution's income and economic value, even though a parallel movement in the yield curve might have no effect.

3. *Basis Risk.* Another source of interest rate risk arises from imperfect correlation in the adjustment of the rates earned and paid on different financial instruments with otherwise similar repricing characteristics. When interest rates change, these differences can cause changes in the cash flows and earnings spread between assets, liabilities and off-balance sheet instruments of similar maturities or repricing frequencies. For example, a strategy of funding a three-year loan that reprices quarterly based on the three-month U.S. Treasury bill rate, with a three-year deposit that reprices quarterly based on three-month LIBOR, exposes the institution to the risk that the spread between the two index rates may change unexpectedly.

4. *Options Risk.* Interest rate risk also arises from options embedded in many financial instruments. An option provides the holder the right, but not the obligation, to buy, sell, or in some manner alter the cash flows of an instrument or financial contract. Options may be stand alone instruments such as exchange-traded options and over-the-counter (OTC) contracts, or they may be embedded within standard instruments. Instruments with embedded options include bonds and notes with call or put provisions, loans which give borrowers the right to prepay balances, adjustable rate loans with interest rate caps or floors that limit the amount by which the rate may adjust, and various types of non-maturity deposits which give depositors the right to withdraw funds at any time, often without any penalties. If not adequately managed, the asymmetrical payoff characteristics of instruments with option features can pose significant risk, particularly to those who sell them, since the options held, both explicit and embedded, are generally exercised to the advantage of the holder.

Part II: OTS Minimum Guidelines Regarding Interest Rate Risk

OTS has established specific minimum guidelines for thrift institutions to observe in two areas of interest rate risk management. The first guideline concerns establishment and maintenance of board-approved limits on interest rate risk. The second, concerns institutions' ability to measure their risk level.

A. Interest Rate Risk Limits

Effective control of interest rate risk begins with the board of directors, which defines the institution's tolerance for risk. OTS regulation § 563.176 requires all institutions to establish board-approved interest rate risk limits.

1. Limits on Change in Net Portfolio Value

All institutions should establish and demonstrate quarterly compliance with board-approved limits on interest rate risk that are defined in terms of net portfolio value (NPV).[1] These limits should specify the minimum NPV Ratio[2] the board is willing to allow under current interest rates and for a range of six hypothetical interest rate scenarios. These six scenarios are represented by immediate, permanent, parallel movements in the term structure of interest rates of plus and minus 100, 200, and 300 basis points from the actual term structure observed at quarter end.[3]

Two illustrations of such limits are provided in Exhibits 1 and 2. (The numerical limits shown in these exhibits are examples only and should not be interpreted as appropriate limits or regulatory requirements.)

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Exhibit 1
ABC Savings Association IRR Limits

[a} Change in Market Interest Rates	[b] Minimum Permissible NPV Ratio
+300 b.p.	10%
+200	11
+100	12
0	13
-100	14
-200	15
-300	16

Exhibit 2
XYZ Savings Association IRR Limits

[a} Change in Market Interest Rates	[b] Minimum Permissible NPV Ratio
+300 b.p.	10%
+200	10
+100	10
0	10
-100	10
-200	10
-300	10

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In Exhibit 1, the board of directors of ABC Savings Association has specified that the institution's risk be limited so that for each interest rate change listed in column [a] the institution's NPV Ratio would fall to no less than the level shown in column [b]. The limits set by the board in this example are more demanding in falling interest rate scenarios than in rising ones to reflect the board's expectation that the institution should perform better in the former than in the latter. Because each rate scenario has a different minimum allowable NPV Ratio, this set of limits will likely require frequent review and adjustment by the board. For example, if market interest rates have risen since ABC's limits were established, and ABC's NPV Ratio has fallen significantly, the NPV limits may well require adjustment.

In Exhibit 2, the board of XYZ Savings Association has indicated an unwillingness to allow the institution's NPV Ratio to fall below 10 percent in any of the interest rate scenarios. While

[1] Net portfolio value (NPV) is defined as the net present value of an institution's existing assets, liabilities, and off-balance sheet contracts. In the original TB 13, this measure was referred to as the ''market value of portfolio equity'' (MVPE). A detailed description of how OTS defines and calculates NPV is provided in the manual entitled, The OTS Net Portfolio Value Model.

[2] An institution's NPV Ratio for a given interest rate scenario is calculated by dividing the net portfolio value that would result in that scenario by the present value of the institution's assets in that same scenario and is expressed in percentage terms. The NPV ratio is analogous to the capital-to-assets ratio used to measure regulatory capital, but NPV is measured in terms of economic values (or present values) in a particular rate scenario. These limits represent a change in format from those called for by the original TB 13. They will provide a greater degree of comparability across institutions and will mesh better with the OTS guidelines for the Sensitivity to Market Risk component rating, described later in this Bulletin.

[3] Institutions that do not file Schedule CMR of the Thrift Financial Report and do not have a means of calculating NPV should have suitable alternative limits.

such a set of limits will not require attention as frequently as those in Exhibit 1, they should still be reviewed periodically, particularly if market interest rates change substantially. In both exhibits, management would be responsible for structuring the institution's portfolio so that an immediate increase in interest rates of 300 basis points would reduce the institution's NPV Ratio to no less than 10 percent.

2. Limits on Earnings Sensitivity

Many institutions also set risk limits expressed in terms of the interest rate sensitivity of projected earnings. Such limits can provide a useful supplement to the NPV-based limits. Although institutions are not required by OTS to establish limits and conduct analysis in terms of earnings sensitivity, OTS considers it a good management practice for institutions to estimate the interest rate sensitivity of their earnings and to incorporate this analysis into their business plan and budgeting process. The institution has total discretion over the type of earnings sensitivity analysis and all details of how that analysis is performed. However, OTS encourages institutions to develop earnings simulations utilizing base case and adverse interest rate scenarios and to compare results to actual earnings on a quarterly basis.

3. Prudence of IRR Limits

In assessing the prudence of their institution's NPV limits, as well as in evaluating their institution's current level of risk relative to the rest of the industry, the board of directors will find it useful to refer to the quarterly OTS publication, Thrift Industry Interest Rate Risk Measures.[4] This publication contains statistical data about key interest rate risk measures for the industry.

Examiners will consider all pertinent facts in their analysis, but will usually consider an institution's interest rate risk limits to be imprudent if they permit the institution to exhibit a Post-shock NPV Ratio and Interest Rate Sensitivity Measure that would warrant an ''S'' component rating of 3 or worse. (See Part IV.B.2, Prudent Limits, and Appendix A, Identifying Prudent Interest Rate Risk Limits, for discussion of this topic.) Imprudent NPV limits may result in examiner criticism or an adverse ''S'' component rating.

[4] Thrift Industry Interest Rate Risk Measures is published for a particular quarter approximately seven weeks after the end of that quarter. It may be retrieved using the OTS PubliFax system, at (202) 906–5660, or from the OTS World Wide Web site, http://www.ots.treas.gov.

4. Revision of IRR Limits

Interest rate risk limits reflect the board of directors' risk tolerance. Although the board should periodically re-evaluate the appropriateness of the institution's interest rate risk limits, particularly after a significant change in market interest rates, any changes should receive careful consideration and be documented in the minutes of the board meeting.

If the institution's level of risk at some point does violate the board's limits, that fact should be recorded in the minutes of the board meeting, along with management's explanation for that occurrence. Depending on the circumstances and the board's tolerance for risk, the board may elect to revise the risk limits. Alternatively, the board may wish to retain the existing limits and direct management to adopt an acceptable plan for an orderly return to compliance with the limits.

Recurrent changes to interest rate risk limits for the purpose of accommodating instances in which the limits have been, or are about to be, breached may be indicative of inadequate risk management practices and procedures.

B. Systems for Measuring Interest Rate Risk

The ability to identify, measure, and monitor interest rate risk are key elements in risk management. To ensure compliance with its board's IRR limits and to comply with OTS regulation § 563.176, each institution must have a way of measuring its interest rate risk. OTS guidelines for interest rate risk measurement systems are as follows, though examiners have broad discretion to require more less rigorous systems.

1. Interest Rate Sensitivity of NPV for Institutions Below $1 Billion in Assets

Unless otherwise directed by their OTS Regional Director, institutions below $1 billion in assets may usually rely on the quarterly NPV estimates produced by OTS and distributed in the Interest Rate Risk Exposure Report. If such an institution owns complex securities whose recorded investment exceeds 5 percent of total assets, the institution should be able to measure or have access to measures of the economic value of those securities under the range of interest rate scenarios described in Part II.A.1, Limits on Change in Net Portfolio Value. The institution may rely on the OTS estimates for the other financial instruments in its portfolio, unless examiners direct otherwise.

2. Interest Rate Sensitivity of NPV for Institutions Above $1 Billion in Assets

Those institutions with more than $1 billion in assets should measure their own NPV and its interest rate sensitivity. OTS examiners will look for the following desirable methodological features in evaluating the quality of such institutions' NPV measurement systems:

(a) The institution's NPV estimates utilize information on its financial holdings that are generally more detailed than the information reported on Schedule CMR.

(b) Value is ascribed only to financial instruments currently in existence or for which commitments or other contracts currently exist (*i.e.*, future business is not included in NPV).

(c) Values are, where feasible, based directly or indirectly on observed market prices.

(d) Zero-coupon (spot) rates of the appropriate maturities are used to discount cash flows.

(e) Implied forward interest rates are used to model adjustable rate cash flows.

(f) Cash flows are adjusted for reasonable non-interest costs the institution will incur in servicing both its assets and liabilities.

(g) Valuations take account of embedded options using, at least, the static discounted cash flow technique, but preferably using more rigorous options pricing techniques (which normally produce a value greater than zero even for out-of-the-money options).

(h) Valuation of deposits is based, at least in part, on institution-specific data regarding retention rates of existing deposit accounts and the rates offered by the institution on deposits. Preferably, the institution would base these valuations on sound econometric research into such data.

Examiners may determine an institution should use more sophisticated measurement techniques for individual financial instruments or categories of instruments where they believe it to be warranted (*e.g.*, because of the volume and price sensitivity of a group of financial instruments; because of concern that the institution's results may materially misstate the level of risk; because of the combination of a low Post-shock NPV Ratio and high Sensitivity Measure; etc.). In any case, the institution should be familiar with the details of the assumptions, term structure, and logic used in performing the measurements. Measures obtained from financial screens or vendors may, therefore, not always be adequate.

In addition to the prescribed parallel shock interest rate scenarios described

above, OTS recommends that institutions evaluate the effects of other stressful market conditions (*e.g.*, non-parallel movements in the term structure, basis changes, changes in volatility), as well as the effects of breakdowns in key assumptions (*e.g.*, prepayment and core deposit attrition rates).

3. Integration of Risk Measurement and Operations

As part of their assessment of the quality of an institution's risk management practices, examiners will consider the extent to which the institution's risk measurement process is integrated with management decision-making. Examiners will evaluate whether, in making significant operational decisions (*e.g.*, changes in portfolio structure, investments, business planning, derivatives activities, funding decisions, pricing decisions, etc.), the institution considers their effect on the level of interest rate risk. Institutions may do this using an earnings sensitivity approach, one based on NPV sensitivity, or any other reasonable approach. The institution has discretion over all aspects of such analysis. The analysis, however, should not be merely *pro forma* in nature, but rather should be an active factor in the institution's decision-making process. If evidence of such integration is not apparent, examiner criticism or an adverse rating may result.

Part III: Investment Securities and Financial Derivatives

A. Analysis and Stress Testing

Management should understand the various risks associated with investment securities and financial derivatives. As a matter of sound practice, prior to taking an investment position or initiating a derivatives transaction, an institution should:

(a) Ensure that the proposed transaction is legally permissible for a savings institution;

(b) Review the terms and conditions of the security or financial derivative;

(c) Ensure that the proposed transaction is allowable under the institution's investment or derivatives policies;

(d) Ensure that the proposed transaction is consistent with the institution's portfolio objectives and liquidity needs;

(e) Exercise diligence in assessing the market value, liquidity, and credit risk of the security or financial derivative;

(f) Conduct a pre-purchase portfolio sensitivity analysis for any significant transaction involving securities or financial derivatives (as described below in Significant Transactions);

(g) Conduct a pre-purchase price sensitivity analysis of any complex security [5] or financial derivative [6] prior to taking a position (as described below in Complex Securities and Financial Derivatives).

1. Significant Transactions

A ''significant transaction'' is any transaction (including one involving instruments other than complex securities) that might reasonably be expected to increase an institution's Sensitivity Measure by more than 25 basis points. Prior to undertaking any significant transaction, management should conduct an analysis of the incremental effect of the proposed transaction on the interest rate risk profile of the institution. The analysis should show the expected change in the institution's net portfolio value (with and without the proposed transaction) that would result from an immediate parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. In general, an institution should conduct its own analysis. It may, however, rely on analysis conducted by an independent third-party (*i.e.*, someone other than the seller or counterparty) provided management understands the analysis and its key assumptions.

Institutions with less than $1 billion in assets that do not have the internal modeling capability to conduct such an incremental analysis may use the most recent quarterly NPV estimates for their institution provided by OTS to estimate the incremental effect of a proposed transaction on the sensitivity of its net portfolio value.[7]

2. Complex Securities and Financial Derivatives

Prior to taking a position in any complex security or financial derivative, an institution should conduct a price sensitivity analysis (*i.e.*, pre-purchase analysis) of the instrument. At a minimum, the analysis should show the expected change in the value of the instrument that would result from an immediate parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. Where appropriate, the analysis should encompass a wider range of scenarios (*e.g.*, non-parallel changes in the yield curve, changes in interest rate volatility, changes in credit spreads, and in the case of mortgage-related securities, changes in prepayment speeds). In general, an institution should conduct its own in-house pre-acquisition analysis. An institution may, however, rely on an analysis conducted by an independent third-party (*i.e.*, someone other than the seller or counterparty) provided management understands the analysis and its key assumptions.

Investments in complex securities and the use of financial derivatives by institutions that do not have adequate risk measurement, monitoring, and control systems may be viewed as an unsafe and unsound practice.

3. Risk Reduction

In general, the use of financial derivatives or complex securities with high price sensitivity [8] should be limited to transactions and strategies that lower an institution's interest rate risk as measured by the sensitivity of net portfolio value to changes in interest rates. An institution that uses financial derivatives or invests in such securities for a purpose other than that of reducing portfolio risk should do so in accordance with safe and sound practices and should:

(a) Obtain written authorization from its board of directors to use such instruments for a purpose other than to reduce risk; and

(b) Ensure that, after the proposed transaction(s), the institution's Post-Shock NPV Ratio would not be less than 6 percent.

The use of financial derivatives or complex securities with high price sensitivity for purposes other than to reduce risk by institutions that do not meet the conditions set forth above may

[5] For purposes of the pre-purchase analysis, the term ''complex security'' includes any collateralized mortgage obligation (''CMO''), real estate residential mortgage conduit (''REMIC''), callable mortgage pass-through security, stripped-mortgage-backed-security, structured note, and any security not meeting the definition of an ''exempt security.'' An ''exempt security'' includes: (1) standard mortgage-pass-through securities, (2) non-callable, fixed-rate securities, and (3) non-callable, floating-rate securities whose interest rate is (a) not leveraged (*i.e.*, the rate is not based on a multiple of the index), and (b) at least 400 basis points from the lifetime rate cap at the time of purchase.

[6] The following financial derivatives are exempt from the pre-purchase analysis called for above: commitments to originate, purchase, or sell mortgages. To perform the pre-purchase analysis for derivatives whose initial value is zero (*e.g.*, futures, swaps), the institution should calculate the change in value as a percentage of the notional principal amount.

[7] Institutions that are exempt from filing Schedule CMR and that choose not to file voluntarily, should ensure that no transaction—whether involving complex securities, financial derivatives, or any other financial instruments—causes the institution to fall out of compliance with its board of directors' interest rate risk limits.

[8] For purposes of this Bulletin, ''complex securities with high price sensitivity'' include those whose price would be expected to decline by more than 10 percent under an adverse parallel change in interest rates of 200 basis points.

be viewed as an unsafe and unsound practice.

B. Record-Keeping

Institutions must maintain accurate and complete records of all securities and derivatives transactions in accordance with 12 CFR 562.1. Institutions should retain any analyses (including pre-and post-purchase analyses) relating to investments and derivatives transactions and make such analyses available to examiners upon request.

In addition, for each type of financial derivative instrument authorized by the board of directors, the institution should maintain records containing:

(a) The names, duties, responsibilities, and limits of authority (including position limits) of employees authorized to engage in transactions involving the instrument;

(b) A list of approved counterparties with which transactions may be conducted;

(c) A list showing the credit risk limit for each approved counterparty; and

(d) A contract register containing key information on all outstanding contracts and positions.

The contract registers should specify the type of contract, the price of each open contract, the dollar amount, the trade and maturity dates, the date and manner in which contracts were offset, and the total outstanding positions.

Where deferred gains or losses on derivatives from hedging activities have been recorded consistent with generally accepted accounting principles (GAAP), the institution should maintain appropriate supporting documentation.[9]

C. Supervisory Assessment of Investment and Derivatives Activities

Examiners will assess the overall quality and effectiveness of the institution's risk management process governing investment and derivatives activities. In making such assessments, examiners will take into account compliance with the guidelines set forth above and the quality of the institution's risk management process. The quality of the institution's risk management process will be evaluated in the context of Appendix B, Sound Practices for Market Risk Management.

[9] At the time of this writing, it was anticipated that the FASB's proposed standard, ''Accounting for Derivative and Similar Financial Instruments and for Hedging Activities,'' would be issued in 1998, to be effective in 1999. Under that proposal, all ''derivative financial instruments,'' as defined, including those used for hedging purposes, would be accounted for at fair value. Accordingly, under the FASB's proposal, deferred gains and losses on ''derivative financial instruments'' from hedging activities would no longer be recorded.

Part IV: Guidelines for the ''Sensitivity to Market Risk'' Component Rating

Consistent with the interagency Uniform Financial Institutions Rating System, or CAMELS rating system, of which an excerpt is attached as Appendix C, the ''Sensitivity to Market Risk'' component rating (*i.e.*, the ''S'' rating) is based on examiners' conclusions about two dimensions: (1) An institution's level of market risk and (2) the quality of its practices for managing market risk. This section discusses the guidelines that examiners will use in assessing the two dimensions and combining those assessments into a component rating. Because few thrift institutions have significant exposure to foreign exchange risk or commodity or equity price risks, interest rate risk will generally be the only form of market risk to be assessed under this component rating.

A. Assessing the Level of Interest Rate Risk

Examiners will base their conclusions about an institution's level of interest rate risk—the first dimension for determining the ''S'' component rating—primarily on the interest rate sensitivity of the institution's net portfolio value. The two specific measures of risk that will receive examiners' primary attention are the Interest Rate Sensitivity Measure and the Post-shock NPV Ratio (see Glossary for definitions).

OTS uses risk measures based on NPV for several reasons. First, the NPV measures are more readily comparable across institutions than internally generated measures of earnings sensitivity. Second, NPV focuses on a longer-term analytical horizon than institutions' internally generated earnings sensitivity measures. (The interest rate sensitivity of earnings is typically measured over a short-term horizon such as a year, while NPV is based on all future cash flows anticipated from an institution's existing assets, liabilities, and off-balance sheet contracts.) Third, the NPV-based measures take better account of the embedded options present in the typical thrift institution's portfolio.

1. Interest Rate Sensitivity Measure

In assessing the level of interest rate risk, a high (*i.e.*, risky) Interest Rate Sensitivity Measure, by itself, may not give cause for supervisory concern when the institution has a strong capital position. Because an institution's risk of failure is inextricably linked to capital and, hence, to its ability to absorb adverse economic shocks, an institution with a high level of economic capital (*i.e.*, NPV) may be able safely to support a high Sensitivity Measure.

2. Post-Shock NPV Ratio

The Post-shock NPV Ratio is a more comprehensive gauge of risk than the Sensitivity Measure because it incorporates estimates of the current economic value of an institution's portfolio, in addition to the reported capital level and interest rate risk sensitivity. There are three potential causes of a low (*i.e.*, risky) Post-shock NPV Ratio: (i) Low reported capital; (ii) significant unrecognized depreciation in the value of the portfolio; or (iii) high interest rate sensitivity. Although the first two of these, low reported capital and significant unrecognized depreciation in portfolio value, may cause supervisory concern (and receive attention under the portions of the examination devoted to evaluating Capital Adequacy, Asset Quality, or Earnings), they do not necessarily represent an ''interest rate risk problem.'' Only when an institution's low Post-shock Ratio is, in whole or in part, caused by high interest rate sensitivity is an interest rate risk problem suggested. That condition is reflected in the guidelines discussed below.

3. Guidelines for Determining the Level of Interest Rate Risk

In describing the five levels of the ''S'' component rating, the interagency uniform ratings system established several qualitative levels of risk: ''minimal,'' ''moderate,'' ''significant,'' ''high,'' and ''imminent threat.'' The following interest rate risk levels are ordinarily indicated for OTS-regulated institutions, based on the combination of each institution's Post-shock NPV Ratio and Interest Rate Sensitivity Measure. (These guidelines are summarized in Table 1 below.) These risk levels are for guidance, they are not mandatory; examiners have discretion to exercise judgment in a number of respects (see Part IV.D, Examiner Judgment).

An institution with a Post-shock NPV Ratio below 4% and an Interest Rate Sensitivity Measure of:

(a) More than 200 basis points will ordinarily be characterized as having ''high'' risk. Such an institution will typically receive a 4 or 5 rating for the ''S'' component.[10]

[10] According to the interagency uniform ratings system, the level of market risk at a 4-rated institution is ''high,'' while that at a 5-rated institution is so high as to pose ''an imminent threat to its viability.'' Under the Prompt Corrective Action regulation, 12 CFR Part 565, supervisory

(b) 100 to 200 basis points will ordinarily be characterized as having ''significant'' risk. Such an institution will typically receive a 3 rating for the ''S'' component.

(c) 0 to 100 basis points will ordinarily be characterized as having ''moderate'' risk. Such an institution will typically receive a rating of 2 for the ''S'' component. If the institution's sensitivity is extremely low, a rating of 1 may be supportable if the institution is not likely to incur larger losses under rate shocks other than the parallel shocks depicted in the OTS NPV Model.

An institution with a Post-shock NPV Ratio between 4% and 8% and an Interest Rate Sensitivity Measure of:

(a) More than 400 basis points will ordinarily be characterized as having ''high'' risk. Such an institution will typically receive a 4 or 5 rating for the ''S'' component.

(b) 200 to 400 basis points will ordinarily be characterized as having ''significant'' risk. Such an institution will typically receive a 3 rating for the ''S'' component.

(c) 100 to 200 basis points will ordinarily be characterized as having ''moderate'' risk. Such an institution will typically receive a 2 rating for the ''S'' component.

(d) 0 to 100 basis points will ordinarily be characterized as having ''minimal'' risk. Such an institution will typically receive a rating of 1 for the ''S'' component.

An institution with a Post-shock NPV Ratio between 8% and 12% and an Interest Rate Sensitivity Measure of:

(a) More than 400 basis points will ordinarily be characterized as having ''significant'' risk. Such an institution will typically receive a 3 rating for the ''S'' component.

(b) 200 to 400 basis points will ordinarily be characterized as having ''moderate'' risk. Such an institution will typically receive a 2 rating for the ''S'' component.

(c) Less than 200 basis points will ordinarily be characterized as having ''minimal'' risk. Such an institution will typically receive a rating of 1 for the ''S'' component.

An institution with a Post-shock NPV Ratio of more than 12% and an Interest Rate Sensitivity Measure of:

(a) More than 400 basis points will ordinarily be characterized as having ''moderate'' risk. Such an institution will typically receive a 2 rating for the ''S'' component.

(b) Less than 400 basis points will ordinarily be characterized as having ''minimal'' risk. Such an institution will typically receive a rating of 1 for the ''S'' component.

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Table 1
Summary of Guidelines for the "Level of Interest Rate Risk"

Post-Shock NPV Ratio	Interest Rate Sensitivity Measure			
	0 - 100 b.p.	100-200 b.p.	200-400 b.p.	Over 400 b.p.
Over 12%	Minimal Risk (1)	Minimal Risk (1)	Minimal Risk (1)	Moderate Risk (2)
8% to 12%	Minimal Risk (1)	Minimal Risk (1)	Moderate Risk (2)	Significant Risk (3)
4% to 8%	Minimal Risk (1)	Moderate Risk (2)	Significant Risk (3)	High Risk (4 or 5)
Below 4%	Moderate Risk (2)	Significant Risk (3)	High Risk (4 or 5)	High Risk (4 or 5)

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In Table 1 the numbers in parentheses represent the preliminary ''S'' component ratings that an institution would ordinarily receive barring deficiencies in its risk management practices. Examiners may assign a different rating based on their interpretation of the facts and circumstances at each institution.

4. Internal vs. OTS Risk Measures

In applying the guidelines described above, examiners will encounter three general types of situations regarding the availability of risk measures.

First, if the institution does not have internal NPV measures, but does file Schedule CMR, examiners will use the NPV measures produced by OTS. In such instances, examiners must be aware of the importance of accurate reporting by the institution on Schedule CMR, particularly of items for which the institution provides its own market value estimates in the various interest rate scenarios, such as for mortgage derivative securities. They must also be aware of circumstances in which the OTS measures may overstate or understate the sensitivity of an institution's financial instruments.

Second, if the institution does produce its own NPV measures, examiners will have to decide whether to use the institution's or OTS' risk measures.

(a) If the institution's own measures and those produced by OTS are broadly consistent and result in the same risk category (*e.g.*, ''minimal risk,'' ''moderate risk,'' etc.), the choice between using the institution's measures or the OTS estimates probably does not matter, though examiners should attempt to ascertain the reasons for any major discrepancies between the two sets of results.

(b) If the institution's NPV measures place it in a different risk category than the OTS measures do, examiners (in consultation with their Regional Capital Markets group or the Washington Risk Management Division) should determine which financial instruments are the source of that discrepancy. If the institution's valuations for those instruments are judged more reliable than OTS', the institution's results will be used to replace the OTS results for

action is tied to regulatory capital. An institution's viability is, therefore, directly dependent on regulatory capital, not on economic capital. Because regulatory capital can remain positive for an extended period of time after economic capital has become zero or negative, the NPV measures are not by themselves indicators of near-term viability. For an institution's level of interest rate risk to constitute an imminent threat to viability, the institution will typically have a high level of risk and will be critically undercapitalized.

those financial instruments in calculating NPV in the various interest rate scenarios.

(c) If examiners have reason to doubt both the institution's own measures and those produced by OTS, they may modify (in consultation with their Regional Capital Markets group or the Washington Risk Management Division) either or both measures to arrive at NPV measures they consider reasonable.

In deciding whether to rely on an institution's internal NPV measures, examiners will ensure that the institution's measures are produced in a manner that is broadly consistent with the OTS measures. (The major methodological points to consider are described in Part II.B, Systems for Measuring Interest Rate Risk.)

The third situation examiners will encounter is one in which the institution calculates no internal NPV measures and does not report on Schedule CMR. Because no NPV results will be available in such cases, the guidelines are not directly applicable. In addition to reviewing the institution's balance sheet structure in such cases, examiners will review whatever interest rate risk measurement and management tools the institution uses to comply with § 563.176. Depending on their findings regarding the institution's general level of risk and its risk management practices, examiners might reconsider the appropriateness of the institution's continued exemption from filing Schedule CMR.

B. Assessing the Quality of Risk Management

In drawing conclusions about the quality of an institution's risk management practices—the second dimension of the ''S'' component rating—examiners will assess all significant facets of the institution's risk management process. To aid in that assessment, examiners will refer to Appendix B of this Bulletin which provides a set of Sound Practices for Market Risk Management. These sound practices suggest the sorts of management practices institutions of varying levels of sophistication may utilize. As (i) the size of the institution increases, (ii) the complexity of its assets, liabilities, or off-balance sheet contracts increases, or (iii) the overall level of interest rate risk at the institution increases, its risk management process should exhibit more of the elements included in the Sound Practices and should display a greater degree of formality and rigor. Because there is no formula for determining the adequacy of such systems, examiners will make that determination on a case-by-case basis. Examiners will, however, take the following eight factors, among others, into consideration in assessing the quality of an institution's risk management process.

1. Oversight by Board and Senior Management

Examiners will assess the quality of oversight provided by the institution's board and senior management. That assessment may include many facets, as described in Appendix B, Sound Practices for Market Risk Management.

2. Prudent Limits

Examiners will assess whether the institution's board-approved interest rate risk limits are prudent. Ordinarily, examiners will consider a set of IRR limits imprudent if they permit the institution's NPV potentially to exhibit a Post-shock NPV Ratio and Interest Rate Sensitivity Measure that would ordinarily warrant an ''S'' component rating of 3 or worse (see Table 1, in Part IV.A.3). Imprudent limits may result in examiner criticism or an adverse ''S'' rating. See Appendix A, Identifying Prudent Interest Rate Risk Limits, for examples of how examiners will make that determination.

3. Adherence to Limits

Assuming the institution's interest rate risk limits are considered prudent, examiners will assess the degree to which the institution adheres to those limits. Frequent exceptions to the board's limits may indicate weak interest rate risk management practices. Similarly, recurrent changes to the institution's limits to accommodate exceptions to the limits may reflect ineffective board oversight.

4. Quality of System for Measuring NPV Sensitivity

Examiners will consider whether the quality of the institution's risk measurement and monitoring system is commensurate with the institution's size, the complexity of its financial instruments, and its level of interest rate risk. Examiners will generally expect the quality of an institution's system for measuring the interest rate sensitivity of NPV to be consistent with the descriptions in Part II.B, Systems for Measuring Interest Rate Risk.

5. Quality of System for Measuring Earnings Sensitivity

OTS places considerable reliance on NPV analysis to assess an institution's interest rate risk. Other sorts of measures may, however, be considered in evaluating an institution's risk management practices. In particular, utilization of a well-supported earnings sensitivity analysis may be viewed as a favorable factor in determining an institution's component rating. In fact, all institutions are encouraged to measure the interest rate sensitivity of projected earnings. Despite inherent limitations,[11] such analyses can provide useful information to an institution's management.

Methodologies used in measuring earnings sensitivity vary considerably among different institutions. To assist the examiner in reviewing the earnings modeling process, institutions should have clear descriptions of the methodologies and assumptions used in their models. Of particular importance are the type of rate scenarios used (*e.g.,* instantaneous or gradual, consistent with forward yield curve) and assumptions regarding new business (*i.e.,* type of assets, dollar amounts, and interest rates). In addition, formulas for projecting interest rate changes on existing business (*e.g.,* ARMs, transaction deposits) should be clearly described and any major differences from analogous formulas used in the OTS NPV Model should be explained and supported.

6. Integration of Risk Management With Decision-Making

Examiners will consider the extent to which the results of an institution's risk measurement system are used by management in making operational decisions (*e.g.,* changes in portfolio structure, investments, derivatives activities, business planning, funding decisions, pricing decisions). This is of particular significance if the institution's Post-shock NPV Ratio is relatively low, and thus provides less of an economic buffer against loss.

Examiners will evaluate whether management considers the effect of significant operational decisions on the institution's level of interest rate risk. The form of analysis used for measuring that effect (earnings sensitivity, NPV sensitivity, or any other reasonable approach) and all details of the measurement are up to the institution. That analysis should be an active factor in management's decision-making and not be generated solely to avoid examiner criticism. In the absence of such a decision-making process, examiner criticism or an adverse rating may be appropriate.

[11] The effectiveness of an earnings sensitivity model to identify interest rate risk depends on the composition of an institution's portfolio. In particular, management should recognize that such models generally do not fully take account of longer-term risk factors.

7. Investments and Derivatives

Examiners will consider the adequacy of the institution's risk management policies and procedures regarding investment and derivatives activities. See Part III of this Bulletin, Investment Securities and Financial Derivatives, for a detailed discussion.

8. Size, Complexity, and Risk Profile

Under the interagency uniform ratings descriptions, an institution's risk management practices are evaluated relative to its ''size, complexity, and risk profile.'' Thus, a small institution with a simple portfolio and a consistently low level of risk may receive an ''S'' rating of 1 even if its risk management practices are fairly rudimentary. A large institution with these same characteristics would be expected to have more rigorous risk management practices, but would not be held to the same risk management standards as a similarly sized institution with either a higher level of risk or a portfolio containing complex securities or financial derivatives. An institution making a conscious business decision to maintain a low risk profile by investing in low risk products or maintaining a high level of capital may not require elaborate and costly risk management systems.

C. Combining Assessments of the Level of Risk and Risk Management Practices

Guidelines examiners will use in assessing an institution's level of risk and the quality of its risk management practices have been described in the two previous sections. This section provides guidelines for combining those two assessments into an ''S'' component rating for the institution.

The interagency uniform ratings descriptions specify the criteria for the ''S'' component ratings in terms of the level of risk and the quality of risk management practices (see Appendix C). For example:

> A rating of 1 indicates that market risk sensitivity is *well controlled* and that there is *minimal* potential that the earnings performance or capital position will be adversely affected. * * * [emphasis added]

Thus, if market risk is less than ''well controlled'' (*i.e.*, ''adequately controlled,'' ''in need of improvement,'' or ''unacceptable'') the institution does not qualify for a component rating of 1. Likewise, if the level of market risk is more than ''minimal'' (*i.e.*, ''moderate,'' ''significant,'' or ''high'') the institution similarly does not qualify for a rating of 1.

Applying the same logic to the descriptions of the 2, 3, 4, and 5 levels of the ''S'' component rating results in the ratings guidelines shown in Table 2. That table summarizes how various combinations of examiner assessments about an institution's ''level of interest rate risk'' and ''quality of risk management practices'' translate into a suggested rating.[12]

Two important caveats must be noted about this table. First, the two dimensions are not totally independent of one another, because the quality of risk management practices is evaluated relative to an institution's level of risk (among other things). Thus, for example, an institution's risk management practices are more likely to be assessed as ''well controlled'' if the institution has minimal risk than if it has a higher level of risk. Second, as described further in the next section, the ratings shown in Table 2 are provisional and subject to examiner discretion.

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Table 2
"S" Component-Rating Guidelines in Matrix Form

Quality of Risk Management Practices*	Level of Interest Rate Risk			
	Minimal Risk	Moderate Risk	Significant Risk	High Risk**
Well Controlled	S=1	S=2	S=3	S=4 or 5
Adequately Controlled	S=2	S=2	S=3	S=4 or 5
Needs Improvement	S=3	S=3	S=3	S=4 or 5
Unacceptable	S=4	S=4	S=4	S=4 or 5

* The Quality of Risk Management Practices is evaluated relative to an institution's size, complexity, and level of interest rate risk.

** To receive a component rating of 5, an institution's level of interest rate risk must be an "imminent threat to its viability." Such an institution will typically have a high level of risk and be critically undercapitalized.

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D. Examiner Judgment

Examiners have a responsibility to exercise judgment in assigning ratings based on the facts they encounter at each institution. This section provides a non-exhaustive list of factors examiners may consider in applying the ''S'' rating guidelines to a particular institution.

1. Judgment in Assessing the Level of Risk

In assessing the level of interest rate risk, the likelihood that examiners will deviate from the guidelines in Table 1 is heightened in cases where the Post-shock NPV Ratio and the Interest Rate Sensitivity Measure are both near cell boundaries. For example, there is no material difference between an institution whose Post-shock Ratio and Sensitivity Measure are, respectively, 4.01% and 199 b.p. and one where they

[12] Some of the combinations of risk management quality and level of risk shown in the table will rarely, if ever, be encountered (*e.g.*, an institution with ''unacceptable'' risk management practices, but a ''minimal'' level of risk). For the sake of completeness, however, all cells of the matrix are shown.

are 3.99% and 201 b.p., yet the guidelines in Table 1 suggest a 2 rating for the former and a 4 for the latter. Clearly, the boundaries of the cells in the table must be interpreted as transition zones, rather than precise cut-off points, between suggested ratings. As such, examiners will more commonly deviate from the stated guidelines in the vicinity of cell borders than in their interior.

In applying the guidelines in Table 1 generally, but especially in such borderline cases, many considerations may cause an examiner to reach a different conclusion than suggested by the guidelines. Such considerations include the following:

(a) The trend in the institution's risk measures during recent quarters.

(b) The trend in the institution's risk measures compared with those of the rest of the industry in recent quarters. (Comparison with the results for the industry as a whole often provides a useful backdrop for evaluating an institution's results, particularly during a period of volatile interest rates.)

(c) The examiner's level of comfort with the overall accuracy of the available risk measures as applied to the particular products of the institution.

(d) The existence of items with particularly volatile or uncertain interest rate sensitivity for which the examiner wants to allow an added margin for possible error.

(e) The effect of any restructuring that may have occurred since the most recently available risk measures.

(f) Other available evidence that causes the examiner to favor a higher or lower risk assessment than that suggested by the guidelines.

2. Judgment in Assessing the Quality of Risk Management Practices

Conclusions about the quality of risk management practices should be based, in part, on the institution's level of risk, with less risky institutions requiring less rigorous risk management practices. Considerations listed in the Judgment in Assessing the Level of Risk, above, may therefore cause the examiner to modify his or her assessment of the institution's risk management practices. In addition, if changes have occurred in the institution's level of risk since the last evaluation, the examiner may wish to reassess the quality of the institution's risk management practices in light of these changes.

Part V: Supervisory Action

If supervisory action to address interest rate risk is needed, examiners will discuss the problem with management and obtain their commitment to correct the problem as quickly as practicable.

If deemed necessary, examiners will request a written plan from the board and management to reduce interest rate sensitivity, increase capital, or both. The plan should include specific risk measure targets. If the initial plan is inadequate, examiners will require amendment and resubmission. Examiners will document the corrective strategy and results in the Regulatory Plan, and review progress at case review meetings.

For institutions with composite ratings of 4 or 5, the presumption of formal enforcement action generally requires a supervisory agreement, cease and desist order, prompt corrective action directive, or other formal supervisory action.

If an institution's interest rate risk increases between examinations, examiners will consider whether a downgrade of the ''S'' component rating or the composite rating is warranted. Examiners will obtain quarterly progress reports (more frequently if the situation is severe). Where appropriate, examiners may require the institution to develop the capacity to conduct its own modeling.

Appendix A: Identifying Prudent Interest Rate Risk Limits

The basic principle examiners will use in determining whether an institution's risk limits are prudent is that the limits should not permit NPV to reach such a level that the Post-shock NPV Ratio and Sensitivity Measure would suggest an ''S'' component rating of 3 or worse under the guidelines for the Level of Risk (reproduced here as Table 1).

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Table 1
Summary of Guidelines for the "Level of Interest Rate Risk"

Post-Shock NPV Ratio	Interest Rate Sensitivity Measure			
	0 - 100 b.p.	100-200 b.p.	200-400 b.p.	Over 400 b.p.
Over 12%	Minimal Risk (1)	Minimal Risk (1)	Minimal Risk (1)	Moderate Risk (2)
8% to 12%	Minimal Risk (1)	Minimal Risk (1)	Moderate Risk (2)	Significant Risk (3)
4% to 8%	Minimal Risk (1)	Moderate Risk (2)	Significant Risk (3)	High Risk (4 or 5)
Below 4%	Moderate Risk (2)	Significant Risk (3)	High Risk (4 or 5)	High Risk (4 or 5)

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Examples of Evaluating the Prudence of Interest Rate Risk Limits

The following examples illustrate how OTS examiners will evaluate whether an institution's interest rate risk limits are prudent. In each example, the interest rate risk limits approved by the institution's board of directors are shown in column [b]. These specify a minimum NPV Ratio for each of the interest rate scenarios shown in column [a]. The NPV Ratios currently estimated for the institution for each rate scenario are shown in column [c].

Example Institution A

INSTITUTION A.—LIMITS AND CURRENT NPV RATIOS

[a] Rate shock (in basis points)	[b] Board limits (minimum NPV ratios) (percent)	[c] Institution's current NPV ratios (percent)
+300	6.00	10.00
+200	7.00	11.50
+100	8.00	12.50
0	9.00	13.00
−100	10.00	13.25
−200	11.00	13.50
−300	12.00	13.75

To determine whether Institution A's interest rate risk limits are prudent, examiners will evaluate the risk measures permitted under those limits relative to the guidelines for the Level of Risk in Table 1. The Post-shock NPV Ratio permitted by the institution's board limits is 7.00% (from the +200 b.p. scenario in column [b], above). The Sensitivity Measure permitted by the limits is not known; it depends on the actual level of the base case NPV Ratio which will probably be higher than the limit for the base case scenario. Examiners will, therefore, use the institution's current Sensitivity Measure (based on OTS' results or those of the institution) in performing their evaluation. Institution A's current Sensitivity Measure is 150 basis points (*i.e.*, [13.00%—11.50%], the NPV Ratios in the 0 b.p. and +200 b.p. scenarios in column [c], above).

Referring to Table 1, the Post-shock NPV Ratio allowed by the institution's limits falls into the ''4% to 8%'' row and its current Sensitivity Measure falls into the ''100 to 200 b.p.'' column. The rating suggested by Table 1 is, therefore, a 2, and Institution A's risk limits would, thus, probably be considered prudent.[13]

Example Institution B

INSTITUTION B.—LIMITS AND CURRENT NPV RATIOS

[a] Rate shock (in basis points)	[b] Board limits (minimum NPV ratios) (percent)	[c] Institution's current NPV ratios (percent)
+300	6.00	6.00
+200	7.00	8.50
+100	8.00	11.00
0	9.00	13.00
−100	10.00	14.00
−200	11.00	14.50
−300	12.00	15.00

Institution B has identical interest rate risk limits as Institution A, but is considerably more interest rate sensitive than Institution A. Institution B's Sensitivity Measure is 450 b.p. (*i.e.*, [13.00%—8.50%]).

For purposes of applying the guidelines in Table 1 to the limits, the Post-shock NPV Ratio of 7.00% permitted by the institution's board limits falls into the ''4% to 8%'' row. Its current Sensitivity Measure, however, falls into the ''Over 400 b.p.'' column of Table 1. The rating suggested by the guidelines is therefore a 4, and Institution B's risk limits would probably not be considered prudent. Even though its limits are identical to those of Institution A, its much higher current Sensitivity Measure requires the support of a higher Post-shock NPV Ratio than the minimum permitted by the board limits.

Example Institution C

INSTITUTION C.—LIMITS AND CURRENT NPV RATIOS

[a] Rate shock (in basis points)	[b] Board limits (minimum NPV ratios) (percent)	[c] Institution's current NPV ratios (percent)
+300	6.00	6.00
+200	6.00	8.50
+100	6.00	11.00
0	6.00	13.00
−100	6.00	14.00
−200	6.00	14.50
−300	6.00	15.00

Institution C has the same current NPV Ratios as Institution B, but its board limits are a uniform 6.00% in all rate scenarios. In judging the prudence of its limits, the Post-shock NPV Ratio permitted by the limits is, therefore, 6.00%. Its current Sensitivity Measure, like that of Institution B, is 450 b.p.

In applying the Table 1 guidelines to the limits, Institution C's Post-shock NPV Ratio is in the ''4% to 8%'' row and its Sensitivity Measure in the ''Over 400 b.p.'' column of Table 1, so the rating suggested by the table is a 4, just like Institution B. Thus, Institution C's risk limits would also probably not be considered prudent.

Example Institution D

INSTITUTION D.—LIMITS AND CURRENT NPV RATIOS

[a] Rate shock (in basis points)	[b] board limits (minimum NPV ratios) (percent)	[c] Institution's current NPV ratios (percent)
+300	3.50	2.50
+200	3.50	3.25
+100	3.50	3.75
0	3.50	4.00
−100	3.50	4.25
−200	3.50	4.50
−300	3.50	4.75

Institution D has a relatively low base case level of economic capital, and its board limits recognize that fact by permitting relatively low NPV Ratios. Furthermore, the institution's level of interest rate risk currently exceeds the board limits (*i.e.*, the current NPV Ratios in the +200 and +300 scenarios are below the 3.50% minimums). While examiners would be very likely to express concern about that aspect of the institution's risk management process, the limits themselves might still be prudent.

To determine whether the institution's limits are prudent, examiners will use the Post-shock NPV Ratio of 3.50% permitted by the limits and the institution's current Sensitivity Measure of 75 basis points (*i.e.*, [4.00%–3.25%]). In applying Table 1, the Post-shock NPV Ratio permitted by the limits falls into the ''Below 4%'' row and the current Sensitivity Measure falls into the ''0 to 100 b.p.'' column. The rating suggested by Table 1 is therefore a 2, and assuming that Institution A's Sensitivity Measure has been consistently low, its risk limits would probably be considered prudent. Because of the critical importance of the Sensitivity Measure in this determination, examiners might well arrive at a different conclusion if they

[13] This example assumes there are no significant deficiencies in the institution's risk management practices.

lack assurance that the institution has the ability to maintain that measure at its current, low level. Thus, if the Sensitivity Measure has been volatile in the past or if examiners have concerns about the quality of the institution's risk management practices, they may probably conclude that the risk limits are not prudent.

Appendix B: Sound Practices for Market Risk Management

This section describes the key elements for effective management of market risk exposures. These key elements encompass sound practices for both interest rate risk management and the management of investment and derivatives activities.

The degree of formality and rigor with which an institution implements these elements in its own risk management system should be consistent with the institution's size, the complexity of its financial instruments, its tolerance for risk, and the level of market risk at which it actually operates.

A. Board and Senior Management Oversight

Effective oversight is an integral part of an effective risk management program. The board and senior management should understand their oversight responsibilities regarding interest rate risk management and the management of investment and derivatives activities conducted by their institution.

Board of Directors

The board of directors should approve broad strategies and major policies relating to market risk management and ensure that management takes the steps necessary to monitor and control market risk. The board of directors should be informed regularly of the institution's risk exposures.

The board of directors has ultimate responsibility for understanding the nature and level of risk taken by the institution. Board oversight need not involve the entire board, but may be carried out by an appropriate subcommittee of the board. The board, or an appropriate subcommittee of board members, should:

- Approve broad objectives and strategies and major policies governing interest rate risk management and investment and derivatives activities.
- Provide clear guidance to management regarding the board's tolerance for risk.
- Ensure that senior management takes steps to measure, monitor, and control risk.
- Review periodically information that is sufficient in timeliness and detail to allow it to understand and assess the institution's interest rate risk and risks related to investment and derivatives activities.
- Assess periodically compliance with board-approved policies, procedures, and risk limits.
- Review policies, procedures and risk limits at least annually.

Although board members are not required to have detailed technical knowledge, they should ensure that management has the expertise needed to understand the risks incurred by the institution and that the institution has personnel with the expertise needed to manage interest rate risk and conduct investment and derivative activities in a safe and sound manner.

Senior Management

Senior management should ensure that the institution's operations are effectively managed, that appropriate risk management policies and procedures are established and maintained, and that resources are available to conduct the institution's activities in a safe and sound manner.

Senior management is responsible for the daily oversight and management of the institution's activities, including the implementation of adequate risk management policies and procedures. To carry out its responsibilities, senior management should:

- Ensure that effective risk management systems are in place and properly maintained. An institution's risk management systems should include (1) systems for measuring risk, valuing positions, and measuring performance, (2) appropriate risk limits, (3) a comprehensive reporting and review process, and (4) effective internal controls.
- Establish and maintain clear lines of authority and responsibility for managing interest rate risk and for conducting investment and derivatives activities.
- Ensure that the institution's operations and activities are conducted by competent staff with technical knowledge and experience consistent with the nature and scope of their activities.
- Provide the board of directors with periodic reports and briefings on the institution's market-risk related activities and risk exposures.
- Review periodically the institution's risk management systems, including related policies, procedures, and risk limits.

Lines of Responsibility and Authority for Managing Market Risk

Institutions should identify the individuals and/or committees responsible for risk management and should ensure there is adequate separation of duties in key elements of the risk management process to avoid potential conflicts of interest. Institutions should have a risk management function (or unit) with clearly defined duties that is sufficiently independent from position-taking functions.

Institutions should identify the individuals and/or committees responsible for conducting risk management. Senior management should define lines of authority and responsibility for developing strategies, implementing tactics, and conducting the risk measurement and reporting functions.

The risk management unit should report directly to both senior management and the board of directors, and should be separate from, and independent of, business lines. The function may be part of, or may draw its staff from, more general operations (*e.g.*, the audit, compliance, or Treasury units). Large institutions should, however, have a separate risk management unit, particularly if the Treasury unit is also a profit center. Smaller institutions with limited resources and personnel should provide additional oversight by outside directors in order to compensate for the lack of separation of duties.

Management should ensure that sufficient safeguards exist to minimize the potential that individuals initiating risk-taking positions may inappropriately influence key control functions of the risk management process such as the development and enforcement of policies and procedures, the reporting of risks to senior management, and the conduct of back-office functions.

B. Adequate Policies and Procedures

Institutions should have clearly defined risk management policies and procedures. The board of directors has ultimate responsibility for the adequacy of those policies and procedures; senior management and the institution's risk management function have immediate responsibility for their design and implementation. Policies and procedures should be reviewed periodically and revised as needed.

Interest Rate Risk

Institutions should have written policies and procedures for limiting and

controlling interest rate risk. Such policies and procedures should be consistent with the institution's strategies, financial condition, risk-management systems, and tolerance for risk. An institution's policies and procedures (or documentation issued pursuant to such policies) should:

- Address interest rate risk at the appropriate level(s) of consolidation. (Although the board will generally be most concerned with the consolidated entity, it should be aware that accounting and legal restrictions may not permit gains and losses occurring in different subsidiaries to be netted.)
- Delineate lines of responsibility and identify individuals or committees responsible for (1) developing interest rate risk management strategies and tactics, (2) making interest rate risk management decisions, and (3) conducting oversight.
- Identify authorized types of financial instruments and hedging strategies.
- Describe a clear set of procedures for controlling the institution's aggregate interest rate risk exposure.
- Define quantitative limits on the acceptable level of interest rate risk for the institution.
- Define procedures and conditions necessary for exceptions to policies, limits, and authorizations.

Investment and Derivatives Activities

Institutions should have written policies and procedures governing investment and derivatives activities. Such policies and procedures should be consistent with the institution's strategies, financial condition, risk-management systems, and tolerance for risk. An institution's policies and procedures (or documentation issued pursuant to such policies) should:

- Identify the staff authorized to conduct investment and derivatives activities, their lines of authority, and their responsibilities.
- Identify the types of authorized investment securities and derivative instruments.
- Specify the type and scope of pre-purchase analysis that should be conducted for various types or classes of investment securities and derivative instruments.
- Define, where appropriate, position limits and other constraints on each type of authorized investment and derivative instrument, including constraints on the purpose(s) for which such instruments may be used.
- Identify dealers, brokers, and counterparties that the board or a committee designated by the board (*e.g.*, a credit policy committee) has authorized the institution to conduct business with and identify credit exposure limits for each authorized entity.
- Ensure that contracts are legally enforceable and documented correctly.
- Establish a code of ethics and standards of professional conduct applicable to personnel involved in investment and derivatives activities.
- Define procedures and approvals necessary for exceptions to policies, limits, and authorizations.

Policies and procedures governing investment and derivatives activities may be embedded in other policies, such as the institution's interest rate risk policies, and need not be stand-alone documents.

C. Risk Measurement, Monitoring, and Control Functions

Interest Rate Risk Measurement

Institutions should have interest rate risk measurement systems that capture all material sources of interest rate risk. Measurement systems should utilize accepted financial concepts and risk measurement techniques and should incorporate sound assumptions and parameters. Management should understand the assumptions underlying their systems. Ideally, institutions should have interest rate risk measurement systems that assess the effects of interest rate changes on both earnings and economic value.

An institution's interest rate risk measurement system should address all material sources of interest rate risk including repricing, yield curve, basis and option risk exposures. In many cases, the interest rate sensitivity of an institution's mortgage portfolio will dominate its aggregate risk profile. While all of an institution's holdings should receive appropriate treatment, instruments whose interest rate sensitivity may significantly affect the institutions overall results should receive special attention, as should instruments whose embedded options may have a significant effect on the results.

The usefulness of any interest rate risk measurement system depends on the validity of the underlying assumptions and accuracy of the methodologies. In designing interest rate risk measurement systems, institutions should ensure that the degree of detail about the nature of their interest-sensitive positions is commensurate with the complexity and risk inherent in those positions.

Management should assess the significance of the potential loss of precision in determining the extent of aggregation and simplification used in its measurement approach.

Institutions should ensure that all material positions and cash flows, including off-balance-sheet positions, are incorporated into the measurement system. Where applicable, these data should include information on the coupon rates or cash flows of associated instruments and contracts. Any adjustments to underlying data should be documented, and the nature and reasons for the adjustments should be understood. In particular, any adjustments to expected cash flows for expected prepayments or early redemptions should be documented.

Key assumptions used to measure interest rate risk exposure should be re-evaluated at least annually. Assumptions used in assessing the interest rate sensitivity of complex instruments should be documented and reviewed periodically.

Management should pay special attention to those positions with uncertain maturities, such as savings and time deposits, which provide depositors with the option to make withdrawals at any time. In addition, institutions often choose not to change the rates paid on these deposits when market rates change. These factors complicate the measurement of interest rate risk, since the value of the positions and the timing of their cash flows can change when interest rates vary. Mortgages and mortgage-related instruments also warrant special attention due to the uncertainty about the timing of cash flows introduced by the borrowers' ability to prepay.

IRR Limits

Institutions should establish and enforce risk limits that maintain exposures within prudent levels.

Management should ensure that the institution's interest rate risk exposure is maintained within self-imposed limits. A system of interest rate risk limits should set prudent boundaries for the level of interest rate risk for the institution and, where appropriate, should also provide the capability to set limits for individual portfolios, activities, or business units.

Limit systems should also ensure that positions exceeding limits or predetermined levels receive prompt management attention.

Senior management should be notified immediately of any breaches of limits. There should be a clear policy as to how senior management will be informed and what action should be taken. Management should specify whether the limits are absolute in the sense that they should never be

exceeded or whether, under specific circumstances, breaches of limits can be tolerated for a short period of time.

Limits should be consistent with the institution's approach to measuring interest rate risk.

Interest rate risk limits should be tied to specific scenarios for movements in market interest rates and should include ''high stress'' interest rate scenarios.

Limits may also be based on measures derived from the underlying statistical distribution of interest rates, using ''earnings-at-risk'' or ''value-at-risk'' techniques.

Stress Testing

Institutions should measure their risk exposure under a number of different scenarios and consider the results when establishing and reviewing their policies and limits for interest rate risk.

Institutions should use interest rate scenarios that are sufficiently varied to encompass different stressful conditions.

Stress tests should include ''worst case'' scenarios in addition to more probable scenarios. Possible stress scenarios might include abrupt changes in the general level of interest rates, changes in the relationships among key market rates (*i.e.*, basis risk), changes in the slope and the shape of the yield curve (*i.e.*, yield curve risk), changes in the liquidity of key financial markets or changes in the volatility of market rates. In conducting stress tests, special consideration should be given to instruments or positions that may be difficult to liquidate or offset in stressful situations. Management and the board of directors should periodically review both the design and the results of such stress tests and ensure that appropriate contingency plans are in place.

Market Risk Monitoring and Reporting

Institutions should have accurate, informative, and timely management information systems, both to inform management and to support compliance with board policy. Reports for monitoring and controlling market risk exposures should be provided on a timely basis to the board of directors and senior management.

The board of directors and senior management should review market risk reports (*i.e.*, interest rate risk reports and reports on investment and derivatives activities) on a regular basis (at least quarterly). While the types of reports prepared for the board and various levels of management will vary, they should include:

- Summaries of the institution's aggregate interest rate risk and other market risk exposures including results of stress tests.
- Reports on the institution's compliance with risk management policies, procedures, and limits.
- Reports comparing the institution's level of interest rate risk with other savings associations using industry data provided by OTS.
- A summary of any major differences between the results of the OTS Net Portfolio Value Model and the institution's own results.
- Summaries of internal and external reviews of the institution's risk management framework, including reviews of policies, procedures, risk measurement and control systems, and risk exposures.

D. Internal Controls

Institutions should have an adequate system of internal controls over their interest rate risk management process. A fundamental component of the internal control system involves regular independent reviews and evaluations of the effectiveness of the system.

Internal controls should be an integral part of an institution's risk management system. The controls should promote effective and efficient operations, reliable financial and regulatory reporting, and compliance with relevant laws, regulations, and institutional policies. An effective system of internal control for interest rate risk should include:

- Effective policies, procedures, and risk limits.
- An adequate process for measuring and evaluating risk.
- Adequate risk monitoring and reporting systems.
- A strong control environment.
- Continual review of adherence to established policies and procedures.

Institutions are encouraged to have their risk measurement systems reviewed by knowledgeable outside parties. Reviews of risk measurement systems should include assessments of the assumptions, parameter values, and methodologies used. Such a review should evaluate the system's accuracy and recommend solutions to any identified weaknesses. The results of the review, along with any recommendations for improvement, should be reported to senior management and the board, and acted upon in a timely manner.

Institutions should review their system of internal controls at least annually. Reviews should be performed by individuals independent of the function being reviewed. Results should be reported to the board. The following factors should be considered in reviewing an institution's internal controls:

- Are risk exposures maintained at prudent levels?
- Are the risk measures employed appropriate to the nature of the portfolio?
- Are board and senior management actively involved in the risk management process?
- Are policies, controls, and procedures well documented?
- Are policies and procedures followed?
- Are the assumptions of the risk measurement system well documented?
- Are data accurately processed?
- Is the risk management staff adequate?
- Have risk limits been changed since the last review?
- Have there been any significant changes to the institution's system of internal controls since the last review?
- Are internal controls adequate?

E. Analysis and Stress Testing of Investments and Financial Derivatives

Management should undertake a thorough analysis of the various risks associated with investment securities and derivative instruments prior to making an investment or taking a significant position in financial derivatives and periodically thereafter. Major initiatives involving investments and derivatives transactions should be approved in advance by the board of directors or a committee of the board.

As a matter of sound practice, prior to taking an investment position or initiating a derivatives transaction, an institution should:

- Ensure that the proposed investment or derivative transaction is legally permissible for a savings institution;
- Review the terms and conditions of the investment instrument or derivative contract;
- Ensure that the proposed transaction is allowable under the institution's investment or derivatives policies;
- Ensure that the proposed transaction is consistent with the institution's portfolio objectives and liquidity needs;
- Exercise diligence in assessing the market value, liquidity, and credit risk of any investment security or derivative instrument;
- Conduct a price sensitivity analysis of the security or financial derivative prior to taking a position, and
- Conduct an analysis of the incremental effect of any proposed transaction on the overall interest rate sensitivity of the institution.

Prior to taking a position in any complex securities or financial derivatives, it is important to have an understanding of how the future direction of interest rates and other changes in market conditions could affect the instrument's cash flows and market value. In particular, management should understand:

- The structure of the instrument;
- The best-case and worst-case interest rates scenarios for the instrument;
- How the existence of any embedded options or adjustment formulas might affect the instrument's performance under different interest rate scenarios;
- The conditions, if any, under which the instrument's cash flows might be zero or negative;
- The extent to which price quotes for the instrument are available;
- The instrument's universe of potential buyers; and
- The potential loss on the instrument (*i.e.,* the potential discount from its fair value) if sold prior to maturity.

F. Evaluation of New Products, Activities, and Financial Instruments

Involvement in new products, activities, and financial instruments (assets, liabilities, or off-balance sheet contracts) can entail significant risk, sometimes from unexpected sources. Senior management should evaluate the risks inherent in new products, activities, and instruments and ensure that they are subject to adequate review procedures and controls.

Products, activities, and financial instruments that are new to the organization should be carefully reviewed before use or implementation. The board, or an appropriate committee, should approve major new initiatives involving new products, activities, and financial instruments.

Prior to authorizing a new initiative, the review committee should be provided with:

- A description of the relevant product, activity, or instrument
- An analysis of the appropriateness of the proposed initiative in relation to the institution's overall financial condition and capital levels
- A description of the procedures to be used to measure, monitor, and control the risks of the proposed product, activity, or instrument

Management should ensure that adequate risk management procedures are in place in advance of undertaking any significant new initiatives.

Appendix C: Excerpt From Interagency Uniform Financial Institutions Rating System

Sensitivity to Market Risk

The sensitivity to market risk component reflects the degree to which changes in interest rates, foreign exchange rates, commodity prices, or equity prices can adversely affect a financial institution's earnings or economic capital. When evaluating this component, consideration should be given to: management's ability to identify, measure, monitor, and control market risk; the institution's size; the nature and complexity of its activities; and the adequacy of its capital and earnings in relation to its level of market risk exposure.

For many institutions, the primary source of market risk arises from non-trading positions and their sensitivity to changes in interest rates. In some larger institutions, foreign operations can be a significant source of market risk. For some institutions, trading activities are a major source of market risk.

Market risk is rated based upon, but not limited to, an assessment of the following evaluation factors:

- The sensitivity of the financial institution's earnings or the economic value of its capital to adverse changes in interest rates, foreign exchange rates, commodity prices, or equity prices.
- The ability of management to identify, measure, monitor, and control exposure to market risk given the institution's size, complexity, and risk profile.
- The nature and complexity of interest rate risk exposure arising from non-trading positions.
- Where appropriate, the nature and complexity of market risk exposure arising from trading and foreign operations.

Ratings

1. A rating of 1 indicates that market risk sensitivity is *well controlled* and that there is *minimal* potential that the earnings performance or capital position will be adversely affected. Risk management practices are strong for the size, sophistication, and market risk accepted by the institution. The level of earnings and capital provide substantial support for the degree of market risk taken by the institution.

2. A rating of 2 indicates that market risk sensitivity is *adequately controlled* and that there is only *moderate* potential that the earnings performance or capital position will be adversely affected. Risk management practices are satisfactory for the size, sophistication, and market risk accepted by the institution. The level of earnings and capital provide adequate support for the degree of market risk taken by the institution.

3. A rating of 3 indicates that control of market risk sensitivity *needs improvement* or that there is *significant* potential that the earnings performance or capital position will be adversely affected. Risk management practices need to be improved given the size, sophistication, and level of market risk accepted by the institution. The level of earnings and capital may not adequately support the degree of market risk taken by the institution.

4. A rating of 4 indicates that control of market risk sensitivity is *unacceptable* or that there is *high* potential that the earnings performance or capital position will be adversely affected. Risk management practices are deficient for the size, sophistication, and level of market risk accepted by the institution. The level of earnings and capital provide inadequate support for the degree of market risk taken by the institution.

5. A rating of 5 indicates that control of market risk sensitivity is *unacceptable* or that the level of market risk taken by the institution is an *imminent threat to its viability.* Risk management practices are wholly inadequate for the size, sophistication, and level of market risk accepted by the institution. [Emphasis added].

Source: Uniform Financial Institutions Rating System, December 1996, pp. 12–13.

Appendix D: Glossary

Alternate Interest Rate Scenarios: Scenarios that depict hypothetical shocks to, or movements in, the current term structure of interest rates. As currently utilized in the OTS NPV Model, there are eight alternate interest rate scenarios, depicting shocks in which the term structure has been changed by the same amount at all maturities. The changes currently depicted in the alternate scenarios range from −400 basis points to +400 basis points. (Institutions need only provide board limits for scenarios ranging from −300 to +300 basis points.)

Base Case: A term sometimes used for the prevailing term structure of interest rates (i.e., the current interest rate scenario). Also known as the ''pre-shock'' or ''no shock'' scenario, one not subjected to a change in interest rates. This is in contrast to, say, the plus or minus 100 basis point rate shock scenarios.

CAMELS Rating System: A uniform ratings system, applied to all banks, thrifts, and credit unions, which provides an indication of an

institution's overall condition. The six factors of the CAMELS rating system represent Capital Adequacy, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk. Quantitative and qualitative factors are used to establish a rating, ranging from 1 to 5 for each CAMELS component rating. A rating of 1 represents the best rating and least degree of concern, while a 5 rating represents the worst rating and greatest degree of concern. The six CAMELS component ratings are used in developing the overall Composite Rating for an institution.

Complex Securities: The term ''complex security'' includes any collateralized mortgage obligation (''CMO''), real estate mortgage investment conduit (''REMIC''), callable mortgage pass-through security, stripped-mortgage-backed-security, structured note, and any security not meeting the definition of an ''exempt security.'' An ''exempt security'' includes: (1) standard mortgage-pass-through securities, (2) non-callable, fixed-rate securities, and (3) non-callable, floating-rate securities whose interest rate is (a) not leveraged (*i.e.*, the rate is not based on a multiple of the index), and (b) at least 400 basis points from the lifetime rate cap at the time of purchase.

Composite Rating: A rating that summarizes an institution's overall condition under the CAMELS rating system. This overall rating is expressed through a numerical scale of 1 through 5, with 1 representing the best rating and least degree of concern, and 5 representing the worst rating and highest degree of concern.

Financial Derivative: Any financial contract whose value depends on the value of one or more underlying assets, indices, or reference rates. The most common types of financial derivatives are futures, forward commitments, options, and swaps. A mortgage derivative security, such as a collateralized mortgage obligation or a real estate mortgage investment conduit, is not a financial derivative under this definition.

Interest Rate Risk: The vulnerability of an institution's financial condition to movements in interest rates. Changes in interest rates affect an institution's earnings and economic value.

Interest Rate Risk Exposure Report: A quarterly report, sent by OTS to all institutions that file Schedule CMR, presenting the results of the OTS NPV Model for each institution.

Interest Rate Sensitivity Measure: The magnitude of the decline in an institution's NPV Ratio that occurs as a result of an adverse rate shock of 200 basis points. The measure equals the difference between an institution's Pre-shock NPV Ratio and its Post-shock NPV Ratio and is expressed in basis points. In general, institutions that have significant imbalances between the interest rate sensitivity (*i.e.*, duration) of their assets and liabilities tend to have high Interest Rate Sensitivity Measures.

MVPE: The abbreviation for Market Value of Portfolio Equity, a term previously used for Net Portfolio Value. This term is no longer used by OTS because some of the factors used to determine NPV may not be market based.

NPV: The abbreviation for Net Portfolio Value which equals the present value of expected net cash flows from existing assets minus the present value of expected net cash flows from existing liabilities plus the present value of net expected cash flows from existing off-balance sheet contracts.

Post-shock NPV Ratio: Along with the Sensitivity Measure, one of the two primary measures of interest rate risk used by OTS. The ratio is determined by dividing an institution's NPV by the present value of its assets, where both the numerator and denominator are measured after a 200 basis point increase or decrease in market interest rates, whichever produces the smaller ratio. A higher Post-shock Ratio indicates a lower level of interest rate risk. Also sometimes referred to as the ''Exposure Measure.''

Pre-shock NPV Ratio: Ratio determined by dividing an institution's NPV by the present value of its assets, where both the numerator and denominator are measured in the base case. The ratio is a measure of an institution's economic capitalization. It is also referred to as the ''Base Case NPV Ratio.

Prompt Corrective Action: A system of enforcement actions, established under the Federal Deposit Insurance Corporation Improvement Act of 1991, that regulators are required to take against insured institutions whose capital falls below certain critical thresholds.

''S'' Component Rating: see ''Sensitivity to Market Risk Component Rating.''

Schedule CMR: A section of the Thrift Financial Report that is used by OTS to collect financial data for the OTS NPV Model.

Sensitivity Measure: see ''Interest Rate Sensitivity Measure.''

''Sensitivity to Market Risk'' Component Rating: The component rating in the CAMELS rating system designed to express the degree to which changes in interest rates, foreign exchange rates, commodity prices, or equity prices can adversely affect a financial institution's earnings or economic capital. The rating is based on two components: an institution's level of market risk and the quality of its practices for managing market risk. The ''S'' component rating.

Shocked Rate Scenarios: see ''Alternate Interest Rate Scenarios.''

Uniform Financial Institutions Rating System: see ''CAMELS Rating System'' and ''Composite Rating.''

Value-at-risk: A measure of market risk. An estimate of the maximum potential loss in economic value over a given period of time for a given probability level.

Dated: April 9, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

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April 23, 1998

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 930

Tart Cherries Grown in the States of Michigan, et al.; Establishment of Rules and Regulations for Grower Diversion and a Compensation Rate for the Cherry Industry Administrative Board Public Member and Alternate Public Member; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97–930–2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Establishment of Rules and Regulations for Grower Diversion and a Compensation Rate for the Cherry Industry Administrative Board Public Member and Alternate Public Member

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document contains rules and regulations for a grower diversion program under the tart cherry marketing order for the 1998–1999 and following crop years. It would also establish a compensation rate to be paid to the Cherry Industry Administrative Board (Board) public member and/or alternate public member when attending Board meetings.

DATES: Comments must be received by May 26, 1998.

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

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456, telephone: (202) 720–5053, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This proposal invites comments on rules and regulations for grower diversion under the tart cherry marketing order and the establishment of a compensation rate of $250 per meeting for the public member and alternate public member when attending Board meetings. The tart cherry marketing order became effective in September of 1996 and the Board met March 12–13, June 26–27, September 11–12, 1997, and January 29–30, 1998, to establish and recommend to the Secretary rules and regulations to implement order authorities. At its meetings, the Board recommended grower diversion regulations and a compensation rate for the public member and alternate public member to the Department for appropriate action.

An interim final rule was published in the **Federal Register** on August 25, 1997, to establish terms and conditions for the issuance of grower diversion certificates for the 1997–1998 crop season. A final rule is being published separately in the **Federal Register**. This proposed rule includes the terms and conditions for the grower diversion program proposed to be used for 1998–1999 and subsequent crop years.

Section 930.33 of the order authorizes the Board to compensate the public member and/or alternate public member for performance of their duties. The Board at its discretion may request the attendance of the alternate public member at any or all meetings, notwithstanding the expected or actual presence of the public member. The $250 compensation rate would allow the Board to compensate the public member and alternate public member for attending Board meetings. Such compensation is a per meeting rate. For example, if a Board meeting is convened and lasts four days or four hours, the public member and/or alternate public member attending the meeting would receive $250. This action is intended to compensate them for loss of work and wages. This payment would be in addition to compensation for travel, lodging, meals, and other related costs incurred in attending public Board meetings.

The order in § 930.50 provides the method of establishing an optimum supply level of cherries for the crop year. The optimum supply is defined as the average of the prior three years' sales of tart cherries, adjusted for carry-in and desired carry-out inventory. The optimum supply consists of a free percentage amount of cherries which a handler could sell to any market and a restricted percentage amount, when warranted, which would have to be withheld from the market. Based on the optimum supply level, the Board establishes preliminary free and restricted percentages. No later than September 15, after harvesting and processing of the crop, the Board computes and recommends to the Secretary final free and restricted percentages based on actual crop amounts. After receiving the Board's recommendation, the Secretary designates the final free and restricted percentages through informal rulemaking if he finds that such action would tend to effectuate the purposes of the Act. The difference between any final free market percentage and 100 percent is the final restricted percentage. The Board established an optimum supply of 247 million pounds and preliminary free and restricted percentages for tart cherries acquired by handlers during the 1997–98 crop year during its June 26–27, 1997, meeting. Final free and restricted percentages which were recommended by the Board to the Secretary were established during its September 11–12, 1997, meeting. A proposed rule setting the final free and

restricted percentages for the 1997–98 crop year at 55 percent and 45 percent, respectively, was published in the **Federal Register** on January 21, 1998, (63 FR 3048). A final rule is being published separately in the **Federal Register**.

Handlers can satisfy their restricted percentage in various ways. The restricted percentage cherries can be maintained in handler-owned inventory reserve pools. Handlers can also satisfy restricted percentage obligations by redeeming grower diversion certificates, exporting cherries to designated countries, shipping to exempt outlets, contributing to charitable organizations or diverting cherries at the handler's facility.

The maximum volume of cherries that can be held in the primary inventory reserve is 50 million pounds. Handlers can establish a secondary inventory reserve after the primary inventory reserve has reached its maximum volume. There is no maximum volume in the secondary inventory reserve. Each handler establishing a reserve (primary and secondary) is required to pay all of his or her own storage expenses. Reserve cherries can be released for sale upon Board approval into commercial outlets when the current crop is not expected to fill demand.

Section 930.58 of the tart cherry marketing order provides authority for voluntary grower diversion. Growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Growers would receive diversion certificates from the Board stating the weight of cherries diverted. The grower could then present this certificate to a handler in lieu of actual cherries. The handler could apply the weight of cherries represented by the certificate against the handler's restricted percentage amount. In comments concerning the 1997–98 grower diversion program there were concerns that such program could act as an insurance policy for cherries that are not marketable contrary to the intent of the order. The overall intent of the order is that only cherries that have reached a harvestable, marketable condition be allowed to be diverted. Therefore, in order to further clarify this concept, this rule would provide that the Board would not allow diversion credit to a grower whose fruit was destroyed before it set and/or matured on the tree, or whose fruit is unmarketable. If marketable fruit were to be damaged or destroyed by acts of nature such as storms or hail, diversion credit could be granted.

A new § 930.158 is proposed to be added to the rules and regulations specifying the guidelines for grower diversion for the 1998–99 and subsequent crop years. First, any grower desiring to divert in the orchard would need to request an application form from the Board and would need to apply by June 15, 1998, for the 1998–99 crop year and by April 15 for subsequent crop years. The application would include the name, address, phone number and a signed statement certifying that the grower will abide by all the rules and regulations for diversion. In addition, the grower would need to include maps of such grower's orchard. Each map would include the grower's name, address and location of the orchard.

The Board has recommended four types of in-orchard diversion. These are: (1) Random row diversion, in which rows of cherry trees are randomly selected by the Board's computer programs to remain unharvested; (2) whole block diversion, in which an entire orchard block is left unharvested; (3) partial block diversion, in which a contiguous portion of a definable block is diverted; and (4) in-orchard tank diversion, in which cherries harvested into tanks are measured, calculated and then diverted in the orchard. The regulations for the 1997–98 crop year only provide for random row and whole block diversion.

For all types of diversion, except tank diversion, growers would need to map each orchard block they intend to divert. A block would be defined as a group of trees that are of similar age, running in the same direction and having definable boundaries (e.g., roads, ditches). If a grower desires to divert using the random row method, all of the grower's orchards would need to be mapped, since random row diversion would involve diverting a certain amount of trees from all the grower's orchards. If the grower elects whole or partial block diversion, all blocks to be diverted would need to be mapped. The maps would need to be supplied to the Board so that the Board can calculate the diversion amounts. New maps would not need to be prepared each season. However, maps would have to be updated to reflect any substantive changes in the grower's orchard such as new trees or trees destroyed by inclement weather.

It is proposed that, for the 1998–99 and subsequent crop years, only trees more than six years old would qualify for diversion. This rule proposes that trees which are six years old or younger should not be eligible for diversion because tart cherry trees do not come into full commercial production before they are five to seven years old. These figures are based on information from the National Agricultural Statistical Service (NASS), and from record testimony. Using trees which are not producing cherries or which are only beginning to come into full production when calculating diversion amounts would result in figures which are not representative of a grower's true production.

By July 1 of each crop year in which volume regulation is recommended, a grower that has provided the Board with the required orchard maps would have to inform the Board of such grower's intention to divert in the orchard and the method of diversion. If a grower does not elect the method of diversion by July 1, then only random row or in-orchard tank diversion would be available and the Board would provide the information necessary for the grower to divert by the random row method.

Random Row Diversion

Based on orchard maps submitted to the Board by the grower, the Board, using a computer program, would randomly designate rows of trees in each orchard block for nonharvest and inform the grower of this designation. This designation would be based upon the preliminary restricted percentage amount computed and announced by the Board. For example, if the preliminary restricted percentage is 20 percent, the Board's computer would randomly select rows of trees across all blocks in the grower's orchard to allow the grower to divert 20 percent of such grower's crop. The grower, however, would not have to choose this diversion amount. No less than seven days prior to each grower's individual harvest date, such grower could request a different diversion percentage (either smaller or greater). The purpose of the seven day notice is to allow the Board adequate time to prepare a different orchard map using different percentages.

To divert cherries through random row diversion, the grower would not harvest the designated rows. After completing harvest of all trees not designated for diversion, the grower would be required to notify the Board and/or a Board compliance officer. Such grower would also need to provide the Board with total harvested production amounts so the Board could calculate the amount of grower diversion tonnage to be placed on the diversion certificate. Independent confirmation by the Board of the grower's production would also be provided by the handler on Board form number two.

Growers would receive diversion certificates only after confirmation of diversion is provided to the Board. After harvest, the Board's compliance staff would visit the grower's orchards to ensure that the rows selected on the orchard map for random row diversion had not been harvested. Once the orchard has been visited by a compliance officer and the grower has carried out the terms and conditions for random row diversion, a diversion certificate would be issued to the grower. The diversion certificate would represent the weight of cherries diverted by the grower. The grower could then present the certificate to a handler to be redeemed.

Whole Block Diversion

Whole block diversion would involve diversion of the production from an entire block of cherry trees.

In whole block diversion, the value of the diversion would be determined by application of a statistical sampling protocol. For example, if a block has 5 rows or less, 3 rows would be randomly chosen to be sampled. If a block has 6 to 15 rows, 4 rows would be randomly chosen to be sampled. If a block has 16 or more rows, 5 rows would be randomly chosen to be sampled.

The Board originally recommended that a 5 percent sample size be used. However, after the first season of operation, the Board determined that the statistical method of sampling would be much more accurate in obtaining the weight of what is to be diverted. From each of the rows to be sampled, ten contiguous originally planted tree sites would be sampled within the rows. A tree site is a planted tree or an area where a tree was planted and may have been uprooted or died. Only trees over age of six years old would be harvested for the sample. For example, if it is determined that five rows are to be sampled, then 10 tree sites in each of the five rows would be sampled. A total of 50 tree sites would be sampled ((10 original tree sites) × (5 rows) = 50 trees). If a total of 4600 pounds is harvested from the sample trees and this is divided by 50 tree sites, a yield of 92 pounds per tree site will be obtained. The yield for the block is found by multiplying 92 pounds per site by 880 trees that were mapped in the block to yield 80,960 pounds per block.

The Board discussed another sampling option. This would have required that mapping be done by the grower each year the grower applied for diversion. However, the Board felt that was an undue burden on the grower. Using the proposed sampling method would only require the grower to map an orchard one time and update the map, as necessary, to reflect any substantive changes in the grower's orchard. The grower would not need to redo the map every year such grower may want to divert.

Prior to sampling, the grower would notify the Board to allow observation of the sampling process by a compliance officer. After harvest, the compliance officer could again visit the grower's orchard to verify that diversion actually took place.

A diversion certificate would be issued for an amount equal to the volume of cherries diverted by the grower. The grower could then present the certificate to a handler to be redeemed.

Partial Block Diversion

The Board recommended that partial block diversion be available as an option to growers. Inclusion of this option would permit growers added flexibility. Also, it would help discourage the tendency of growers to break up large blocks into multiple small blocks. Partial block diversion would also speed up the orchard diversion activity by decreasing the sampling time for growers and the Board. Growers may wish to divert only partial blocks of marketable, harvestable cherries that have been subjected to storm damage or are of lower quality. For example, this would allow a grower that has a block that is 35 rows by 40 trees per row to divert contiguous rows 1 through 22 and harvest rows 23 through 35. The partial block would be sampled as in whole block diversion. This provides the grower with more options when determining if such grower should in-orchard divert.

The Board decided to limit partial block diversions to one partial block per grower per year. This would alleviate the time that compliance officers would need to spend observing sampling and diversion at grower's premises. The Board may evaluate partial block diversions at the end of the season to decide if it is not timely or not cost effective to administer by the compliance officers. Based on this evaluation the Board may recommend increasing the number of partial block diversions or eliminate this type of diversion as an option to growers. The grower should inform the Board by July 1 if such grower elects to whole or partial block divert. If whole block or partial block diversion is not selected by July 1, growers who wish to divert could then choose the random row method or the in-orchard tank method of diversion.

In-Orchard Tank Diversion

The Board recommended that in-orchard tank diversion be authorized to growers as another option for diversion. The Board discussed at length the fact that the grower diversion program must be grower friendly in order for growers to take full advantage of the program. Adding options to the grower diversion program provides more flexibility to the grower.

A grower diverting by this method would need to notify the Board and compliance officers of such diversion. Growers may wish to use tank diversion when marketable cherries in part of the orchard have sustained damage or are of lower quality. Such cherries could be picked and placed in harvesting tanks until a compliance officer could come to the orchard to probe the tanks for volume measurement and observe the destruction of the cherries on the grower's premises.

To use this diversion option a grower would need to inform a compliance officer that such grower has tanks ready for diversion. The Board recommended that the grower have no fewer than 10 tanks for diversion prior to informing the compliance officer. This would keep the cost of inspections to a minimum and decrease the compliance officer's time from traveling from location to location to observe a small amount of in-orchard tank diversion. The Board discussed the fact that 10 tanks is not a large amount, since each tank holds about 1,000 pounds and 10 tanks would be about a truckload of cherries. This would not be an undue hardship on small growers that wish to take advantage of such diversion.

After the grower informs the compliance officer of such diversion, the compliance officer would have up to five days to come to the grower's premises to probe the tanks and observe the diversion. This would allow the compliance officer the flexibility to schedule visits throughout the area and save compliance costs.

Compliance

In-orchard diversion by growers is a voluntary action. However, once chosen, growers are expected to meet all of the terms and conditions for diversion to receive a diversion certificate and to be diligent in actually diverting the percentage of the crop for which they have applied. Handlers depend upon growers to accurately divert the percentages requested as they make their marketing and storage decisions throughout the season. Thus, in the case where growers fail to properly divert all of the cherries

specified in their application, such growers should not receive diversion credit for the undiverted cherries.

When a grower chooses random row diversion, such grower would not harvest trees in rows that have been randomly chosen by the Board's computer programs, to be left unharvested. Unintended errors could occur during harvest that could void a growers diversion efforts. The Board has recommended that growers who choose random row diversion should be permitted to rectify any unintended errors that may occur during harvest. Therefore, under this proposal, growers who fail to properly divert designated rows, but who otherwise meet the terms and conditions of diversion, would have to divert cherries in addition to those randomly chosen, but would still receive the diversion percentage originally applied for.

For example, a grower's map could require such grower to random row divert rows 5 and 6 and such grower may harvest row 5 in error. Such grower would then be required to divert another two rows to make up for the mistake in diverting. This would discourage mistakes being made in the orchard since such growers know they may have to divert more cherries to correct a mistake. This recommended adjustment would allow a grower to correct an error in the orchard and still receive a diversion certificate.

However, if growers are harvesting at the end of the orchard and thus, do not have an opportunity to rectify a mistake by diverting additional rows or trees, the Board could reduce the grower's diversion certificate by using the two for one method. For example, a grower specifies a diversion amount of 20 percent on the original application for diversion (and does not increase or decrease such percentage by the June 15, 1998, cutoff date for the 1998–99 crop year and by April 15 for subsequent crop years). Subsequently, the grower fails to divert a complete block or all of the specified rows, resulting in diversion of only 16 percent of the crop. Thus, the grower has failed to divert an additional 4 percent of the crop. The Board would then multiply that percent by two and subtract that amount from the original diversion application amount. This would reduce the diversion amount by twice the amount of the mistake that was made and therefore, a 2 for 1 reduction would be made as explained above. In this example, 2 times 4 percent equals 8 percent; which, when subtracted from the original percentage of 20 percent, yields a diversion credit of 12 percent of the grower's total production. Thus, the grower would receive a diversion certificate equal to 12 percent of the originally requested amount.

Growers, when aware of such errors, would need to immediately inform the Board when such errors are made during the diversion process to ensure that they continue to meet the terms and conditions of diversion. Growers who divert more than their preliminary percentage would not receive additional diversion credit. The Department agrees with this recommendation. The ''two for one'' method is a necessary part of compliance for the diversion provisions because it is important that the industry accurately projects the annual tonnage of cherries available for market.

The Board recommended that all grower diversion certificates should be redeemed with handlers by November 1. After November 1, grower diversion certificates would not be valid. It was intended that diversion certificates be used within the same crop year that they were issued, as if a crop had been produced. The November 1 date would allow handlers adequate time to meet their restricted percentage amounts after final percentages have been established.

Compensation

The Board also recommended adding a new § 930.133 to provide a compensation rate of $250 to be paid to the public member and to the alternate public member for each meeting they attend. Section 930.33 provides that the public member and alternate public member shall receive such compensation as the Board may establish and the Secretary may approve. The public and alternate public member cannot have a financial interest in the tart cherry industry. To attend meetings, it may be necessary for them to be absent from their places of employment. Therefore, the Board recommended a compensation rate be established. This payment would be in addition to compensation for travel, lodging, meals, and other related costs incurred in attending Board meetings. For example, if a Board meeting is convened and lasts for a day or two or only four hours, the public member and/or alternate public member attending the meeting would receive $250.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic impacts.

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 1,220 producers or growers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of tart cherries may be classified as small entities.

This proposed rule would establish rules and regulations for grower diversion under the tart cherry marketing order. The order was promulgated on September 25, 1996. The Board was established on December 20, 1996, met several times in 1997 and recommended numerous rulemaking actions. The Board recommended establishing an assessment rate and late payment charges, procedures for grower and handler diversion and exemptions for certain order provisions. The Board also recommended regulations for the issuance of grower diversion certificates and final free and restricted percentages for the 1997–98 crop year. These actions were recommended at Board meetings held March 12–13, June 26–27, September 11–12, 1997, and January 29–30, 1998.

The impact of this rule would be beneficial to growers. The receipt of grower diversion certificates is one of the methods under the order that handlers can utilize to meet any such

handler's restricted percentage. Growers may voluntarily choose to divert because they have an abundance of low value, poor quality marketable cherries or because they are unable to find a processor willing to process some or all of their cherries. Before choosing to divert, the grower would most likely evaluate the harvesting and other cultural costs that could be saved by diverting and locate a handler that would be willing to redeem such grower's diversion certificate. An interim final rule was published on August 25, 1997, (62 FR 44881) establishing terms and conditions for the issuance of grower diversion certificates by the Board for the 1997–98 crop year. A final rule is being published separately in the **Federal Register**.

Initially, about 700 growers expressed an interest in participating in the voluntary grower diversion program. However, because of the exceptional quality of 1997–98 tart cherry crop, fewer growers opted to participate in the grower diversion program. As such, approximately 120 growers (65 growers diverting by random row and 55 diverting by whole block diversion) received diversion certificates for a total of 6,139,600 pounds of diverted cherries for an average of 51,163 pounds of cherries diverted per grower. Although it is difficult to quantify the overall effect the grower diversion program has had on the tart cherry industry at this time, information from the Board indicates that the program's economic impact on both the handlers and growers appears to have been positive. There seems to be overall satisfaction among both growers and handlers with this year's returns. The economic impact of the grower diversion provisions of this proposed regulation are also expected to be positive. They should result in benefits to both growers and handlers which are similar to those which resulted from the 1997–98 program. In addition, this proposed rule offers growers greater flexibility when diverting their cherries.

With regard to methods of diversion, this rule proposes four different ones: Random row, whole block, partial block and in-orchard tank. During diversion for the 1997–1998 season only the first two were used. The Board discussed limiting the blocks to be diverted to 5 acre blocks, but felt that this could have an adverse impact on small growers that produce on less than 5 acre blocks. Therefore, the Board recommended there be no limit on the size of orchard blocks to be diverted. The Board also discussed a sampling option that would have required mapping to be done by the grower each year the grower applied for diversion, but rejected it because it would be an undue burden on the grower. Using the sampling methods in this proposal would only require the grower to map an orchard one time and not redo the map every year such grower may want to divert.

This proposed rule would also establish a compensation rate of $250 per meeting for the public member and alternate public member when attending Board meetings. The public member and alternate public member would receive $250 whether the Board meeting convened and lasted for one or two days or only four hours. The compensation to be paid to the public member and alternate public member would compensate such persons for loss of work or wages since such persons do not have a financial interest in the tart cherry industry. There was consideration for a lower compensation rate but the Board decided to proceed with the above mentioned amount. The Board did not support a lower compensation rate because it did not adequately compensate the public member and alternate public member for their time to attend Board meetings.

This proposed rule would not impose any reporting or recordkeeping requirements on either small or large tart cherry growers or handlers in addition to those already considered or approved during the order promulgation proceeding. The only written information requested from a grower is an orchard map and the grower's final production volume. Since growers maintain this information as part of their normal farming operations, it takes approximately 10 minutes to prepare a map and less than a minute to total the final production volume. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this proposed rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the March, June, September 1997, meetings and January 1998 meeting were public meetings and all entities, both large and small, were allowed to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Diversion Subcommittee met on March 12, 1997, and discussed grower diversion in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. This comment period is appropriate because the 1998–99 crop year will begin on July 1, 1998. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cheeries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 930.133 is added to read as follows:

§ 930.133 Compensation rate.

A compensation rate of $250 per meeting shall be paid to the public member and to the alternate public member when attending Board meetings. Such compensation is a per meeting rate. For example, if a Board meeting is convened and lasts one or two days or only four hours, the public member and/or alternate public member attending the meeting would receive $250 each.

3. A new § 930.158 is added to read as follows:

§ 930.158 Grower diversion and grower diversion certificates.

(a) *Grower diversion certificates.* The Board may issue diversion certificates to growers in districts subject to volume regulation who have voluntarily elected to divert in the orchard all or a portion of their tart cherry production which otherwise, upon delivery to handlers, would become restricted percentage cherries. Growers may offer the diversion certificate to handlers in lieu of delivering cherries. Handlers may redeem diversion certificates with the Board through November 1 of each crop year. After November 1 of the crop year that crop year's grower diversion certificates are no longer valid. Cherries that have reached a harvestable, marketable condition will be eligible for diversion. Diversion will not be granted to growers whose fruit was destroyed before it set and/or matured on the tree, or whose fruit is unmarketable. If marketable fruit were to be damaged or destroyed by acts of nature such as storms or hail diversion credit could be granted.

(b) *Application and mapping for diversion.* Any grower desiring to divert cherries using methods other than random row or in-orchard tank shall submit a map of the orchard or orchards to be diverted, along with a completed Grower Diversion Application, to the Board by June 15, 1998, for the 1998–99 crop year (July 1, 1998 through June 30, 1999) and April 15 for subsequent crop years. The application includes a statement which must be signed by the grower which states that the grower agrees to comply with the regulations established for a tart cherry diversion program. Each map shall contain the grower's name and number assigned by the Board, the grower's address, block name or number when appropriate, location of orchard or orchards and other information which may be necessary to accomplish the desired diversion. On or before July 1, the grower should inform the Board of such grower's intention to divert in-orchard and what type of diversion will be used. The four types of diversion are random row diversion, whole block diversion, partial block diversion and in-orchard tank diversion. A grower who informs the Board about the type of diversion he or she wishes to use by July 1 can elect to use any diversion method or a combination of diversion methods. Only random row or in-orchard tank diversion methods may be used if the Board is not so informed by July 1. Trees that are six years or younger do not qualify for diversion.

(1) *Random row diversion.* Using the orchard map furnished by the grower, the Board will randomly select rows of trees within the orchard to be diverted. The amount of cherries to be diverted will be based on the preliminary restricted percentage amount established pursuant to § 930.50. A grower may elect a different percentage amount; however, the grower needs to inform the Board as soon as possible after the preliminary percentages are announced of this other amount, but in no event shall this be less than seven days in advance of harvest. The designated rows indicated by the map must not be harvested. After completing harvest of the remaining rows in the orchard, the grower must notify the Board and/or the Board's compliance officer. A compliance officer will then be allowed to observe the grower's orchard to assure that the selected rows have not been harvested. The grower must inform the Board of the total production of the orchard to calculate the tonnage that was diverted.

(2) *Whole block diversion.* Based on maps supplied by the grower, a sampling procedure will be used to determine the amount of cherries in the orchard to be diverted. A block is defined as rows that run the same direction, are similar in age, and have definable boundaries. The Board would require a number of trees to be sampled depending on the size of the block. For example, if a block has 5 rows or less, 3 rows would be randomly chosen to be sampled, if a block has 6 to 15 rows, 4 rows would be randomly chosen to be sampled, and if a block has 16 or more rows, 5 rows would be randomly chosen to be sampled. From each of the rows to be sampled ten contiguous originally planted tree sites will be sampled within the rows. Only trees more than five years old will be harvested for the sample. For example, if it is determined that five rows are to be sampled and 10 trees in the five rows are to be sampled, then a total of 50 trees are to be sampled ((10 original tree sites)×(5 rows)=50 trees). A total of 4600 pounds will be harvested from the sample trees which is divided by 50 trees to obtain a yield of 92 pounds per tree. To find the yield for the block, 92 pounds is multiplied by 880 trees that were mapped in the block to yield 80,960 pounds per block. The harvested tonnage will be converted to a volume that represents the entire block of cherries. The grower should inform the Board when the samples are being taken so a compliance officer can observe the sampling. The compliance officer would be allowed to confirm that the block has been diverted.

(3) *Partial block diversion.* Partial block diversion will also be accomplished using maps supplied by the grower. Sampling will be done as in whole block diversion except that only partial blocks would be selected and sampled. Growers may divert one partial block per year. Such block must be mapped and would be sampled as described under whole block diversion. Rows used in partial block diversion must be contiguous.

(4) *In-orchard tank diversion.* Growers wishing to in-orchard tank divert must pick the cherries to be diverted and place them in harvesting tanks. A compliance officer would then probe the tanks for volume measurement and observe the destruction of the cherries on the grower's premises. Growers wishing to take advantage of this option must have at least 10 tanks ready for diversion. The compliance officer has up to five days to come to the grower's premises to observe the diversion after being contacted.

(c) *Compliance.* Growers who voluntarily participate in the grower diversion program must sign and file with the Board a Grower Diversion Application. By signing the application, a grower agrees to the terms and conditions of the grower diversion program as contained in these regulations. To be eligible to receive diversion credit, growers voluntarily choosing to divert cherries must meet the following terms and conditions:

(1) In order to receive a certificate, a grower must demonstrate, to the satisfaction of the Board, that rows or trees which were selected for diversion were not harvested. Trees six years old or younger do not qualify for diversion.

(2) The grower must furnish the Board with a total harvested production amount so the Board can calculate the amount of grower diversion tonnage to be placed on the diversion certificate. The Board will confirm the grower's production amount with information provided by handlers (to which the grower delivers cherries) on Board form Number Two.

(3) The grower must agree to allow a Board compliance officer to visit the grower's orchard to confirm that diversion has actually taken place. If the terms and conditions for whole block, partial block or in-orchard tank diversion are not completed, the Board shall not issue the grower a diversion certificate. If a grower who chooses random row diversion harvests rows that were designated not to be harvested, the grower should inform the Board immediately of the error. The grower will then be required to divert twice the amount (rows or trees) incorrectly harvested to correct the mistake. The grower will still receive a diversion certificate equal to the original

requested amount. However, in instances where a grower is at the end of harvesting the orchard and fails to divert a complete block or specified rows, the Board shall multiply by two the difference between the original diversion amount and the actual diverted amount. The Board shall subtract that amount from the diversion application amount. Thus, the grower would receive a grower diversion certificate equal to a portion of the originally requested amount. If the grower does not inform the Board of such errors, the grower will not receive a diversion certificate.

Dated: April 17, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–10770 Filed 4–22–98; 8:45 am]

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Thursday
April 23, 1998

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61 and 141

Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules: Clarifying Amendments and Other Editorial Changes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 141

[Docket No. 25910; Amendment Nos. 61–104 and 141–10]

RIN 2120–AE71

Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules; Clarifying Amendments and Other Editorial Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment makes minor revisions to clarify regulations regarding the certification, training, and experience requirements for pilots, flight instructors, and ground instructors, and the certification requirements for pilot schools approved by the FAA.

EFFECTIVE DATE: This rule is effective May 26, 1998.

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS–840, General Aviation and Commercial Division, Flight Standards Service, FAA, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3844.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, Attn: ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Federal Register's electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov, or the Federal Register's web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Small Business Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.dot.gov.

Background

On April 4, 1997, the FAA published a final rule titled ''Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules'' (62 FR 16220). That final rule, which became effective on August 4, 1997, amended the certification, training, and experience requirements for pilots, flight instructors, and ground instructors, and the certification requirements for pilot schools approved by the FAA. The FAA published corrections to that final rule on July 30, 1997 (62 FR 40888). This amendment makes minor revisions to clarify certain provisions in that final rule. In addition, this amendment includes provisions that were inadvertently omitted from the final rule.

Discussion of Amendment

Terminology

To provide for consistency throughout parts 61 and 141, the phrases ''performing the functions of pilot in command (PIC)'' and ''performing the functions and duties of PIC'' have been replaced with the phrase ''performing the duties of PIC.'' It was not the intent of the FAA to distinguish between the words ''functions'' and ''duties'' and this revision has been made to avoid any ambiguity concerning the meaning of these terms. This revision is not discussed in the following section-by-section analysis.

Part 61

Section 61.2 Certification of foreign pilots, flight instructors, and ground instructors. As adopted in the final rule, § 61.2 provides that, except under certain conditions, a person who is not a citizen or resident alien of the United States may not be issued an airman certificate unless that person passes the appropriate knowledge or practical test in the United States. The FAA did not previously require a person who is not a citizen or resident alien of the United States to take the knowledge test in the United States; that requirement was inadvertently included in the provisions of § 61.2. Therefore, the references to the knowledge test have been removed from § 61.2. However, the FAA notes that a person who is not a citizen or resident alien of the United States must take a knowledge test for a certificate or rating when otherwise required in part 61, although the test may be taken outside the United States.

Section 61.31 Type rating requirements, additional training, and authorization requirements. The FAA has revised the heading for § 61.31(h) to read ''Additional aircraft type-specific training'' rather than ''Additional training required by the aircraft's type certificate.'' This new heading more accurately reflects the content of § 61.31(h), which requires additional training and an endorsement from an authorized instructor before a person may serve as PIC of an aircraft that the Administrator has determined requires additional type-specific training. The introductory text of § 61.31(i)(1) also has been revised to correct a typographical error.

Section 61.35 Knowledge test: Prerequisites and passing grades. Section 61.35(a)(1) requires that an applicant for a knowledge test receive an endorsement from an authorized instructor certifying that the applicant has accomplished a ground-training or home-study course for the certificate or rating sought and is prepared for the knowledge test. The FAA notes that not all applicants for a certificate or rating are required to have such an endorsement before taking a knowledge test. Sections 61.153 and 61.165 do not require an applicant for an airline transport pilot (ATP) certificate or an additional aircraft category or class rating on an ATP certificate to have such an endorsement. In addition, an applicant for a ground instructor certificate or rating under § 61.213 need not obtain an endorsement from an authorized instructor before taking the knowledge test. Therefore, § 61.35 has been revised to require an endorsement only if otherwise required in part 61.

Section 61.39 Prerequisites for practical tests. Section 61.39 has been revised to reflect that not all applicants for a practical test are required to have an endorsement from an authorized instructor to be eligible to take the

practical test. Sections 61.153 and 61.165 do not require an applicant for an ATP certificate or an additional aircraft category or class rating on an ATP certificate to have such an endorsement. Therefore, § 61.39(a)(6) has been revised accordingly.

Section 61.45 Practical tests: Required aircraft and equipment. In the correction to the final rule, the FAA added the language ''Unless otherwise authorized by the Administrator'' to the introductory paragraph of § 61.45(b). This language was added to permit an applicant to obtain authorization from the Administrator to take the practical test in an aircraft whose operating characteristics preclude a pilot from demonstrating all of the maneuvers required to be performed during the practical test. For example, the Cessna (C) 336 and 337 series airplanes do not have a published minimum control speed with critical engine inoperative(V_{MC}) and thus an applicant for an airplane multiengine rating would not be able to perform the V_{MC} demonstration task if a C–336/337 series airplane is used to take the practical test. As noted in the correction to the final rule, a similar provision was included in § 61.13(c) before the adoption of the final rule but was inadvertently omitted when the provisions of that paragraph were incorporated into § 61.45(b).

Upon further review, the FAA has determined that instead of relying on the phrase ''Unless otherwise authorized by the Administrator,'' § 61.45(b) should be revised to explicitly provide for the use of such aircraft. Therefore, § 61.45(b) has been revised to provide that an applicant for a certificate or rating may use an aircraft whose operating characteristics preclude the applicant from performing all of the tasks required for the practical test. The FAA notes that before the adoption of the final rule, § 61.13(c) also provided for the placement of a limitation on an applicant's certificate or rating if such an aircraft is used by an applicant. This provision was inadvertently omitted from the previous correction of § 61.45(b). Therefore, § 61.45(b) now provides that the applicant's certificate or rating will be issued with an appropriate limitation if an aircraft whose operating characteristics preclude demonstration of all the tasks required for a practical test.

Section 61.51 Pilot logbooks. Section 61.51(e)(1)(i) allows a recreational, private, or commercial pilot to log PIC time for that flight time during which the pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated. However, this provision does not permit those pilots to log PIC time if the pilot is the sole occupant of an aircraft but is not rated in that aircraft. For example, a commercial pilot with a single-engine rating who is training for a multiengine rating is not currently permitted to log PIC time for that flight time during which the pilot is the sole occupant of a multiengine aircraft. The provision to allow a recreational, private, or commercial pilot to log PIC time for that flight time during which the pilot is the sole occupant of the aircraft, which was included in § 61.51 before the adoption of the final rule, was inadvertently omitted from the final rule language. This was not the intent of the FAA. Therefore, the FAA has revised § 61.51(e)(1) to permit a recreational, private, or commercial pilot to log PIC time for that flight time during which the pilot is the sole occupant of the aircraft.

Section 61.56 Flight review. Section 61.56 provides that a person may act as PIC of an aircraft only if that person has accomplished a biennial flight review (BFR). Because § 61.51 now permits student pilots, under certain circumstances, to log PIC flight time, there has been some concern as to whether the BFR requirement applies to student pilots. Before the adoption of the final rule, a student pilot was required to log solo flight time, rather than PIC flight time, when that student pilot was the sole occupant of the aircraft or when that student pilot was acting as PIC of an airship requiring more than one flight crewmember. To avoid confusion, the FAA has revised § 61.56 to except a student pilot from the BFR requirement if that student pilot is undergoing training for a certificate and has a current solo flight endorsement as required under § 61.87 of this part.

Section 61.63 Additional aircraft ratings (other than on an airline transport pilot certificate). In the corrections to the final rule, the FAA revised § 61.63(d)(5) to require that the practical test for an additional type rating (other than on an ATP certificate) be performed in actual or simulated instrument conditions rather than under instrument flight rules (IFR). Section 61.63(d)(5) provides that if the practical test is not performed under those conditions because under the aircraft's type certificate the aircraft is incapable of operating under IFR, the type rating is issued with a ''VFR only'' limitation. That paragraph provides for lifting the limitation for that aircraft type if the person subsequently passes the practical test ''under IFR.'' The FAA has determined that this later provision should be revised in a manner consistent with the previous correction to provide that the ''VFR only'' limitation be lifted for that aircraft type after the person passes the practical test ''in actual or simulated instrument conditions.''

In addition, § 61.63(f)(10) has been revised to clarify that an applicant for an additional rating in a helicopter who meets only the requirements of § 61.63(f)(9)(ii) will be issued the additional rating with a limitation. The previous rule language referenced § 61.63(f)(9), rather than § 61.63(f)(9)(ii), which was incorrect. Similarly, § 61.63(g)(10) has been revised to reference § 61.63(g)(9)(ii), rather than § 61.63(g)(9).

Section 61.109 Aeronautical experience. Section 61.109(f) has been revised to clarify when the aeronautical experience requirements for obtaining a private pilot certificate with a glider category rating must be accomplished with an authorized instructor and when those requirements must be accomplished in solo flight. To obtain a private pilot certificate with a glider category rating, § 61.109(f) requires an applicant to accomplish three training flights in a glider. Unlike the term ''flight training,'' which is defined in § 61.1(b)(6) as training, other than ground training, received from an authorized instructor in flight in an aircraft, the term ''training flight'' is not defined. Therefore, the FAA has added the phrase ''with an authorized instructor'' to clarify when training flights are to be accomplished with an authorized instructor.

In addition, the FAA has revised § 61.109(f)(1) to clarify that the 20 flights and 2 hours of solo flight time in a glider that are required by paragraphs (f)(1)(i) and (f)(1)(ii) may be used to meet the 10 hours of flight time specified in the introductory language of paragraph (f)(1). In addition, the three training flights with an authorized instructor required in paragraph (f)(1)(i) may be used to meet the 20 flights also required in that paragraph.

The introductory paragraph of § 61.109(f)(2) also has been revised to clarify that the 10 solo flights and 3 training flights with an authorized instructor in a glider required by paragraphs (f)(2)(i) and (f)(2)(ii) may be used to meet the 3 hours of flight time specified in the introductory language of paragraph (f)(2).

Section 61.109(g)(2) has been revised to clarify the type of instrument training required for a private pilot certificate with an airship rating. As noted in the correction to the final rule, the

instrument training for a private pilot certificate requires training only on basic maneuvers such as straight and level flight, constant airspeed climbs and descents, turns to a heading, and recovery from unusual flight attitudes, and need not be provided by an instructor who holds an instrument rating on his or her flight instructor certificate. In addition, there are no regulations that provide for an airship category rating with an instrument rating on a pilot or flight instructor certificate. Therefore, to avoid any possible confusion, the rule language has been revised to specify the required instrument maneuvers.

The FAA also has revised § 61.109(g)(4) to require that an applicant for a private pilot certificate with an airship rating must accomplish 5 hours performing the duties of PIC in an airship with an authorized instructor. In the final rule, this provision required an applicant to log 5 hours of solo flight time with an authorized instructor. However, solo flight time cannot be accomplished with an authorized instructor on board the aircraft; therefore, the provision should have stated that the applicant is required to perform the duties of PIC.

For reasons similar to those previously discussed in the preamble to § 61.109(f), the FAA has revised § 61.109(h) to clarify that an applicant for a private pilot certificate with a balloon class rating must accomplish with an authorized instructor the ''training flights'' and the flight performing the duties of PIC required in that paragraph. The FAA notes that the authorized instructor in that case would be a commercial pilot with a balloon class rating.

Section 61.129 Aeronautical experience. In Notice No. 95–11, proposed § 61.129(b)(4) would have required an applicant to accomplish solo flight time in a multiengine airplane. During the rulemaking process, the FAA determined that the accomplishment of solo flight time in a multiengine airplane may be impracticable because of liability and insurance concerns. Therefore, in the final rule, the FAA replaced the requirement that an applicant accomplish solo flight time in a multiengine airplane with the requirement that the flight time required under § 61.129(b)(4) be acquired while performing the duties of PIC in a multiengine airplane with an authorized instructor. However, in revising this requirement, the FAA did not consider the applicant who holds a private pilot certificate with a multiengine rating and, therefore, may already have solo flight time in a multiengine aircraft or may be able to accomplish solo flight time without the cost of acquiring the required flight time with an authorized instructor. Therefore, the FAA has revised § 61.129(b)(4) to require an applicant to accomplish 10 hours of solo flight in a multiengine airplane or 10 hours of flight time performing the duties of PIC in a multiengine airplane with an authorized instructor.

In addition, the FAA has revised § 61.129(b)(4) to permit an applicant for a commercial pilot certificate with a multiengine rating to credit the 10 hours of flight time performing the duties of PIC in a multiengine airplane required by that paragraph toward the 100 hours of PIC flight time required under § 61.129(b)(2). This revision is consistent with the provisions of § 61.129(b) as proposed in Notice No. 95–11. As previously noted, proposed § 61.129(b)(4) would have required an applicant to accomplish solo flight time in a multiengine airplane. The solo flight time would have constituted PIC flight time; therefore, the applicant would have been able to credit that flight time toward the requirements of § 61.129(b)(2). However, under § 61.129(b)(4) as adopted in the final rule, an applicant would be performing the duties of PIC rather than acting as PIC. Consequently, that flight time does not constitute PIC flight time. Therefore, the FAA has revised § 61.129(b)(4) to permit the crediting of flight time accomplished under that paragraph toward the requirements of § 61.129(b)(2). However, this revision does not permit an applicant to log the flight time required under § 61.129(b)(4) as PIC flight time under § 61.51(e) unless the applicant holds a private pilot certificate with a multiengine rating and chooses to accomplish the requirements with an authorized instructor.

The FAA notes that if an applicant meets the requirements of § 61.129(b)(4) by logging 10 hours of solo flight time in a multiengine airplane (as permitted in this final rule), that time would constitute PIC flight time. Therefore, the applicant may count that flight time toward the requirements of § 61.129(b)(2) and log it as PIC time under § 61.51(e).

Finally, for the reasons previously discussed in the preamble to § 61.109, the FAA has added the phrase ''with an authorized instructor'' to § 61.129(f) to clarify that training flights in a glider are to be accomplished with an authorized instructor. In addition, the introductory text of § 61.129(f)(1) has been revised to clarify that the 100 flights required by paragraph (f)(1) may be used to meet 25 hours of flight time as a pilot in a glider also specified in that paragraph. Section 61.129(h) also has been revised to clarify that an applicant for a commercial pilot certificate with a balloon class rating must accomplish with an authorized instructor (a commercial pilot with a balloon class rating) the ''training flights'' and flight performing the duties of PIC required by that paragraph.

Section 61.157 Flight proficiency. For the reasons discussed in the preamble to § 61.63, the FAA has revised § 61.157(b)(3), which provides for the addition of an aircraft type rating to an ATP certificate, to permit the lifting of the ''VFR only'' limitation once the person passes the practical test in actual or simulated instrument conditions rather than under IFR.

In addition, the FAA has removed the requirement in § 61.157(f)(2) that proficiency and competency checks used to satisfy the requirements of § 61.157 include all maneuvers and procedures required for the issuance of a type rating. That requirement was inconsistent with the waiver provision of § 61.157(j) and the requirements of appendix F to part 121. Section 61.157(f)(2) also has been revised to clarify that those checks must be conducted by an authorized designated pilot examiner or FAA aviation safety inspector. The previous rule language stated that the checks had to be evaluated by a ''designated examiner or FAA inspector.''

The introductory language of paragraphs (g), (h), and (i) of § 61.157 has been revised to clarify that the requirements of those paragraphs must be met only if a flight simulator or flight training device is used to meet ''all,'' rather than ''any,'' of the training requirements and the practical test for an airline transport pilot certificate with the applicable category, class, and type rating. The word ''all'' was inadvertently changed to the word ''any'' during the rulemaking process when the previous provisions of §§ 61.158(d)(3) and 61.163 were incorporated into § 61.157(g).

Finally, the FAA has revised § 61.157(g)(8) to reference § 61.157(g)(7)(ii) rather than § 61.157(g)(7). Therefore, § 61.157(g)(8) provides that an applicant meeting only the requirements of paragraph (g)(7)(ii) of that section be issued an additional rating or an ATP certificate with an additional rating, as applicable, with a limitation. Similarly, paragraphs (h)(8) and (i)(8) have been revised to reference §§ 61.157(h)(7)(ii) and 61.157(i)(7)(ii), respectively, rather than §§ 61.157(h)(7) and 61.157(i)(7).

Section 61.197 Renewal of flight instructor certificates. Section 61.197(a) permits a person to renew a current flight instructor certificate by passing a practical test or by presenting certain documentation to a FAA Flight Standards Inspector. A person may renew a current flight instructor certificate at any time with one exception. As adopted in the final rule, a person may renew a current flight instructor certificate through presentation of a graduation certificate from an approved flight instructor refresher course (FIRC) only if the FIRC was completed within the 90 days preceding the expiration of the current flight instructor certificate.

The FAA has revised paragraph (a)(2)(iii) to permit the renewal of a current flight instructor certificate at any time by presenting a graduation certificate demonstrating that the applicant has successfully completed an approved FIRC. The FAA notes, however, that if a flight instructor renews his or her flight instructor certificate more than 3 calendar months before the expiration of that certificate by presenting a graduation certificate from an FIRC, that course must have been completed within the 3 calendar months preceding the date of presentation of the graduation certificate to the Flight Standards Inspector. The FAA has replaced the ''90 day'' language with the phrase ''3 calendar months'' throughout § 61.197 to facilitate the calculation of the relevant time periods. Section 61.197(b)(2) will provide that if renewal is sought within the 3 calendar months preceding the expiration month of the current flight instructor certificate through the presentation of an FIRC graduation certificate, the FIRC must have been completed within the 3 calendar months preceding the expiration month of the certificate.

In addition to the correction discussed above, the FAA has made other minor revisions to § 61.197 to clarify the provisions of that section. The following discussion is provided to explain the provisions of § 61.197 as adopted in this final rule.

Paragraph (a)(1)(i) has been revised to state that a person may renew a current flight instructor certificate by passing a practical test ''for one of the ratings listed on the current flight instructor certificate.'' For example, if a flight instructor holds a current flight instructor certificate with single-engine airplane and multiengine airplane ratings, that instructor would be required to pass a practical test for only one of those ratings to be issued a new flight instructor certificate with both ratings. The previous language, which required the applicant to take a practical test ''for renewal of the flight instructor certificate,'' may have given the impression that an applicant had to take a practical test for each of the ratings listed on the applicant's flight instructor certificate. This has never been the policy of the FAA and it was not the intention of the FAA to impose such a requirement when the final rule language was adopted.

Paragraph (a)(2)(ii) permits a person to renew their flight instructor certificate without accomplishing a practical test by presenting to an authorized FAA Flight Standards Inspector a record that shows that within the preceding 24 calendar months the flight instructor has served in a position involving the regular evaluation of pilots. The FAA offers the following examples of ''a position involving the regular evaluation of pilots.'' A person who regularly determines whether pilots may use a fixed base operator's aircraft may be in a position involving the regular evaluation of pilots. A captain for a certificate holder operating under part 121 or part 135 may be in a position involving the regular evaluation of pilots. These individuals may renew their flight instructor's certificate under paragraph (a)(2)(ii) if the authorized FAA Flight Standards Inspector is acquainted with the duties and responsibilities of the applicant's position and the applicant has satisfactory knowledge of current pilot training, certification, and standards.

Paragraph (b)(1) has been revised to state the general rule that a current flight instructor certificate will be renewed for an additional 24 months from the month the person accomplishes any of the renewal requirements of paragraph (a). This provision allows a flight instructor to renew his or her flight instructor certificate at any time. The FAA notes that if renewal is accomplished through the presentation of a graduation certificate from an FIRC under paragraph (a)(2)(iii), the new expiration date will be calculated from the date the graduation certificate is presented to the Flight Standards Inspector rather than the date the FIRC is completed.

Paragraph (b)(2) allows a person who accomplishes any of the renewal requirements of paragraph (a) in the 3 calendar months preceding the expiration month of the person's current flight instructor certificate to renew their certificate for an additional 24 months from the month of expiration of the current flight instructor certificate. However, as previously noted, if renewal is accomplished under paragraph (b)(2) through the presentation of a graduation certificate from an FIRC, that course must have been completed within the 3 calendar months preceding the expiration month of the current flight instructor certificate. For example, if a person whose current flight instructor certificate expires on May 31, 1998, seeks to renew his or her certificate through presentation of a graduation certificate from an FIRC and obtain a new expiration date of May 31, 2000, that person must complete the FIRC and present the graduation certificate to the Flight Standards Inspector on or after February 1, 1998. The 3-calendar-month window is computed from the first day of the expiration month rather than the last day of the expiration month of the current flight instructor certificate. Therefore, if a person's flight instructor certificate expires on May 31, 1998, the 3-calendar-month window is computed from May 1, 1998.

Section 61.199 Expired flight instructor certificates and ratings. The FAA has revised § 61.199 to clarify that a flight instructor who holds an expired flight instructor certificate may exchange that certificate for a new flight instructor certificate with the same ratings by passing a practical test as required in § 61.183(h) for only one of the ratings listed on the expired certificate. Section 61.199 previously did not require a flight instructor who held an expired flight instructor certificate to pass a practical test for each rating listed on that certificate and the FAA did not intend to impose such a requirement when it revised that section.

Part 141

Section 141.35 Chief instructor qualifications. The FAA has revised § 141.35 to require that a chief instructor for a course of training leading to the issuance of a recreational pilot certificate meet the requirements of § 141.35(b). This provision was inadvertently omitted from the final rule. Without this revision, those chief instructors would be required to meet the more demanding requirements of § 141.35(d).

Section 141.36 Assistant chief instructor qualifications. Section 141.36 has been revised to require that assistant chief instructors for a course leading to the issuance of a recreational pilot certificate meet the requirements of § 141.36(b), rather than the more demanding requirements of § 141.36(d).

Appendix B to Part 141—Private Pilot Certification Course and Appendix D to Part 141—Commercial Pilot

Certification Course. For the reasons previously discussed in the preamble to §§ 61.109 and 61.129, paragraph 4(b)(6) of appendix B to part 141 and paragraph 4(b)(6) of appendix D to part 141 have been revised to include the phrase ''with a certificated flight instructor'' when requiring an applicant to accomplish training flights in a glider. In addition, paragraph 4(b)(8) of appendix B has been revised to clarify that the five flights an applicant for a private pilot certificate with a balloon class rating must accomplish are ''training flights.'' The word ''training'' was inadvertently omitted from the final rule.

Good Cause Justification for Immediate Adoption

This amendment makes minor revisions to clarify the language in parts 61 and 141 and includes certain provisions omitted from a previous rulemaking action. In addition, the amendment would impose no additional burden on the public. Therefore, the FAA finds that notice and opportunity for public comment before adopting this amendment are unnecessary.

Regulatory Evaluation

The FAA has determined that this regulation imposes no additional burden on any person. Accordingly, it has been determined that the action (1) is not significant under Executive Order 12866 and (2) is not a significant rule under Department of Transportation Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. No cost impact is expected to result from this amendment and, therefore, a full regulatory evaluation is not required. In addition, the FAA certifies that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 141

Airmen, Aviation safety, Educational facilities, Reporting and recordkeeping requirements, Schools.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 61 and 141 of Title 14, Code of Federal Regulations (14 CFR part 61 and part 141) as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Section 61.2 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 61.2 Certification of foreign pilots, flight instructors, and ground instructors.

(a) Except as provided for in paragraph (b) of this section, an airman certificate issued under this part (other than under § 61.75) may not be issued to a person who is not a citizen of the United States or a resident alien of the United States unless that person passes the appropriate practical test within the United States.

(b) A person who is not a citizen of the United States or a resident alien of the United States may be issued an airman certificate, and the practical test for that certificate may be administered outside the United States when—

* * * * *

3. Section 61.31 is amended by revising the paragraph (h) heading and the introductory text of paragraph (i)(1) to read as follows:

§ 61.31 Type rating requirements, additional training, and authorization requirements.

* * * * *

(h) *Additional aircraft type-specific training.* * * *

* * * * *

(i) *Additional training required for operating tailwheel airplanes.* (1) Except as provided in paragraph (i)(2) of this section, no person may act as pilot in command of a tailwheel airplane unless that person has received and logged flight training from an authorized instructor in a tailwheel airplane and received an endorsement in the person's logbook from an authorized instructor who found the person proficient in the operation of a tailwheel airplane. The flight training must include at least the following maneuvers and procedures:

* * * * *

4. Section 61.35 is amended by revising paragraph (a)(1) to read as follows:

§ 61.35 Knowledge test: Prerequisites and passing grades.

(a) * * *

(1) Received an endorsement, if required by this part, from an authorized instructor certifying that the applicant accomplished the appropriate ground-training or a home-study course required by this part for the certificate or rating sought and is prepared for the knowledge test; and

* * * * *

5. Section 61.39 is amended by revising the introductory text of paragraph (a)(6) to read as follows:

§ 61.39 Prerequisites for practical tests.

(a) * * *

(6) Have an endorsement, if required by this part, in the applicant's logbook or training record that has been signed by an authorized instructor who certifies that the applicant—

* * * * *

6. Section 61.45 is amended by revising paragraph (b) to read as follows:

§ 61.45 Practical tests: Required aircraft and equipment.

* * * * *

(b) *Required equipment (other than controls).* (1) Except as provided in paragraph (b)(2) of this section, an aircraft used for a practical test must have—

(i) The equipment for each area of operation required for the practical test;

(ii) No prescribed operating limitations that prohibit its use in any of the areas of operation required for the practical test;

(iii) Except as provided in paragraph (e) of this section, at least two pilot stations with adequate visibility for each person to operate the aircraft safely; and

(iv) Cockpit and outside visibility adequate to evaluate the performance of the applicant when an additional jump seat is provided for the examiner.

(2) An applicant for a certificate or rating may use an aircraft with operating characteristics that preclude the applicant from performing all of the tasks required for the practical test. However, the applicant's certificate or rating, as appropriate, will be issued with an appropriate limitation.

* * * * *

7. Section 61.51 is amended by revising paragraphs (d) and (e)(1)(i), (ii) and (e)(4)(i) and by adding paragraph (e)(1)(iii) to read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(d) *Logging of solo flight time.* Except for a student pilot performing the duties of pilot in command of an airship requiring more than one pilot flight crewmember, a pilot may log as solo flight time only that flight time when the pilot is the sole occupant of the aircraft.

(e) * * *

(1) * * *

(i) Is the sole manipulator of the controls of an aircraft for which the pilot is rated;

(ii) Is the sole occupant of the aircraft; or

(iii) Except for a recreational pilot, is acting as pilot in command of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted.

* * * * *

(4) * * *

(i) Is the sole occupant of the aircraft or is performing the duties of pilot of command of an airship requiring more than one pilot flight crewmember;

* * * * *

8. Section 61.56 is amended by revising the introductory text of paragraph (c), redesignating paragraph (g) as paragraph (h), redesignating paragraph (h) as paragraph (i) and revising it, and adding paragraph (g) to read as follows:

§ 61.56 Flight review.

* * * * *

(c) Except as provided in paragraphs (d), (e), and (g) of this section, no person may act as pilot in command of an aircraft unless, since the beginning of the 24th calendar month before the month in which that pilot acts as pilot in command, that person has—

* * * * *

(g) A student pilot need not accomplish the flight review required by this section provided the student pilot is undergoing training for a certificate and has a current solo flight endorsement as required under § 61.87 of this part.

* * * * *

(i) A flight simulator or flight training device may be used to meet the flight review requirements of this section subject to the following conditions:

(1) The flight simulator or flight training device must be used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(2) Unless the flight review is undertaken in a flight simulator that is approved for landings, the applicant must meet the takeoff and landing requirements of § 61.57(a) or § 61.57(b) of this part.

(3) The flight simulator or flight training device used must represent an aircraft or set of aircraft for which the pilot is rated.

9. Section 61.63 is amended by revising paragraphs (d)(5), (f)(10), and (g)(10) to read as follows:

§ 61.63 Additional aircraft ratings (other than on an airline transport pilot certificate).

* * * * *

(d) * * *

(5) Must perform the practical test in actual or simulated instrument conditions, unless the aircraft's type certificate makes the aircraft incapable of operating under instrument flight rules. If the practical test cannot be accomplished for this reason, the person may obtain a type rating limited to ''VFR only.'' The ''VFR only'' limitation may be removed for that aircraft type when the person passes the practical test in actual or simulated instrument conditions. When an instrument rating is issued to a person who holds one or more type ratings, the type ratings on the amended pilot certificate shall bear the ''VFR only'' limitation for each aircraft type rating for which the person has not demonstrated instrument competency;

* * * * *

(f) * * *

(10) A applicant meeting only the requirements of paragraph (f)(9)(ii) of this section will be issued an additional rating with a limitation.

* * * * *

(g) * * *

(10) An applicant meeting only the requirements of paragraph (g)(9)(ii) of this section will be issued an additional rating with a limitation.

* * * * *

10. Section 61.87 is amended by revising paragraph (a) to read as follows:

§ 61.87 Solo requirements for student pilots.

(a) *General.* A student pilot may not operate an aircraft in solo flight unless that student has met the requirements of this section. The term ''solo flight'' as used in this subpart means that flight time during which a student pilot is the sole occupant of the aircraft or that flight time during which the student performs the duties of a pilot in command of a gas balloon or an airship requiring more than one pilot flight crewmember.

* * * * *

11. Section 61.109 is amended by revising paragraphs (f), (g)(2), (g)(4), the introductory text of paragraph (h) and paragraphs (h)(1)(i) and (ii) to read as follows:

§ 61.109 Aeronautical experience.

* * * * *

(f) *For a glider category rating.* (1) If the applicant for a private pilot certificate with a glider category rating has not logged at least 40 hours of flight time as a pilot in a heavier-than-air aircraft, the applicant must log at least 10 hours of flight time in a glider in the areas of operation listed in § 61.107(b)(6) of this part, and that flight time must include at least—

(i) 20 flights in a glider in the areas of operations listed in § 61.107(b)(6) of this part, including at least 3 training flights in a glider with an authorized instructor in preparation for the practical test that must have been performed within the 60-day period preceding the date of the test; and

(ii) 2 hours of solo flight time in a glider in the areas of operation listed in § 61.107(b)(6) of this part, with not less than 10 launches and landings being performed.

(2) If the applicant has logged at least 40 hours of flight time in a heavier-than-air aircraft, the applicant must log at least 3 hours of flight time in a glider in the areas of operation listed in § 61.107(b)(6) of this part, and that flight time must include at least—

(i) 10 solo flights in a glider in the areas of operation listed in § 61.107(b)(6) of this part; and

(ii) 3 training flights in a glider with an authorized instructor in preparation for the practical test that must have been performed within the 60-day period preceding the date of the test.

(g) * * *

(2) 3 hours of flight training in an airship on the control and maneuvering of an airship solely by reference to instruments, including straight and level flight, constant airspeed climbs and descents, turns to a heading, recovery from unusual flight attitudes, radio communications, and the use of navigation systems/facilities and radar services appropriate to instrument flight;

* * * * *

(4) 5 hours performing the duties of pilot in command in an airship with an authorized instructor.

(h) *For a balloon rating.* A person who applies for a private pilot certificate with a lighter-than-air category and balloon class rating must log at least 10 hours of flight training that includes at least six training flights with an authorized instructor in the areas of operation listed in § 61.107(b)(8) of this part, that includes—

(1) * * *

(i) At least one training flight with an authorized instructor within 60 days prior to application for the rating on the areas of operation for a gas balloon;

(ii) At least one flight performing the duties of pilot in command in a gas balloon with an authorized instructor; and

* * * * *

12. Section 61.129 is amended by revising paragraphs (b)(4) introductory text, (f), (g)(5) introductory text, and (h)(4) introductory text, (h)(4)(i)(A), (B), and (h)(4)(ii)(A) to read as follows:

§ 61.129 Aeronautical experience.

* * * * *

(b) * * *

(4) 10 hours of solo flight time in a multiengine airplane or 10 hours of flight time performing the duties of pilot in command in a multiengine airplane with an authorized instructor (either of which may be credited towards the flight time requirement in paragraph (b)(2) of this section), on the areas of operation listed in § 61.127(b)(2) of this part that includes at least—

* * * * *

(f) *For a glider rating.* A person who applies for a commercial pilot certificate with a glider category rating must log at least—

(1) 25 hours of flight time as a pilot in a glider and that flight time must include at least 100 flights in a glider as pilot in command, including at least—

(i) 3 hours of flight training in a glider or 10 training flights in a glider with an authorized instructor on the areas of operation listed in § 61.127(b)(6) of this part, including at least 3 training flights in a glider with an authorized instructor in preparation for the practical test within the 60-day period preceding the date of the test; and

(ii) 2 hours of solo flight that include not less than 10 solo flights in a glider on the areas of operation listed in § 61.127(b)(6) of this part; or

(2) 200 hours of flight time as a pilot in heavier-than-air aircraft and at least 20 flights in a glider as pilot in command, including at least—

(i) 3 hours of flight training in a glider or 10 training flights in a glider with an authorized instructor on the areas of operation listed in § 61.127(b)(6) of this part including at least 3 training flights in a glider with an authorized instructor in preparation for the practical test within the 60-day period preceding the date of the test; and

(ii) 5 solo flights in a glider on the areas of operation listed in § 61.127(b)(6) of this part.

(g) * * *

(5) 10 hours of flight training performing the duties of pilot in command with an authorized instructor on the areas of operation listed in § 61.127(b)(7) of this part, which includes at least—

* * * * *

(h) * * *

(4) 10 hours of flight training that includes at least 10 training flights with an authorized instructor in balloons on the areas of operation listed in § 61.127(b)(8) of this part, which consists of at least—

(i) * * *

(A) 2 training flights of 2 hours each with an authorized instructor in a gas balloon on the areas of operation appropriate to a gas balloon within 60 days prior to application for the rating;

(B) 2 flights performing the duties of pilot in command in a gas balloon with an authorized instructor on the appropriate areas of operation; and

* * * * *

(ii) * * *

(A) 2 training flights of 1 hour each with an authorized instructor in a balloon with an airborne heater on the areas of operation appropriate to a balloon with an airborne heater within 60 days prior to application for the rating;

* * * * *

13. Section 61.157 is amended by revising paragraphs (b)(3), (f)(2), (g) introductory text, (g)(8), (h) introductory text, (i) introductory text, and (i)(8) to read as follows:

§ 61.157 Flight proficiency.

* * * * *

(b) * * *

(3) Must perform the practical test in actual or simulated instrument conditions, unless the aircraft's type certificate makes the aircraft incapable of operating under instrument flight rules. If the practical test cannot be accomplished for this reason, the person may obtain a type rating limited to ''VFR only.'' The ''VFR only'' limitation may be removed for that aircraft type when the person passes the practical test in actual or simulated instrument conditions.

* * * * *

(f) * * *

(2) The checks specified in paragraph (f)(1) of this section must be conducted by an authorized designated pilot examiner or FAA aviation safety inspector.

(g) *Use of a flight simulator or flight training device for an airplane rating.* If a flight simulator or flight training device is used for accomplishing all of the training and the required practical test for an airplane transport pilot certificate with an airplane category, class, and type rating, if applicable, the applicant, flight simulator, and flight training device are subject to the following requirements:

* * * * *

(8) An applicant meeting only the requirements of paragraph (g)(7)(ii) of this section will be issued an additional rating or an airline transport pilot certificate with an additional rating, as applicable, with a limitation. The limitation shall state: ''This certificate is subject to pilot-in-command limitations for the additional rating.''

* * * * *

(h) *Use of a flight simulator or flight training device for a helicopter rating.* If a flight simulator or flight training device is used for accomplishing all of the training and the required practical test for an airline transport pilot certificate with a helicopter class rating and type rating, if applicable, the applicant, flight simulator, and flight training device are subject to the following requirements:

* * * * *

(8) An applicant meeting only the requirements of paragraph (h)(7)(ii) of this section will be issued an additional rating or an airline transport pilot certificate with an additional rating, as applicable, with a limitation. The limitation shall state: ''This certificate is subject to pilot-in-command limitations for the additional rating.''

* * * * *

(i) *Use of a flight simulator or flight training device for a powered-lift rating.* If a flight simulator or flight training device is used for accomplishing all of the training and the required practical test for an airline transport pilot certificate with a powered-lift category rating and type rating, if applicable, the applicant, flight simulator, and flight training device are subject to the following requirements:

* * * * *

(8) An applicant meeting only the requirements of paragraph (i)(7)(ii) of this section will be issued an additional rating or an airline transport pilot certificate with an additional rating, as applicable, with a limitation. The limitation shall state: ''This certificate is subject to pilot-in-command limitations for the additional rating.''

* * * * *

14. Section 61.159 is amended by revising the introductory text of paragraph (a)(4) to read as follows:

§ 61.159 Aeronautical experience: Airplane category rating.

(a) * * *

(4) 250 hours of flight time in an airplane as a pilot in command, or as second in command performing the duties of pilot in command while under the supervision of a pilot in command, or any combination thereof, which includes at least—

* * * * *

15. Section 61.161 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 61.161 Aeronautical experience: Rotorcraft category and helicopter class rating.

(a) * * *

(3) 200 hours of flight time in helicopters, which includes at least 75 hours as a pilot in command, or as second in command performing the duties of a pilot in command under the supervision of a pilot in command, or any combination thereof; and

(4) 75 hours of instrument flight time in actual or simulated instrument meteorological conditions, of which at least 50 hours are obtained in flight with at least 25 hours in helicopters as a pilot in command, or as second in command performing the duties of a pilot in command under the supervision of a pilot in command, or any combination thereof.

* * * * *

16. Section 61.163 is amended by revising the introductory text of paragraph (a)(3) to read as follows:

§ 61.163 Aeronautical experience: Powered-lift category rating.

(a) * * *

(3) 250 hours in a powered-lift as a pilot in command, or as a second in command performing the duties of a pilot in command under the supervision of a pilot in command, or any combination thereof, which includes at least—

* * * * *

17. Section 61.197 is revised to read as follows:

§ 61.197 Renewal of flight instructor certificates.

(a) A person who holds a flight instructor certificate that has not expired may renew that certificate by—

(1) Passing a practical test for—

(i) One of the ratings listed on the current flight instructor certificate; or

(ii) An additional flight instructor rating; or

(2) Presenting to an authorized FAA Flight Standards Inspector—

(i) A record of training students showing that, during the preceding 24 calendar months, the flight instructor has endorsed at least five students for a practical test for a certificate or rating and at least 80 percent of those students passed that test on the first attempt;

(ii) A record showing that, within the preceding 24 calendar months, the flight instructor has served as a company check pilot, chief flight instructor, company check airman, or flight instructor in a part 121 or part 135 operation, or in a position involving the regular evaluation of pilots; or

(iii) A graduation certificate showing that, within the preceding 3 calendar months, the person has successfully completed an approved flight instructor refresher course consisting of ground training or flight training, or a combination of both.

(b) The expiration month of a renewed flight instructor certificate shall be 24 calendar months from—

(1) The month the renewal requirements of paragraph (a) of this section are accomplished; or

(2) The month of expiration of the current flight instructor certificate provided—

(i) The renewal requirements of paragraph (a) of this section are accomplished within the 3 calendar months preceding the expiration month of the current flight instructor certificate, and

(ii) If the renewal is accomplished under paragraph (a)(2)(iii) of this section, the approved flight instructor refresher course must be completed within the 3 calendar months preceding the expiration month of the current flight instructor certificate.

(c) The practical test required by paragraph (a)(1) of this section may be accomplished in a flight simulator or flight training device if the test is accomplished pursuant to an approved course conducted by a training center certificated under part 142 of this chapter.

18. Section 61.199 is amended by revising paragraph (a) to read as follows:

§ 61.199 Expired flight instructor certificates and ratings.

(a) *Flight instructor certificates.* The holder of an expired flight instructor certificate may exchange that certificate for a new certificate with the same ratings by passing a practical test as prescribed in § 61.183(h) of this part for one of the ratings listed on the expired flight instructor certificate.

* * * * *

PART 141—PILOT SCHOOLS

19. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

20. Section 141.35 is amended by revising the introductory text of paragraphs (b) and (d) to read as follows:

§ 141.35 Chief instructor qualifications.

* * * * *

(b) For a course of training leading to the issuance of a recreational or private pilot certificate or rating, a chief instructor must have:

* * * * *

(d) For a course of training other than one leading to the issuance of a recreational or private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, a chief instructor must have:

* * * * *

21. Section 141.36 is amended by revising the introductory text of paragraphs (b) and (d) to read as follows:

§ 141.36 Assistant chief instructor qualifications.

* * * * *

(b) For a course of training leading to the issuance of a recreational or private pilot certificate or rating, an assistant chief instructor must have:

* * * * *

(d) For a course of training other than one leading to the issuance of a recreational or private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, an assistant chief instructor must have:

* * * * *

22. Appendix B to part 141 is amended by revising paragraphs (b)(6)(i) and (ii) and the introductory text of paragraph (b)(8) of section No. 4 and paragraphs (b) introductory text, (g), and (h) of section No. 5 to read as follows:

Appendix B to Part 141—Private Pilot Certification Course

* * * * *

4. * * *

(b) * * *

(6) * * *

(i) Five training flights in a glider with a certificated flight instructor on the launch/tow procedures approved for the course and on the appropriate approved areas of operation listed in paragraph (d)(6) of this section; and

(ii) Three training flights in a glider with a certificated flight instructor in preparation for the practical test within 60 days preceding the date of the test.

* * * * *

(8) *For a lighter-than-air balloon course:* 8 hours of flight training, including at least five training flights, from a commercial pilot with a balloon rating on the approved areas of operation in paragraph (d)(8) of this section, that includes—

* * * * *

5. * * *

(b) *For an airplane multiengine course:* 5 hours of flight training in a multiengine airplane performing the duties of a pilot in command while under the supervision of a certificated flight instructor. The training must consist of the approved areas of operation in paragraph (d)(2) of section No. 4 of this appendix, and include at least—

* * * * *

(g) *For a lighter-than-air airship course:* 5 hours of flight training in an airship performing the duties of pilot in command while under the supervision of a commercial pilot with an airship rating. The training must consist of the approved areas of operation in paragraph (d)(7) of section No. 4 of this appendix.

(h) *For a lighter-than-air balloon course:* Two solo flights in a balloon with an airborne heater if the course involves a balloon with an airborne heater or, if the course involves a gas balloon, at least two flights in a gas balloon performing the duties of pilot in command while under the supervision of a commercial pilot with a balloon rating. The training must consist of the approved areas of operation in paragraph (d)(8) of section No. 4 of this appendix, in the kind of balloon for which the course applies.

* * * * *

23. Appendix D to part 141 is amended by revising paragraphs (b)(6)(i) and (ii) of section No. 4 and paragraphs (b) introductory text, and (g) introductory text of section No. 5 to read as follows:

Appendix D to Part 141—Commercial Pilot Certification Course

* * * * *

4. * * *

(b) * * *

(6) * * *

(i) Five training flights in a glider with a certificated flight instructor on the launch/tow procedures approved for the course and on the appropriate approved areas of operation listed in paragraph (d)(6) of this section; and

(ii) Three training flights in a glider with a certificated flight instructor in preparation for the practical test within 60 days preceding the date of the test.

* * * * *

5. * * *

(b) *For an airplane multiengine course:* 10 hours of flight training in a multiengine airplane performing the duties of pilot in command while under the supervision of a certificated flight instructor. The training must consist of the approved areas of operation in paragraph (d)(2) of section No. 4 of this appendix, and include at least—

* * * * *

(g) *For a lighter-than-air airship course:* 10 hours of flight training in an airship performing the duties of pilot in command while under the supervision of a commercial pilot with an airship rating. The training must consist of the approved areas of operation in paragraph (d)(7) of section No. 4 of this appendix and include at least—

* * * * *

Issued in Washington, D.C., on April 20, 1998.

Jane F. Garvey,

Administrator.

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federal register

Thursday
April 23, 1998

Part V

The President

Proclamation 7085—National Volunteer Week, 1998

Federal Register
Vol. 63, No. 78
Thursday, April 23, 1998

Presidential Documents

Title 3—

The President

Proclamation 7085 of April 21, 1998

National Volunteer Week, 1998

By the President of the United States of America

A Proclamation

Volunteers enrich our lives every day with their generosity and compassion. In recent months, we have witnessed the extraordinary response of America's volunteers to the plight of those who have suffered from the severe weather plaguing much of our country. In communities devastated by mud slides, ice storms, flash floods, or tornadoes, volunteers have opened their hearts and homes to offer shelter, hot meals, building materials, and—most important—the hope and support that people desperately need to begin putting their lives back together. This spirit of citizen service has deep and strong roots in America's past, and by nurturing this spirit we can help to ensure a better future for our Nation.

Just one year ago, at the Presidents' Summit for America's Future in Philadelphia, I called on all Americans to dedicate their volunteer efforts to the well-being of our children and to make the social and educational development of our youngest citizens a national priority. Thousands of individuals and organizations across America pledged their support for this effort; and today, we can be proud that more than 93 million Americans are regularly volunteering to help hundreds of thousands of children in need, serving as leaders, mentors, tutors, and companions. Through their hard work and generous response, this growing army of volunteers is making our streets safer, our schools better, our children healthier, and our future brighter.

We must not only preserve this remarkable spirit of citizen service, but also expand it. By emulating our Nation's many unsung heroes—from the 12-year-old in California who distributed dolls to disadvantaged children, to the businessman in New York who created one of our country's first school-to-work programs—we must strive together to build a society free from crime, poverty, illiteracy, and hopelessness. And by making citizen service the shared experience of all Americans, we can build a sense of common responsibility for our future.

This week and throughout the year, let us salute all those who devote their time and talents to the betterment of our communities and the well-being of our children. Let us honor the work of the thousands of voluntary, civic, religious, school, and neighborhood groups across our Nation who do so much to serve their fellow Americans and improve the quality of life for us all. Let us also recognize and support the efforts of the Corporation for National Service and its programs—AmeriCorps, Learn and Serve America, and the National Senior Service Corps—as well as all the organizations, communities, and individuals who have responded to the Presidents' Summit call to action and are following through on the work begun there.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 19 through April 25, 1998, as National Volunteer Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities to express appreciation to the countless volunteers among us for their commitment to service and to encourage the spirit of volunteerism in our families and communities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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