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Contents

Federal Register

Vol. 63, No. 102

Thursday, May 28, 1998

Agricultural Marketing Service
RULES
Onions (sweet) grown in—
Washington and Oregon, 29089–29091

Agriculture Department
See Agricultural Marketing Service
See Farm Service Agency
See Food and Nutrition Service
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Army Department
NOTICES
Meetings:
Science Board, 29190

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Native Hawaiian entities; governance and social and economic development projects, 29221–29229

Coast Guard
RULES
Ports and waterways safety:
Oceanside, CA; safety zone, 29136–29137
NOTICES
Prevention through people strategic plan; human element in marine accidents; response to comments, 29291–29296

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 29177–29178 ,

Commodity Futures Trading Commission
NOTICES
Meetings:
Financial Products Advisory Committee, 29182

Comptroller of the Currency
RULES
Municipal securities dealers; reporting and recordkeeping requirements, 29092–29094

Consumer Product Safety Commission
NOTICES
Reports and guidance documents; availability, etc.:
Hazardous liquid chemicals in children's products, 29182–29183

Copyright Office, Library of Congress
RULES
Copyright office and procedures:
Special services; fees, 29137–29139

Customs Service
RULES
Financial and accounting procedures:
Automated clearinghouse credit, 29122–29126
Merchandise, special classes:
Nonroad engines, imported; emissions standards, 29121–29122
Recordkeeping, inspection, search, and seizure:
Prior disclosure of previous entry of merchandise into U.S. by fraud, gross negligence or negligence; formal investigation commencement, 29126–29133

Defense Department
See Army Department
NOTICES
Arms sales notification; transmittal letter, etc., 29183–29187
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 29187–29188
Privacy Act:
Systems of records, 29188–29190

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Dissemination and utilization project and rehabilitation research and training center; correction, 29190–29191

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Tenaska Gas Co. et al., 29191
TransCanada Gas Services Inc., 29191–29192

Environmental Protection Agency
NOTICES
Clean Water Act:
Effluent guidelines plan (biennial), 29203–29213
Meetings:
Environmental Financial Advisory Board, 29213
Superfund; response and remedial actions, proposed settlements, etc.:
Herriman Residential Soils Removal Action Site, UT, 29213

Executive Office of the President
See Presidential Documents

Farm Service Agency
RULES
Program regulations:
Single family housing; direct Section 502 and 504 programs; reengineering and reinvention, 29091–29092

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 29096–29098
Dornier, 29098–29099
Glaser-Dirks Flugzeugbau GmbH, 29099–29102
Pilatus Aircraft Ltd., 29102–29103
Saab, 29094–29096
Class E airspace, 29103–29104
PROPOSED RULES
Airworthiness directives:
Airbus, 29146–29148, 29153–29155
Boeing, 29151–29153
Dornier, 29148–29151, 29144–29145
Fokker, 29157–29159
McDonnell Douglas, 29155–29157
Pilatus Britten-Norman Ltd., 29159–29161
Class E airspace, 29161–29168
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 29296–29297
Passenger facility charges; applications, etc.:
San Diego International-Lindbergh Field, CA, 29297

Federal Communications Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 29213–29217
Submission for OMB review; comment request, 29217–29218
Reporting and recordkeeping requirements, 29218–29219

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 29219

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Cox, H. Bruce, 29201–29202
Georgia Power Co.; correction, 29301
Hydroelectric applications, 29202
Applications, hearings, determinations, etc.:
American Electric Power Service Corp. et al.; correction, 29301
ANR Pipeline Co., 29192–29193
Columbia Gas Transmission Corp., 29193–29194
Enron Energy Services, Inc., et al., 29194
Kern River Gas Transmission Co., 29194
Koch Gateway Pipeline Co., 29194–29195
Natural Gas Pipeline Co. of America, 29195–29196
NorAm Gas Transmission Co., 29196
Northern Border Pipeline Co., 29196–29197
Northern Natural Gas Co., 29197
Northwest Alaskan Pipeline Co., 29197
Overthrust Pipeline Co., 29197
Peoples Gas Light & Coke Co., 29198
Public Utility District No. 1 of Chelan County, WA, 29198–29199
Transcontinental Gas Pipe Line Corp., 29199–29200
Williams Gas Pipelines Central, Inc., 29201
Williston Basin Interstate Pipeline Co., 29201

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Cargo U.K., Inc., et al., 29219–29220

Federal Railroad Administration
NOTICES
Safety advisories, bulletins, and directives:
Locomotive engineers; visual acuity qualification standards, 29297–29300

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 29220
Formations, acquisitions, and mergers, 29220–29221
Permissible nonbanking activities, 29221

Fish and Wildlife Service
NOTICES
Reporting and recordkeeping requirements, 29246

Food and Drug Administration
RULES
Food additives:
Monester of alpha-hydro-omega-hydroxy-poly(oxyethylene), etc., 29133–29135
Polymers—
5,7-Bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, etc., 29135–29136
PROPOSED RULES
Medical devices:
Hematology and pathology devices—
Over-the counter test sample collection systems for drugs of abuse testing; reclassification and designation as restricted devices; hearing, 29174
NOTICES
Agency information collection activities:
Proposed collection; comment request, 29229–29233
Animal drugs, feeds, and related products:
New drug applications—
Texas Vitamin Co. et al.; approval withdrawn, 29233–29234
Meetings:
Pulmonary-Allergy Drugs Advisory Committee et al., 29234

Food and Nutrition Service
PROPOSED RULES
Food stamp program:
Food stamp recipient claims; establishment and collection standards, 29304–29332

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Louisiana
North American Shipbuilding, Inc.; main shipbuilding facility, 29178–29179
Pennsylvania, 29179

Forest Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 29177
Environmental statements; notice of intent:
Umpqua National Forest, OR, 29177

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 29187–29188

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Mississippi Delta; Healthy Start Initiative-Phase II, 29234–29235

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 29240–29244
Submission for OMB review; comment request, 29245
Reporting and recordkeeping requirements, 29245

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office
NOTICES
Meetings:
Alaska Land Managers Forum, 29245–29246

International Trade Administration
NOTICES
Antidumping:
Cut-to-length carbon steel plate from—
Canada, 29179–29181

International Trade Commission
NOTICES
Import investigations:
Emulsion styrene-butadiene rubber from—
Brazil et al., 29250
Extruded rubber thread from—
Indonesia, 29250–29251
Stainless steel plate from—
Belgium et al., 29251

Land Management Bureau
NOTICES
Meetings:
National Historic Oregon Trail Interpretive Center Advisory Board, 29246
Public land orders:
Wyoming, 29246–29247
Realty actions; sales, leases, etc.:
New Mexico, 29247
Wyoming; correction, 29247–29248

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Gulf of Mexico OCS—
Lease sales, 29248–29249

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 29187–29188

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Combined Arts Advisory Panel, 29252

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
School bus pedestrian safety devices; conspicuity requirements for stop signal arms, 29139–29143

National Institutes of Health
NOTICES
Meetings:
National Eye Institute, 29235
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 29235
National Institute on Alcohol Abuse and Alcoholism, 29235
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Trillium Neuroscience Inc., 29235–29236

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
New England Fishery Management Council, 29181
Permits:
Marine mammals, 29181–29182

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Carson National Forest, NM; inventory from Rio Arriba and Taos Counties, NM, 29249–29250

National Science Foundation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 29252
Meetings:
Mathematical Sciences Special Emphasis Panel, 29252
Polar Programs Advisory Committee, 29253

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 29253

Northeast Dairy Compact Commission
NOTICES
Meetings, 29253

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 29253–29254
Environmental statements; availability, etc.:
Detroit Edison Co., 29256–29257
Transnuclear, Inc., 29257–29258
Applications, hearings, determinations, etc.:
Detroit Edison Co., 29254–29256

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Enrichment Oversight Committee; establishment (EO 13085), 29335–29337

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
National toxicology program:
Toxicology and carcinogenesis studies—
Bixin, etc., 29236–29238

Rural Business-Cooperative Service
RULES
Program regulations:
Single family housing; direct Section 502 and 504 programs; reengineering and reinvention, 29091–29092

Rural Housing Service
RULES
Program regulations:
Single family housing; direct Section 502 and 504 programs; reengineering and reinvention, 29091–29092

Rural Utilities Service
RULES
Program regulations:
Single family housing; direct Section 502 and 504 programs; reengineering and reinvention, 29091–29092

Securities and Exchange Commission
RULES
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Filer Manual—
Update and incorporation by reference, 29104–29106
Securities:
Shareholders proposals, 29106–29121
PROPOSED RULES
Securities:
Exchanges and alternative trading systems
Correction, 29301
Seed capital exemption, 29168–29174
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 29270–29274
Chicago Board Options Exchange, Inc., 29274–29276
Chicago Stock Exchange, Inc., 29276–29282
Municipal Securities Rulemaking Board, 29282–29285
Pacific Exchange, Inc., 29286–29287
Philadelphia Stock Exchange, Inc., 29287–29291
Philadelphia Stock Exchange, Inc.; correction, 29301
Stock Clearing Corp. of Philadelphia; correction, 29301
Applications, hearings, determinations, etc.:
Boston 1784 Funds et al., 29258–29260
Chase Global Co-Invest Partners 1997, L.P., et al., 29260–29264
U.S. Global Leaders Variable Insurance Trust et al., 29264–29270

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Faculty development program, 29238–29240

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Oklahoma, 29174–29176

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Customs Service

Separate Parts In This Issue

Part II
Department of Agriculture, 29304–29332

Part III
The President, 29335–29337

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

13085.....29335

7 CFR

956.....29089
1806.....29091
1910.....29091
1922.....29091
1944.....29091
1951.....29091
1955.....29091
1956.....29091
1965.....29091
3550.....29091

Proposed Rules:

272.....29304
273.....29304

12 CFR

10.....29092

14 CFR

39 (6 documents) 29094, 29096, 29098, 29099, 29100, 29102
71.....29103

Proposed Rules:

39 (9 documents) 29144, 29146, 29148, 19150, 19151, 29153, 29155, 29157, 29159
71 (7 documents) 29161, 29162, 29163, 29164, 29165, 29166, 29167

17 CFR

232.....29104
240.....29106

Proposed Rules:

201.....29301
230.....29168
240.....29301
242.....29301
249.....29301

19 CFR

12.....29121
24.....29122
162.....29126
178.....29126

21 CFR

173.....29133
178.....29135

Proposed Rules:

809.....29174
864.....29174

30 CFR

Proposed Rules:

936.....29174

33 CFR

165.....29136

37 CFR

201.....29137
202.....29137
203.....29137
204.....29137
211.....29137

49 CFR

571.....29139

Rules and Regulations

Federal Register
Vol. 63, No. 102
Thursday, May 28, 1998

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. FV98–956–2 FR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Walla Walla Sweet Onion Committee (Committee) under Marketing Order No. 956 for the 1998–99 and subsequent fiscal periods from $0.19 to $0.21 per 50-pound bag or equivalent of onions handled. The Committee is responsible for local administration of the marketing order which regulates the handling of sweet onions grown in portions of Walla Walla County, Washington, and Umatilla County, Oregon. Authorization to assess Walla Walla sweet onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins June 1 and ends May 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: May 29, 1998.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 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, P.O. 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. 956 (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Walla Walla sweet onion 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 would be applicable to all assessable sweet onions beginning on June 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 1998–99 and subsequent fiscal periods from $0.19 to $0.21 per 50-pound bag or equivalent of Walla Walla sweet onions handled.

The 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 Committee consists of six producer members, three handler members and one public member, each of whom is 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 budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period 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 February 17, 1998, and unanimously recommended 1998–99 expenditures of $97,272. In a vote with six favoring, three opposing, and one abstaining, the Committee recommended an assessment rate of $0.21 per 50-pound bag or equivalent of Walla Walla sweet onions handled during the 1998–99 and subsequent fiscal periods. The members opposed believed that the assessment rate should be increased more than $0.02 per 50-pound bag or equivalent, so more funds could be earmarked for promotion and paid advertising. The public member abstained because of his desire to remain neutral on these issues. The Committee estimated that the 1998 sweet onion crop will approximate 463,200 50-pound bags or equivalents of onions. In comparison, the 1997–98 fiscal period budget was established at $126,682 with an estimated assessable sweet onion crop of 667,750 50-pound bags or equivalents. In an effort to partially offset the loss of assessment income due to the more conservative

1998 crop estimate, the Committee recommended the $0.02 increase.

In both the 1996 and 1997 seasons, the actual quantity of assessable sweet onions produced for the fresh market was less than the Committee had estimated for the purpose of establishing the respective budgets. Actual assessment income earned during the 1997–98 fiscal period was approximately $30,000 less than was estimated for the 1997–98 budget, and for the 1996–97 fiscal period, actual assessment income was approximately $26,000 less than was budgeted. For the 1998–99 fiscal period, the Committee made its 1998 assessable crop estimate based on a lower average yield per acre than was used during the past two seasons. Based on a reported 772 acres planted, the Committee is anticipating a 1998 harvest averaging 600 50-pound bags or equivalents per acre. Thus, the 1998–99 fiscal period budget is based on a crop estimate of 463,200 50-pound bags or equivalents of Walla Walla sweet onions.

After much discussion, the major expenditures recommended by the Committee for the 1998–99 fiscal period include $43,890 for administration, $10,000 for production research, $35,890 for market promotion including paid advertising, and $4,500 for marketing order compliance. Budgeted expenses for these items in the 1997–98 fiscal period were $41,700, $15,000, $51,000, and $9,000, respectively.

The Committee based its recommended assessment rate increase on the 1998 crop estimate and its estimate of 1998–99 fiscal period expenditures, including administrative costs and desired research and promotion projects. The Committee also took into consideration the impact an increase in the assessment rate would have on producers and handlers. The increased assessment rate should provide $97,272 in income which would be adequate to cover budgeted expenses. In the event the 1998 assessable sweet onion crop falls short of anticipated yields, the Committee estimates it will have approximately $25,000 in its operating reserve at the beginning of the 1998–99 fiscal period (June 1, 1998), which should be adequate to cover any assessment shortages. This amount is within the maximum permitted by the order of approximately two fiscal period's budgeted expenses (§ 956.44).

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 period 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 and are locally published. 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.

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, the 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 60 producers of Walla Walla sweet onions in the production area and approximately 35 handlers subject to regulation under the 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 Walla Walla sweet onion producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from $0.19 to $0.21 per 50-pound bag or equivalent of Walla Walla sweet onions handled. The Committee unanimously recommended 1998–99 expenditures of $97,272, and, with 6 members favoring, 3 members opposing and 1 member abstaining, recommended the $0.21 per 50-pound bag or equivalent assessment rate. This assessment rate is $0.02 higher than the 1997–98 rate. The Committee recommended an increased assessment rate to help offset the smaller projected crop of assessable sweet onions in 1998. The anticipated crop of 463,200 50-pound bags or equivalents is approximately 30 percent less than each of the 1996 and 1997 crops. The $0.21 rate should provide $97,272 in assessment income and be adequate to meet 1998–99 fiscal period expenses.

The Committee discussed alternatives to this rule, including alternative expenditure and assessment levels. The Committee discussed various alternative expenditure levels for promotion, production research, and marketing order compliance. Further, the Committee discussed various levels of assessment from the 1997–98 rate of $0.19 to as much as $0.25 per 50-pound bag or equivalent of sweet onions. Action was taken by the Committee on a motion to increase the assessment rate by $0.01. The vote failed to carry a majority, however, since a $0.01 increase would not have adequately funded desired expenditures. The members opposed believed that the assessment rate should be increased more than $0.02 per 50-pound bag or equivalent, so more funds could be dedicated to promotion and paid advertising. The public member abstained because of his desire to remain neutral on these issues.

The major expenditures recommended by the Committee for the 1998–99 fiscal period include $43,000 for administration, $10,000 for production research, $35,890 for market promotion including paid advertising, and $4,500 for marketing order compliance. Budgeted expenses for these items in the 1997–98 fiscal period were $41,700, $15,000, $51,000, and $9,000, respectively.

Recent price information indicates that producer prices for all sizes and grades of Walla Walla sweet onions for the 1998 shipping season may range between $4.50 and $12.00 per 50-pound bag or equivalent. Thus, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total producer revenue could range between 0.017 and 0.046 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 order. In addition, the Committee's meeting was widely publicized throughout the Walla Walla sweet onion industry and all interested persons were invited to attend the

meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 17, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion 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.

A proposed rule concerning this action was published in the **Federal Register** on April 8, 1998 (63 FR 17125). A copy of the proposed rule was also sent via facsimile to the administrative office of the Committee, which in turn notified Committee members and industry members. The proposal was also made available through the Internet by the Government Printing Office.

A 30-day comment period ending May 8, 1998, was provided to allow interested persons the opportunity to respond to the request for information and comments. 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: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the Committee's 1998–99 fiscal period begins June 1, 1998, and the order requires that the assessment rate apply to all assessable sweet onions handled during that fiscal period; (3) the 1998 sweet onion harvest is expected to begin in early June due to unseasonably warm temperatures experienced in early Spring; (4) handlers are aware of this action which was recommended by the Committee at a public meeting; and (5) a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 956

Sweet onions, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 956 is amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 956.202 is revised to read as follows:

§ 956.202 Assessment rate.

On and after June 1, 1998, an assessment rate of $0.21 per 50-pound bag or equivalent is established for Walla Walla Sweet Onions.

Dated: May 21, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–14017 Filed 5–27–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1806, 1910, 1922, 1944, 1951, 1955, 1956, 1965, and 3550

RIN 0575–AB99

Reengineering and Reinvention of the Direct Section 502 and 504 Single Family Housing (SFH) Programs; Reopening of Comment Period

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Reopening of comment period on interim final rule.

SUMMARY: The Rural Housing Service (RHS) is reopening the comment period on proposed revisions to the Agency's standards for modest housing in the direct Single Family Housing (SFH) program. The Agency published proposed changes to these standards in the **Federal Register** on April 8, 1996 (61 FR 15395), and subsequently published an interim final rule on November 22, 1996 (61 FR 59762). This current action is being taken to solicit additional comments from the public. The intended effect is to ensure that the Agency has regulations in effect which best define modest housing, and provide homeownership opportunities to the maximum number of families within allocated resources.

DATES: Written comments must be received June 29, 1998.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue, SW, Washington, D.C. 20250–0742. Comments may be submitted via the Internet by addressing them to ''comments@rus.usda.gov'' and must contain the word ''modest'' in the subject. All written comments will be available for public inspection at 300 E Street, SW, Third Floor, Washington, D.C. 20546 during normal working hours.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Special Assistant to the Administrator, RHS, U.S. Department of Agriculture, Room 5017–S, Stop 0701, 1400 Independence Avenue, SW, Washington, D.C. 20250–0701, telephone (202) 720–1628.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1996, the Agency published a proposed rule in the **Federal Register** (61 FR 15395) to reinvent and reengineer the direct SFH programs. An interim final rule was subsequently published in the **Federal Register** (61 FR 59762) on November 22, 1996. The interim final rule requested additional comments on four sections of the rule. One of these sections [7 CFR 3550.57(a)] dealt with the Agency's standards for modest housing in the direct SFH program. In brief, the primary factor for determining whether a house is modest is whether the cost is below the section 203(b) maximum loan limits established by the Department of Housing and Urban Development. Use of the section 203(b) limits are not required by statute in the direct SFH program; however, they were adopted by the Agency in 1995 as the primary factor for determining whether a house was modest. Prior to 1995, the Agency used square footage and amenity standards to make such a determination. Different square footage requirements existed for different family sizes, and the regulations contained an extensive list of amenities which were not permitted in houses to be financed by the Agency. These standards were overly cumbersome, especially for

families seeking to purchase an existing home, and did not provide sufficient flexibility. The Agency received tremendous support when the previous standards were eliminated.

As mentioned, the new standards for modest housing became effective in 1995. As the Agency began the process of reinventing and reengineering the program in 1996, we became aware of concerns which impacted our ability to provide financing on modest homes for very-low and low-income families in rural America. For example, in some rural areas, the section 203(b) loan limit is higher than the cost of housing the Agency financed under previous standards. This is evidenced by an increase in the average cost of a house financed by the Agency under the previous standards and the average cost of a house financed under the section 203(b) standards, even when the rise in construction costs is taken into account. This limits our ability to provide the maximum number of homeownership opportunities in rural America within allocated funds. Concomitantly, in other areas of rural America, the section 203(b) limits are too low for the Agency to finance the cost of constructing a modest home. The percentage of newly constructed homes financed by the Agency has dropped significantly since the Agency began utilizing the section 203(b) limits. This severely limits our ability to provide homeownership opportunities for families in many growing rural communities which are in dire need of new housing.

For these reasons, when the Agency published the aforementioned interim final rule comments were solicited on alternative methods the Agency could utilize to ensure that only modest housing was financed. Seven comments were received. None of the commentors wanted the Agency to return to its previous standards and most supported continuing with the section 203(b) limits. No additional criteria were provided by the commentors. In retrospect, the Agency believes that at the time of publication of the interim final rule, most of the commentors were not fully aware of the impact of the use of the 203(b) loan limits in the direct SFH program. The Agency is again seeking recommendations on alternative methods for establishing a standard for modest housing. The Agency is currently considering two options.

The first option being considered is to utilize a multiple of the median income for the area to establish the maximum loan amount. In this manner, the income of the area would assist in determining a typical modest home for the area. RHS is considering establishing a maximum loan amount of 2.5 times the median income for a family of four. For example, if the median income for a family of four was $30,000 in a given county, the maximum loan would be $75,000 ($30,000 times 2.5). For families in excess of four, the loan limit would be 2.5 times the median income for that family size.

The second option being considered is a square footage limitation. The Agency has no intention of reconsidering the previous standards in which amenities were considered and square footage maximums were set by specific family size. The proposed standard is simple and straightforward. The maximum square footage allowable would be 1300 square feet of finished living area. This standard would apply to existing homes and new construction. For family sizes in excess of four, the square footage standard may be increased by 150 square feet for each family member over four. The Agency also proposes to allow the State Director the authority to provide exceptions on a case-by-case basis provided the proposed housing is modest and alternative homes within the square footage standards are not readily available in the market. There would be no amenity standards except for the existing requirements that the property may not have an in-ground pool or be used for income producing purposes.

Under this option, the Agency is particularly interested in comments on how to further satisfy our statutory mandate to finance only modest housing, without the need to establish specific amenity standards. In addition, the Agency is proposing only one square footage standard; whereas in the past, different square footage standards for existing homes and new construction existed. The Agency wants comments on whether a single standard is appropriate, or whether and why separate standards should be established. Also, if two standards are recommended, what square footage standards should be established for existing homes and new construction? And finally, how should the Agency define ''finished'' living area?

The Agency would appreciate comments on these two options, together with any recommended enhancements or changes. In addition, the Agency is also interested in other potential standards by which to determine that housing is modest provided such standards are simple, straightforward and not overly burdensome to our customers.

The Agency generally provides a 60-day comment period for proposed changes. However, since the Agency is only requesting comments on one standard, a 30-day comment period is provided. It is the Agency's objective to publish a final rule with the proposed change by September 1, 1998, with an effective date of October 1, 1998. The rule would be effective for any current applicant who had not submitted a sales contract for the purchase of a home to the Agency.

Dated: May 21, 1998.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 98–14149 Filed 5–27–98; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 10

[Docket No. 98–08]

RIN 1557–AB62

Municipal Securities Dealers

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing a final rule to revise its Municipal Securities Dealers regulation to remove unnecessary provisions. This change would not have any substantive effect on the operations of national banks, but would simplify the OCC's rule regarding bank municipal securities dealers (MSDs) by removing a redundant restatement of rules found elsewhere.

DATES: The final rule is effective June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph W. Malott, National Bank Examiner, Treasury and Market Risk (202) 874–5670; Donald Lamson, Assistant Director, Securities and Corporate Practices (202) 874–5210; or Ursula Pfeil, Attorney, Legislative and Regulatory Activities (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background and Discussion of Final Rule

The OCC is issuing a final rule to revise its Municipal Securities Dealers regulation to remove unnecessary provisions. The OCC had previously published a notice of proposed rulemaking on January 16, 1998, and at that time requested comment on the

changes. 63 FR 2640. The OCC received no comments and, therefore, is now issuing a final rule unchanged from its proposed rule.

Section 15B(b) of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78o–4(b)) created the Municipal Securities Rulemaking Board (MSRB) and mandated that the MSRB adopt rules that establish qualification criteria for municipal securities brokers or dealers and associated persons. To implement section 15B(b), the MSRB adopted Rule G–7 (Information Concerning Associated Persons) (Rule G–7).[1] Rule G–7 requires, among other things, that municipal securities principals and representatives associated with a bank MSD file with the bank either (a) Form MSD–4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) or (b) a similar form prescribed by the bank's primary regulator. A national bank MSD is in turn required by Rule G–7 to submit to the OCC the form that the bank's associated municipal securities principals and representatives file with it. Rule G–7 also requires bank MSDs to update information as necessary, to retain records for specified periods of time, and to file with the appropriate banking agency ''such of the information prescribed by [Rule G–7] as such * * * agency * * * shall by rule or regulation require.'' Rule G–7(g).

Shortly after the MSRB adopted Rule G–7, the OCC adopted part 10 in order to prescribe the information and forms that national bank MSDs are to submit. (42 FR 16813 (March 30, 1977)). Part 10 currently sets out the scope of the rule (§ 10.1); definitions used therein (§ 10.2); information about where and how to file the appropriate forms (§ 10.3); and requirements governing the submission and retention of Form MSD–4 and Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) (§ 10.4).

As explained in the following section-by-section analysis, much of current part 10 either is substantively identical to the requirements contained in Rule G–7 or is otherwise unnecessary.

[1] The MSRB rules may be obtained by contacting the Municipal Securities Rulemaking Board by telephone at (202) 223–9347 or by mail at 1150 18th Street, NW, Suite 400, Washington, DC 20036–3816.

Section-by-Section Analysis

Section 10.1 of Current and Final Rules

This section identifies the entities and individuals covered by part 10. Section 10.1 of the final rule clarifies that subsidiaries of national banks are not covered by the rule. This clarification is consistent with MSRB Rule G–7, which states that ''bank dealers'' are to comply with the rules and requirements adopted by the appropriate bank regulatory agency. The term ''bank dealer'' is defined in Rule D–8 of the MSRB's rules to include ''a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in rule G–1 of the [Municipal Securities Rulemaking] Board.'' Subsidiaries of banks are not included in the definition of ''bank dealer,'' and are, therefore, governed directly by the MSRB's filing requirements. The change to § 10.1 reflects this fact. It does not, however, affect the content of what these subsidiaries are to file or who regulates their municipal securities activities.[2]

Section 10.2 of Current Rule

The terms defined in current § 10.2 are not used in part 10. Accordingly, this section is removed.

Section 10.3 of Current Rule

Section 10.3 provides information about the mechanics of filing the MSD–4 and MSD–5 forms with the OCC. This information is unnecessary in light of the filing instructions that accompany these forms. Therefore, the final rule removes this section.

Section 10.4 of Current Rule/§ 10.2 of Final Rule

Section 10.4(a)(1) of the current rule states that Form MSD–4 is an appropriate means of carrying out the purposes of Rule G–7(b). Two provisions in Rule G–7 make it appropriate for the final rule to retain a provision identifying which form national bank MSDs are to use and what information is to be submitted in order to comply with Rule G–7. First, paragraph (b) of Rule G–7 states that ''in the case of a bank dealer a completed Form MSD–4 or similar form prescribed by the appropriate regulatory agency for such bank dealer, containing the foregoing information [i.e., the information listed in Rule G–7(b)(i)–(x)], shall satisfy the requirements of this paragraph [(b)].'' Given that Rule G–7(b) provides bank regulators the option of using a form other than Form MSD–4, there remains a need for the OCC to clarify which form national banks should use. Second, as previously noted, paragraph (g) of Rule G–7 states that bank MSDs are to file with their appropriate regulatory agency ''such of the information prescribed by this rule [i.e., Rule G–7] as such * * * agency * * * shall by rule or regulation require.'' Repealing all of part 10 arguably would create an unintended gap in the filing requirements for bank MSDs, because there would be no rule or regulation requiring national banks to file.

In light of paragraphs (b) and (g) of Rule G–7, the final rule retains a requirement, at § 10.2(a), stating that a national bank is to use Form MSD–4 to submit the information required by Rule G–7(b)(i)–(x) to be obtained from a person identified in § 10.1(b). Section 10.2(a) also states that a national bank receiving completed MSD–4 forms must submit these forms to the OCC before permitting any person to be associated with it as a municipal securities principal or a municipal securities representative. Should the MSRB amend Rule G–7 to remove the reference to rules or regulations issued by the banking agencies, the OCC will revisit the need for a continued reference to the MSRB rules in part 10.[3]

Section 10.4(a)(2) of the current rule repeats filing requirements found in Rule G–7 and, therefore, is removed.

Section 10.4(b) of the current rule instructs national bank MSDs regarding how they should proceed if a Form MSD–4 contains materially inaccurate or incomplete information. This section is unnecessary, given that paragraph (c) of Rule G–7 requires that the information required to be submitted must remain accurate and complete. A national bank MSD receiving updated information from an associated municipal securities representative or

[2] Subsidiaries of national banks that engage in municipal securities activities must register with the NASD and are regulated by NASD Regulation, Inc., the subsidiary of NASD charged with regulating the securities industry and the Nasdaq Stock Market.

[3] The Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC) each have published proposed amendments to each agency's MSD regulation. See 62 FR 15272 (March 31, 1997) (Board) and 62 FR 26994 (May 16, 1997) (FDIC). Both the Board and the FDIC propose to repeal their MSD rules altogether. However, both agencies intend for banks within their respective jurisdictions to continue filing the MSD–4 and MSD–5 forms with those agencies. Accordingly, the OCC, Board, and FDIC intend to impose substantively identical requirements on bank MSDs. The stylistic differences between the OCC's final rule and those of the Board and FDIC reflect the OCC's view that it is necessary and helpful to national bank MSDs for the OCC's rule to address those areas identified in Rule G–7 where bank dealers are to look to the rules of their primary regulator.

municipal securities principal is obligated pursuant to Rule G–7 to submit the amended information to the OCC in order to ensure that the individuals are properly registered. Accordingly, the final rule removes current § 10.4(b).

Current § 10.4(c) requires national bank MSDs to file Form MSD–5 within 30 days of terminating a person's association with the bank as a municipal securities representative or principal. This requirement does not appear in Rule G–7. In order to facilitate the effective supervision of MSD activity by national banks, the final rule retains the requirement, at § 10.2(b), that a termination notice be submitted.

Finally, current § 10.4(d)(1) restates record retention requirements found in Rule G–7(e), while § 10.4(d)(2) states that the MSD–4 and MSD–5 forms are covered by section 32(a) of the Exchange Act (15 U.S.C. 78ff). These provisions in current § 10.4 are unnecessary and are, therefore, removed.

Regulatory Flexibility Act

The OCC hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As noted earlier, the OCC has only eliminated unnecessary provisions that appear in the current rule. This rule will, therefore, reduce the regulatory burden on national banks, regardless of size. No new burden is added by the changes.

Executive Order 12866

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

Unfunded Mandates Act of 1995

The OCC has determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered as would otherwise be required by the Unfunded Mandates Act of 1995.

List of Subjects in 12 CFR Part 10

National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, the OCC revises part 10 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 10—MUNICIPAL SECURITIES DEALERS

Sec.
10.1 Scope.
10.2 Filing requirements.

Authority: 5 U.S.C. 93a, 481, and 1818; 15 U.S.C. 78o–4(c)(5) and 78q–78w.

§ 10.1 Scope.

This part applies to:

(a) Any national bank, District bank, and separately identifiable department or division of either (collectively, a national bank) that acts as a municipal securities dealer, as that term is defined in section 3(a)(30) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(30)); and

(b) Any person who is associated or to be associated with a national bank in the capacity of a municipal securities principal or a municipal securities representative, as those terms are defined in Rule G–3 of the Municipal Securities Rulemaking Board (MSRB).[1]

§ 10.2 Filing requirements.

(a) A national bank shall use Form MSD–4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) for obtaining the information required by MSRB Rule G–7(b)(i)–(x) from a person identified in § 10.1(b). A national bank receiving a completed MSD–4 form from a person identified in § 10.1(b). A national bank receiving a completed MSD–4 form from a person identified in § 10.1(b) must submit this form to the OCC before permitting the person to be associated with it as a municipal securities principal or a municipal securities representative.

(b) A national bank must submit Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) to the OCC within 30 days of terminating a person's association with the bank as a municipal securities principal or municipal securities representative.

(c) Forms MSD–4 and MSD–5, with instructions, may be obtained by contacting the OCC at 250 E Street, SW., Washington, DC 20219, Attention: Bank Dealer Activities.

[1] The MSRB rules may be obtained by contacting the Municipal Securities Rulemaking Board at 1150 18th Street, NW, Suite 400, Washington, DC 20036–3816.

Dated: May 9, 1998.

Julie L. Williams,

Acting Comptroller of the Currency.

[FR Doc. 98–14016 Filed 5–27–98; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–211–AD; Amendment 39–10532; AD 98–11–05]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires performing a one-time inspection of the dropout boxes of the passenger oxygen system to detect discrepancies and determine whether the system operates properly; correcting any discrepancy found; and reworking or installing new components, if necessary. This amendment is prompted by a report indicating that the oxygen system failed to operate correctly after activation at a low cabin pressure due to the incorrect installation of the oxygen masks or oxygen generators during manufacturing. The actions specified by this AD are intended to ensure that a sufficient supply of oxygen is provided to airplane passengers in the event of rapid decompression of the airplane.

DATES: Effective July 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 2, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on May 22, 1997 (62 FR 27986). That action proposed to require performing a one-time inspection of the dropout boxes of the passenger oxygen system to detect discrepancies and determine whether the system operates properly; correcting any discrepancy found; and reworking or installing new components, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed AD; however, it notes that many different types of failures were discovered upon review by the Luftfartsverket (LFV), which is the airworthiness authority for Sweden. Additionally, the commenter states that the repair work performed to correct the errors also could be performed incorrectly. The commenter requests that because of these two factors, the FAA should require repetitive inspections in lieu of the proposed one-time inspection.

The FAA does not concur with the commenter's request to include repetitive inspections in this rulemaking action at this point. According to Saab, the problem was found to originate from the interior supplier's repacking of the oxygen equipment after installing the dropout boxes in the passenger service units. This finding led to several improvements and related instructions by Saab and the interior and systems suppliers regarding the packing method. These improvements also included hands-on training. Saab is not aware of any further problems occurring with the dropout boxes after implementation of these improvements. Therefore, the FAA has determined that repetitive inspections to ensure the continued proper functioning of the system are not necessary.

The same commenter states that it is unacceptable to operate aircraft with emergency equipment that would not work when needed, and suggests that it would be prudent to periodically perform functional tests of all the emergency equipment to ensure that it will work when needed.

The FAA acknowledges the concerns of the commenter. The FAA has determined that an unsafe condition exists, and that the actions required by this AD are adequate in order to ensure the continued safety of the affected fleet. While there may be merit to the commenter's suggestions, this AD is not the appropriate context in which to evaluate those suggestions. Since the suggested changes would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. No change to this final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $540, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the 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 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.

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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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:

98–11–05 SAAB Aircraft AB: Amendment 39–10532. Docket 96–NM–211–AD.

Applicability: Model SAAB 2000 series airplanes, having serial numbers –003 through –039 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 (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 an insufficient supply of oxygen being provided to airplane passengers in the event of rapid decompression of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time inspection of the dropout boxes of the passenger oxygen system to detect discrepancies and determine whether the system operates properly, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–35–001, dated February 20, 1996.

(1) If the passenger oxygen system operates properly and no discrepancy is found in this system, no further action is required by this AD.

(2) If any discrepancy is found in the passenger oxygen system, prior to further

flight, perform rework or install new components, as applicable, in accordance with the service bulletin.

(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.

(d) The actions shall be done in accordance with Saab Service Bulletin 2000–35–001, dated February 20, 1996. 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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive (SAD) 1–091, dated February 20, 1996.

(e) This amendment becomes effective on July 2, 1998.

Issued in Renton, Washington, on May 18, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13822 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–172–AD; Amendment 39–10544; AD 98–11–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires a visual inspection to detect cracks in the aft mount beam assembly of the engine; and replacement of any cracked beam with a new beam or beam assembly. This amendment also requires a fluorescent penetrant inspection to detect cracks in the aft mount beam assembly of the engine, and various follow-on actions. This amendment is prompted by reports indicating that, apparently due to manufacturing defects during the forging process, cracking was found in two engine aft mount beams. The actions specified by this AD are intended to detect and correct such cracking, which could result in reduced structural integrity of the aft mount beam assembly of the engine.

DATES: Effective July 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 2, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, Connecticut 06108. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published in the **Federal Register** on April 1, 1997 (62 FR 15439). That action proposed to require a visual inspection to detect cracks in the aft mount beam assembly of the engine; and replacement of any cracked beam with a new beam or beam assembly. That action also proposed to require a fluorescent penetrant inspection to detect cracks in the aft mount beam assembly of the engine, and various follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the proposed AD be revised to cite accomplishment of Pratt & Whitney Service Bulletin PW4MD11 A71–102, Revision 3, dated August 30, 1995, as an equivalent alternative to accomplishment of Pratt & Whitney Alert Service Bulletins PW4NAC A71–149, Revision 1, dated August 30, 1995, and PW7R4 A71–129, Revision 1, dated August 30, 1995, as referenced in the proposed AD.

The FAA concurs with the commenter's request to cite accomplishment of Pratt & Whitney Service Bulletin PW4MD11 A71–102, Revision 3, dated August 30, 1995, as an equivalent alternative to accomplishment of Pratt & Whitney Alert Service Bulletins PW4NAC A71–149, Revision 1, dated August 30, 1995 or PW7R4 A71–129, Revision 1, dated August 30, 1995. Pratt & Whitney Alert Service Bulletins PW4NAC A71–149, Revision 1, dated August 30, 1995, and PW7R4 A71–129, Revision 1, dated August 30, 1995, contain a Note that states: ''Service Bulletins PW4NAC A71–149 (PW4000/AI), PW7R4 A71–129 (JT9D–7R4/AI), and PW4MD11 A71–102 (PW4000/DAC) have been issued to cover all aircraft. Accomplishment of any one of these Service Bulletins satisfies the same intent of the other two.'' The FAA has revised this final rule to reflect this change by adding a new Note to the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 8 Airbus Model A310 and A300–600 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection required by this AD on U.S. operators is estimated to be $960, or $120 per airplane.

It will take approximately 34 work hours per airplane to accomplish the required fluorescent penetrant inspection, at an average labor rate of

$60 per work hour. Based on these figures, the cost impact of the fluorescent penetrant inspection required by this AD on U.S. operators is estimated to be $16,320, or $2,040 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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 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.

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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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:

98–11–19 Airbus Industrie: Amendment 39–10544. Docket 96–NM–172–AD.

Applicability: Model A310 and A300–600 series airplanes, equipped with Pratt & Whitney Model JT9D–7R4D1, JT9D–7R4E1, JT9D–7R4H1, PW4151, PW4156A, or PW4158 engines; 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 detect and correct cracking in the aft mount beam assembly of the engine, which could result in reduced structural integrity of the aft mount beam assembly, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, perform a visual inspection to detect cracks in the aft mount beam assembly of the engine, in accordance with Part 1 of the Accomplishment Instructions of Pratt & Whitney Alert Service Bulletin PW7R4 A71–129, Revision 1, dated August 30, 1995, or Pratt & Whitney Alert Service Bulletin PW4NAC A71–149, Revision 1, dated August 30, 1995; as applicable.

(1) If no crack is detected, no further action is required by this paragraph.

(2) If any crack is detected, prior to further flight, replace the cracked beam with a new beam or beam assembly, in accordance with the applicable service bulletin.

(b) Within 4,000 flight cycles after the effective date of this AD, perform a fluorescent penetrant inspection to detect cracks in the aft mount beam assembly of the engine, in accordance with Part 2 of the Accomplishment Instructions of Pratt & Whitney Alert Service Bulletin PW7R4 A71–129, Revision 1, dated August 30, 1995, or Pratt & Whitney Alert Service Bulletin PW4NAC A71–149, Revision 1, dated August 30, 1995; as applicable.

(1) If no crack is detected, prior to further flight, perform an eddy current inspection to detect cracks in the aft mount beam assembly of the engine, in accordance with the applicable service bulletin.

(i) If no crack is detected, prior to further flight, reidentify the beam in accordance with the applicable service bulletin.

(ii) If any crack is detected, prior to further flight, replace the cracked beam with a new beam or beam assembly, in accordance with the applicable service bulletin.

(2) If any crack is detected, prior to further flight, replace the cracked beam with a new beam or beam assembly, in accordance with the applicable service bulletin.

Note 2: Accomplishment of the actions required by paragraphs (a) and (b) of this AD in accordance with Pratt & Whitney Service Bulletin PW4MD11 A71–102, Revision 3, dated August 30, 1995, is considered to be acceptable for compliance with those paragraphs.

(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 3: 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 §§ 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 the following Pratt & Whitney Alert Service Bulletins, which contain the following list of effective pages:

Service bulletin referenced and date	Page number shown on page	Revision level shown on page	Date shown on page
PW7R4 A71–129, Revision 1, August 30, 1995.	1, 4, 12, 17–21, 23, 25–32	1	August 30, 1995.
	2, 3, 5–11, 13–16, 22, 24	Original	May 30, 1995.
PW4NAC A71–149, Revision 1, August 30, 1995.	1, 2, 4, 12, 17–21 25–32	1	August 30, 1995.
	3, 5–11, 13–16 22–24	Original	May 30, 1995.

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 Pratt & Whitney, 400 Main Street, East Hartford, Connecticut 06108. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 96–020–195(B), dated January 31, 1996.

(f) This amendment becomes effective on July 2, 1998.

Issued in Renton, Washington, on May 18, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13821 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–121–AD; Amendment 39–10541; AD 98–11–16]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GmbH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Dornier Luftfahrt GmbH (Dornier) Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes. This AD requires modifying the logic in the failure detection circuits of the landing gear uplock switches. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent a false warning indication of landing gear failure because of the design of the landing gear warning system, which could result in incorrect actions from the pilot based on the warning indications.

DATES: Effective July 11, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 11, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–121–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Dornier Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 26, 1998 (63 FR 14658). The NPRM proposed to require modifying the logic in the failure detection circuits of the landing gear uplock switches. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Dornier Service Bulletin No. SB–228–215, Revision No. 1, dated January 31, 1995.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 26 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 32 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $49,920, or $1,920 per airplane.

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.

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) 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 final 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, 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 a new airworthiness directive (AD) to read as follows:

98–11–16 Dornier Luftfahrt GMBH: Amendment 39–10541; Docket No. 97–CE–121–AD.

Applicability: Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212

airplanes, serial numbers 0001 through 8235, 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 within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent a false warning indication of landing gear failure because of the design of the landing gear warning system, which could result in incorrect actions from the pilot based on the warning indications, accomplish the following:

(a) Modify the logic in the failure detection circuits of the landing gear uplock switches in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Dornier Service Bulletin No. SB–228–215, Revision No. 1, dated January 31, 1995.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64016. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) Questions or technical information related to Dornier Service Bulletin No. SB–228–215, Revision No. 1, dated January 31, 1995, should be directed to Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The modification required by this AD shall be done in accordance with Dornier Service Bulletin No. SB–228–215, Revision No. 1, dated January 31, 1995. 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 Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 95–246, dated August 23, 1995.

(f) This amendment becomes effective on July 11, 1998.

Issued in Kansas City, Missouri, on May 15, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13820 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–11–AD; Amendment 39–10542; AD 98–11–17]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–400 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–400 gliders. This AD requires replacing the Bosch electrical system regulator, part number (P/N) 0212920001, with a type 4 E 26 regulator. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the electrical system regulator, which could result in smoke entering the cockpit with consequent passenger injury.

DATES: Effective July 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–11–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Glaser-Dirks Model DG–400 gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 19, 1998 (63 FR 13381). The NPRM proposed to require replacing the Bosch electrical system regulator, part number (P/N) 0212920001, with a type 4 E 26 regulator. Accomplishment of the proposed action as specified in the NPRM would be in accordance with DG Flugzeubau GmbH Technical Note No. 826/33, dated July 19, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although failure of the electrical system regulator will only be unsafe while the glider is in flight, this unsafe condition is not a result of the number of times the glider is operated. The chance of this situation occurring is the same for a glider with 10 hours time-in-service (TIS) as it is for a glider with 500

hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 35 gliders in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per glider to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $200 per glider. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $11,200, or $320 per glider.

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.

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) 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 final 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, 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 a new airworthiness directive (AD) to read as follows:

98–11–17 Glaser-Dirks Flugzeugbau GMBH: Amendment 39–10542; Docket No. 98–CE–11–AD.

Applicability: Model DG–400 gliders, all serial numbers, certificated in any category.

Note 1: This AD applies to each glider 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 gliders 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 within the next 4 calendar months after the effective date of this AD, unless already accomplished.

To prevent failure of the electrical system regulator, which could result in smoke entering the cockpit with consequent passenger injury, accomplish the following:

(a) Replace the Bosch electrical system regulator, part number (P/N) 0212920001, with a type 4 E 26 regulator in accordance with DG Flugzeugbau GmbH Z 33 Conversion Kit Saprisa regulator Installation Instructions, dated July 4, 1996, and Glaser-Dirks Drawing 4 E 26. These documents are referenced in DG Flugzeugbau GmbH Technical Note No. 826/33, dated July 19, 1996.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) Questions or technical information related to the service information referenced in this AD should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The replacement required by this AD shall be done in accordance with DG Flugzeugbau GmbH Z 33 Conversion Kit Saprisa regulator Installation Instructions, dated July 4, 1996, and Glaser-Dirks Drawing 4 E 26, as referenced in DG Flugzeugbau GmbH Technical Note No. 826/33, dated July 19, 1996. 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 DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 96–242, dated August 29, 1996.

(f) This amendment becomes effective on July 10, 1998.

Issued in Kansas City, Missouri, on May 15, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13818 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–14–AD; Amendment 39–10543; AD 98–11–18]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–400 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–400 gliders. This AD requires replacing the upper rubber shock mounts with mounts made of stainless steel. This AD will also require inspecting the rear plate of the propeller mount for cracks and proper mounting, and replacing or modifying as necessary. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the propeller suspension system caused by cracks in the propeller mounts, which could result in loss of the propeller with consequent reduced glider controllability.

DATES: Effective July 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Glaser-Dirks Model DG–400 gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 18, 1998 (63 FR 13151). The NPRM proposed to require the following:

—Replacing the upper rubber shock mounts with mounts made of stainless steel;

—Inspecting the rear plate of the propeller mount for cracks and an excessive gap between the aluminum blocks and the plate (more than 1 mm or .04 inches);

—Replacing the rear plate of the propeller mount if cracks are found; and

—Installing washers if an excessive gap exists between the aluminum blocks and the plate.

Accomplishment of the proposed shock mounts replacement, the proposed inspections, and the proposed installation, as specified in the NPRM would be in accordance with Glaser-Dirks Technical Note No. 826/11, dated August 29, 1984. Accomplishment of the proposed propeller mount replacement, as required, as specified in the NPRM, would be required in accordance with the applicable maintenance manual.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Difference Between the Technical Note, German AD, and This AD

Both Glaser-Dirks Technical Note No. 826/11, dated August 29, 1984, and German AD 84–157, dated September 24, 1984, specify accomplishing the actions in this AD prior to further flight. The FAA does not have justification for requiring the action prior to further flight. Instead, the FAA has determined that 3 calendar months is a reasonable time period for accomplishing the actions in this AD.

Compliance Time of This AD

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS) because of the typical usage of the affected gliders. For example, an operator of an affected glider may only utilize the glider 50 hours TIS in a year, while another operator may utilize an affected glider 50 hours TIS in one month. The FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 35 gliders in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per glider to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per glider. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $16,100, or $460 per glider.

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.

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) 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 final 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, 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 a new airworthiness directive (AD) to read as follows:

98–11–18 Glaser-Dirks Flugzeugbau GMBH: Amendment 39–10543; Docket No. 98–CE–14–AD.

Applicability: Model DG–400 gliders, all serial numbers, certificated in any category.

Note 1: This AD applies to each glider 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 gliders 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 (d) 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 failure of the propeller suspension system caused by cracks in the propeller mounts, which could result in loss of the propeller with consequent reduced glider controllability, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, replace the upper rubber shock mounts with mounts made of stainless steel in accordance with the Instructions section of Glaser-Dirks Technical Note TN 826/11, dated August 29, 1984.

(b) Within the next 3 calendar months after the effective date of this AD, inspect (using 2× or greater lens) the rear plate of the propeller mount for cracks and an excessive gap between the aluminum blocks and the plate (more than 1 mm or .04 inches). Accomplish these inspections in accordance with the Instructions section of Glaser-Dirks Technical Note TN 826/11, dated August 29, 1984.

(1) If any cracks are found in the propeller mount, prior to further flight, replace the propeller mount with an uncracked mount in accordance with the applicable maintenance manual.

(2) If an excessive gap exists between the aluminum blocks and the plate, prior to further flight, install washers in accordance with the Instructions section of Glaser-Dirks Technical Note TN 826/11, dated August 29, 1984.

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

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to Glaser-Dirks Technical Note No. 826/11, dated August 29, 1984, should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The replacement, inspection, and installation required by this AD shall be done in accordance with Glaser-Dirks Technical Note No. 826/11, dated August 29, 1984. 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 DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 84–157, dated September 24, 1984.

(g) This amendment becomes effective on July 10, 1998.

Issued in Kansas City, Missouri, on May 15, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13823 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–38–AD; Amendment 39–10545; AD 98–11–20]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes that incorporate an executive cabin layout. This AD requires modifying the lavatory wall and passenger seat configuration. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent head injuries during an airplane crash because the lavatory wall and passenger seat configuration do not meet current head injury criteria regulations.

DATES: Effective July 13, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–38–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes that incorporate an executive cabin layout was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 24, 1998 (63 FR 14043). The NPRM proposed to require modifying the lavatory wall and passenger seat configuration. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Pilatus Service Bulletin No. 25–003, dated May 7, 1997.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Since the issuance of the NPRM, Pilatus has revised Service Bulletin No. 25–003 (Rev. 1, dated April 7, 1998) to incorporate minor changes to clarify the situation. There are no technical changes involved.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of the revised service information and minor editorial corrections. The FAA has determined that this addition and these minor corrections will not change the meaning of the AD and will not add any

additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 40 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 15 workhours to accomplish these actions, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $36,000, or $900 per airplane. These figures are based on the presumption that no affected airplanes have these modifications incorporated.

Pilatus has informed the FAA that all 40 airplanes in the U.S. registry have these modifications incorporated. With this in mind, this AD imposes no cost impact upon the public.

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.

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) 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 final 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, 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 a new airworthiness directive (AD) to read as follows:

98–11–20 Pilatus Aircraft Ltd.: Amendment 39–10545; Docket No. 97–CE–38–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, serial numbers MSN 101 through 180, certificated in any category, that incorporate an executive cabin layout.

Note 1: Models PC–12 and PC–12/45 airplanes that incorporate a corporate-utility cabin layout are not affected by this AD.

Note 2: 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 within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent head injuries during an airplane crash because the lavatory wall and passenger seat configuration do not meet current head injury criteria regulations, accomplish the following:

(a) Modify the lavatory wall and passenger seat configuration in accordance with Pilatus Service Bulletin No. 25–003, dated May 7, 1997, or Pilatus Service Bulletin No. 25–003, Rev. 1, dated April 7, 1998.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Pilatus Service Bulletin No. 25–003, dated May 7, 1997, or Pilatus Service Bulletin No. 25–003, Rev. 1, dated April 7, 1998, should be directed to Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland; telephone: +41 41–6196 233; facsimile: +41 41–6103 351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The modification required by this AD shall be done in accordance with Pilatus Service Bulletin No. 25–003, dated May 7, 1997, or Pilatus Service Bulletin No. 25–003, Rev. 1, dated April 7, 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 Pilatus Aircraft Ltd., Marketing Support Department, CH–6370 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swiss AD HB 97–249, dated May 31, 1997.

(f) This amendment becomes effective on July 13, 1998.

Issued in Kansas City, Missouri, on May 18, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13924 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–20]

Amendment of Class E Airspace; Livingston, MT, and Butte, MT, and Removal of Class E Airspace; Coppertown, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action combines the Coppertown, MT, Class E airspace area with the existing Butte, MT, Class E airspace area. This combined airspace is now designated the Butte, MT, Class E airspace area. This action also amends the adjacent Class E airspace at Livingston, MT, by providing additional controlled airspace to accommodate the development of new Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at the Livingston Airport.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal

Aviation Administration, Docket No. 97–ANM–20, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION

History

On February 25, 1998, the FAA proposed to amend Title 14, Code of Federal Regulation, part 71 (14 CFR part 71) by removing the Coppertown, MT, airspace area and revising the Livingston, MT, and Butte, MT, Class E airspace areas (63 FR 9462). This revision provides the additional airspace necessary to encompass a GPS SIAP for the Mission Field Airport, Livingston, MT. This action also corrects two errors discovered in the proposal. A spelling error and an incorrect airport name listed in the legal description are corrected herein. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class 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 Livingston, MT, and Butte, MT, while also removing Class E airspace at Coppertown, MT. This action combines the Coppertown, MT, Class E airspace area with the existing Butte, MT, Class E airspace area. This combined airspace is now designated the Butte, MT, Class E airspace area. The incorrectly named Coppertown, MT, airspace does not serve an airport, has no associated town, and is solely a navigational aid located close to Butte, MT. This amendment also provides the additional airspace necessary to fully encompass the GPS–A SIAP to the Mission Field Airport, Livingston, MT. Additionally, this rule revises the common airspace boundaries where Livingston, MT, and Butte, MT, airspace areas meet in order to better distribute the airspace serving the respective airports and to provide for easier cartography. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rule (IFR) at the Mission Field Airport and between the terminal and en route transition stages.

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

* * * * *

ANM MT E5 Coppertown, MT [Removed]

* * * * *

ANM MT E5 Butte, MT [Revised]

Bert Mooney Airport, Butte, MT
(Lat. 45°57′17″ N, long. 112°29′51″ W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat 46°20′30″N, long 112°48′33″W; to lat 46°10′30″N, long. 113°07′03″W; to lat 45°57′05″N, long. 112°47′43″W; to lat. 45°51′20″N, long. 112°27′33″W; to lat. 46°03′20″N, long. 112°20′03″W; to lat. 46°18′30″N, long. 112°30′33″W; thence to point of beginning; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°35′00″N, long 113°05′00″W; to lat. 46°37′00″N, long. 113°05′00″W; to lat 46°37′00″N, long. 112°26′00″W; to lat. 46°16′00″N, long. 112°00′00″W; to lat. 45°35′00″N, long. 112°00′00″W; thence to point of beginning; excluding that airspace within Federal airways, and the Helena, MT, the Dillon, MT, and the Missoula, MT, Class E airspace areas.

* * * * *

ANM MT E5 Livingston, MT [Revised]

Mission Field, Livingston, MT
(Lat. 45°41′58″N, long 110°26′54″W

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the Mission Field Airport, and that airspace bounded by a line beginning at Lat. 45°40′30″N, long 110°15′20″W; to lat. 45°47′30″N, long. 110°15′30″W; to lat 45°47′30″N, long. 110°23′00″W; to lat. 46°02′20″N, long. 110°31′00″W; to lat. 45°58′00″N, long. 110°47′15″W; to lat. 45°38′45″N, long. 110°37′00″W; thence to point of beginning and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 46°16′00″N, long 112°00′00″W; to lat. 46°37′00″N, long. 111°30′00″W; to lat 46°37′00″N, long. 110°43′00″W; to lat. 46°00′00″N, long. 112°29′00″W; to lat. 46°00′00″N, long. 109°30′00″W; to lat. 45°30′00″N, long. 109°30′00″W; to lat. 45°30′00″N, long. 112°00′00″W; thence to point of beginning; excluding that airspace within Federal airways, the Helena, MT, and the Billings, MT, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on May 5, 1998.

Joe E. Gingles,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–14169 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7539; 34–40003; 35–26876; 39–2363; IC–23191]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final Rules.

SUMMARY: The Commission is adopting an updated edition of the EDGAR Filer Manual and is providing for its

incorporation by reference into the Code of Federal Regulations.

EFFECTIVE DATE: The amendment to 17 CFR part 232 (Regulation S–T) will be effective on June 1, 1998. The new edition of the EDGAR Filer Manual (Release 5.50) will be effective on June 1, 1998. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of June 1, 1998.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Michael E. Bartell; at (202) 942–8800; for questions concerning investment company filings, Ruth Armfield Sanders, Senior Counsel, Division of Investment Management, at (202) 942–0633; and for questions concerning Corporation Finance company filings, Margaret R. Black at (202) 942–2933.

SUPPLEMENTARY INFORMATION: The Commission today announces the adoption of an updated EDGAR Filer Manual (''Filer Manual''), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system.[1] Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.[3]

In this edition of the EDGAR System and the Filer Manual (Release 5.50), the following four EDGAR submission form types have been added for filing of profiles for certain open-end management investment companies[4] pursuant to Rule 497 under the Securities Act.[5] 497K1, 497K2, 497K3A and 497K3B. Also, form type N–14MEF has been added for the filing of Forms N–14 pursuant to the Securities Act Rule 462(b).

In addition, Release 5.50 of EDGARLink no longer supports 1200 baud filing transmission rates, a transmission speed that was not being used by filers. Also, the number of exhibits allowed in one submission has been increased from 99 to 500; if more than 500 exhibits are attached to a single submission, the submission will not be accepted. The readme.doc file has been updated with the description of all 5.50 changes.

Rule 301 of Regulation S–T also is being amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which 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. The revised Filer Manual and the amendment to Rule 301 will be effective on June 1, 1998.

Paper copies of the updated Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 Fifth Street, NW., Washington, DC 20549. Electronic format copies will be available on the EDGAR electronic bulletin board and posted to the SEC's Web Site. The SEC's Web Site address for the Manual is http://www.sec.gov/asec/ofis/filerman.htm. Copies also may be obtained from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.[6] It follows that the requirements of the Regulatory Flexibility Act[7] do not apply.

The effective date for the updated Filer Manual and the rule amendments is June 1, 1998. In accordance with the Administrative Procedure Act 5 U.S.C. 553(d)(3), the Commission finds that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system is scheduled to be upgraded to Release 5.50 on May 30, 1998. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade in order to avoid confusion to EDGAR filers.

Statutory Basis

The amendment to Regulation S–T is being adopted under Sections 6, 7, 8, 10, and 19(a) of the Securities Act,[8] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[9] Section 20 of the Public Utility Holding Company Act of 1935,[10] Section 319 of the Trust Indenture Act of 1939,[11] and Sections 8, 30, 31, and 38 of the Investment Company Act.[12]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Investment companies, Registration requirements, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a)m, 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings shall be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The June 1998 edition of the EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 5.50) is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Compliance with the requirements found therein is essential to the timely receipt and acceptance of documents filed with or otherwise submitted to the Commission in

[1] The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. Release No. 33–6986 (Apr. 1, 1993) [58 FR 18638]. The most recent update to the Filer Manual was implemented on January 26, 1998. See Release No. 33–7495 (Jan. 20, 1998) [63 FR 3462].

[2] See Rule 301 of Regulation S–T (17 CFR 232.310).

[3] See Release Nos. 33–6977 (Feb. 23, 1998) [58 FR 14628], IC–19284 (Feb. 23, 1993) [58 FR 14848], 35–25746 (Feb. 23, 1993) [58 FR 14999], and 33–6980 (Feb. 23, 1993) [58 FR 15009], for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing. See also Release No. 33–7122 (Dec. 19, 1994) [59 FR 67752], in which the Commission made the EDGAR rules final and applicable to all domestic registrants, Release No. 33–7427 (July 1, 1997) [62 FR 36450], adopting the most recent minor amendments to the EDGAR rules; and Release No. 33–7472 (Oct. 24, 1997) [62 FR 58647], in which the Commission announced that, as of January 1, 1998, it would not accept paper filings required to be filed electronically.

[4] See Rule 498 [17 CFR 230.498] under the Securities Act of 1933 (''Securities Act'') [15 U.S.C. 77a *et seq.*].

[5] 17 CFR 230.497.

[6] 5 U.S.C. 601–612.

[7] 5 U.S.C. 553(b).

[8] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

[9] 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w and 78*ll*

[10] 15 U.S.C. 79t.

[11] 15 U.S.C. 77sss.

[12] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

electronic format. Paper copies of the EDGAR Filer Manual may be obtained at the following address: Public Reference Room, U.S. Securities and Exchange Commission, Mail Stop 1–2, 450 5th Street, NW., Washington, DC 20549. They also may be obtained from Disclosure Incorporated by calling (800) 638–8241. Electronic format copies are available through the EDGAR electronic bulletin board and posted to the SEC's Web Site. The SEC's Web site address for the Manual is http://www.sec.gov/asec/ofis/filerman.htm. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 576–4247.

Dated: May 19, 1998.

By the commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–13876 Filed 5–27–98; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40018; IC–23200; File No. S7–25–97]

RIN 3235–AH20

Amendments To Rules On Shareholder Proposals

AGENCY: Securities and Exchange Commission.

ACTION: Final Rule.

SUMMARY: The Securities and Exchange Commission (''we'' or ''Commission'') is adopting amendments to its rules on shareholder proposals. The amendments recast rule 14a–8 into a Question & Answer Format that both shareholders and companies should find easier to follow, and make other modifications to existing interpretations of the rule. We are also amending rule 14a–4 to provide clearer ground rules for companies' exercise of discretionary voting authority, and making related amendments to rule 14a–5.

EFFECTIVE DATE: The amendments are effective June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Frank G. Zarb, Jr., of Sanjay M. Shirodkar, Division of Corporation Finance, (202) 942–2900, or Doretha M. VanSlyke, Division of Investment Management, at (202) 942–0721, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rules 14a–8,[1] 14a–4,[2] and 14a–5[3] under the Securities Exchange Act of 1934 (the ''Exchange Act'').[4]

I. Executive Summary

With modifications, we are adopting some of the amendments to our rules on shareholder proposals that we initially proposed on September 18, 1997.[5] As explained more fully in this release, we modified our original proposals based on our consideration of the more than 2,000 comment letters we received from the public.[6]

Our proposed changes evoked considerable public controversy, as have our earlier efforts to reform these rules. Some shareholders and companies expressed overall support for our proposals.[7] Certain of our proposals, however, were viewed as especially controversial, and generated strong comments in favor, as well as heavy opposition.[8]

The amendments adopted today:

- Recast rule 14a–8 into a Question & Answer format that is easier to read;
- Reverse the *Cracker Barrel* no-action letter on employment-related proposals raising social policy issues;
- Adopt other less significant amendments to rule 14a–8; and
- Amend rule 14a–4 to provide shareholders and companies with clearer guidance on companies' exercise of discretionary voting authority.

These reforms, in our view, will help to improve the operation of the rules governing shareholder proposals and will address some of he concerns raised by shareholders and companies over the last several years on the operation of the proxy process.

We have decided not to adopt other elements of our original proposals, due in part to strong concerns expressed by commenters. We are not adopting our original proposals to increase the percentage of the vote a proposal needs before it can be resubmitted in future years;[9] to streamline the exclusion for matters considered irrelevant to corporate business;[10] or to modify our administration of the rule that permits companies to exclude proposals that further personal grievances or special interests.[11] We are also not adopting the proposed ''override'' mechanism that would have permitted 3% of the shareownership to override a company's decision to exclude proposals under certain of the bases for exclusion set forth under Question 9 of amended rule 14a–8.[12]

Some of the proposals we are not adopting share a common theme: to reduce the Commission's and its staff's role in the process and to provide shareholders and companies with a greater opportunity to decide for themselves which proposals are sufficiently important and relevant to the company's business to justify inclusion in its proxy materials. However, a number of commenters resisted the idea of significantly decreasing the role of the Commission and its staff as informal arbiters through the administration of the no-action letter process. Consistent with these views, commenters were equally unsupportive of fundamental alternatives to the existing rule and process that, in different degrees, would have decreased the Commission's overall participation.

While we have tried to provide the most fair, predictable, and efficient system possible, these rules, even as amended, will continue to require us to make difficult judgments about interpretations of proposals, the motives of those submitting them, and the policies to which they relate. We will continue to explore ways to improve the process as opportunities present themselves.

II. Plain-English Question & Answer Format

We had proposed to recast rule 14a–8 into a more plain-English Question & Answer format.[13] We are adopting that proposal, and the amended rule will be

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[1] 17 CFR 240.14a–8.

[2] 17 CFR 240.14a–4.

[3] 17 CFR 240.14a–5.

[4] 15 U.S.C. 78a *et seq.*

[5] See our Proposing Release, Exchange Act Release No. 29093 (Sept. 18, 1997) [62 Fed. Reg. 50682].

[6] The comment letters are available for inspection and copying in the Commission's Public Reference Room in file number S7–25–97. Comments that were submitted electronically are available on the Commission's website (www.sec.gov).

[7] See, *e.g.,* Comment Letters From Teachers Insurance and Annuity Assoc./College Retirement Equities Fund, Nov. 19, 1997 (''TIAA–CREF Letter''); California Public Employees' Retirement System, Nov. 10, 1997 (''CALPERS Letter''); American Society of Corporate Secretaries, Dec. 8, 1997 (''ASCS Letter''); the Business Roundtable, Dec. 9, 1997 (''BRT Letter''); Barclays Global Investors, Dec. 4, 1997; Georgeson & Company Inc., Dec. 31, 1997 (''Georgeson Letter'').

[8] See, *e.g.,* New York City Employees Retirement System, Nov. 5, 1997 (''NYCERS Letter''); Interfaith Center on Corporate Responsibility, Dec. 23, 1997 (''ICCR Letter''); American Bar Ass'n, Dec. 23, 1997 (''ABA Letter''); Labor Policy Ass'n, Nov. 17, 1997 (''LPA Letter'').

[9] See paragraph (12) under Question 9, formerly rule 14a–8(c)(12) [17 CFR 240.14a–8(c)(12)].

[10] Paragraph (5) under Question 9, former rule 14a–8(c)(5)[17 CFR 240.14a–8(c)(5)].

[11] Paragraph (4) under Question 9, former rule 14a–8(c)(4)[17 CFR 240.14a–8(c)(4)].

[12] The mechanism had been included in Paragraph 10 of rule 14a–8 as proposed to be amended. See Proposing Release.

[13] Unless specifically indicated otherwise, none of these revisions are intended to signal a change in our current interpretations.

the Commission's first in question and answer format. Most commenters who addressed this proposal expressed favorable views, believing that it would make the rule easier for shareholders and companies to understand and follow.[14]

In addition to the other amendments described in this release, we have made some minor revisions to the language we had proposed to conform with the new plain English format. For example, on the proposed revisions to paragraph (1) under Question 9, which is former rule 14a–8(c)(1),[15] commenters stated, and we agree, that the reference to ''the state of the company's incorporation'' may appear narrower than the actual scope of the rule because some entities that may be subject to the rule, such as partnerships, are not ''incorporated.''[16] Accordingly, the rule as adopted refers to ''the laws of the jurisdiction of the company's organization.''

We are adopting minor plain—English revisions to paragraphs (2), (3), and (4) under Question 9, former rules 14a–8(c)(2),[17] (c)(3),[18] and (c)(4). Because we are not adopting the proposed substantive amendments to paragraph (5), former rule 14a–8(c)(5), we are making only minor, non-substantive modifications to the language of that rule so that it conforms to the new plain-English approach.

We are adopting the revisions to former rule 14a–8(c)(6),[19] now paragraph (6) under Question 9, as proposed.[20]

While we are making minor conforming changes to the language of paragraph (7) under Question 9, formerly rule 14a–8(c)(7),[21] we have decided not to adopt the proposed language changes to this rule, or the list of illustrative examples, other than to replace the reference to ''registrant'' with ''company.''[22] We had proposed to revise the rule's language because we thought that the legal term-of-art ''ordinary business'' might be confusing to some shareholders and companies. The term refers to matters that are not necessarily ''ordinary'' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations. Several companies and shareholders nonetheless objected to the proposed revisions, particularly the elimination of the ''ordinary business'' language, on the ground that most participants in the shareholder proposal process are now so familiar with the ''ordinary business'' language that they might misconstrue the revisions as signaling an interpretive change.[23] Indeed, since the meaning of the phrase ''ordinary business'' has been developed by the courts over the years through costly litigation and essentially has become a term-0f-art in the proxy area, we recognize the possibility that the adoption of a new term could inject needless costs and other inefficiencies into the shareholder proposal process.

We are adopting with one modification the proposed language changes to paragraph (8) under Question 9, formerly rule 14a–8(c)(8).[24] The rule as proposed would have permitted companies to exclude a proposal that ''relates to an election for membership on the company's board of directors.'' Based on a suggestion from one commenter, in order to account for non-corporate entities with principal governing bodies bearing names other than the ''board of directors,'' the rule as adopted refers explicitly to elections to an ''analogous governing body.''[25]

We are adopting as proposed our revisions to paragraph (9) under Question 9, formerly rule 14a–8(c)(9).[26] As amended, the rule permits a company to exclude a proposal that ''directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.''[27]

We are adopting as proposed the revisions to paragraphs (10) and (11) under Question 9, formerly rules 14a–8(c)(10)[28] and 14a–8(c)(11).[29] The revisions to paragraph (10) reflect an interpretation that we adopted in 1983.[30]

Although we are not adopting proposed substantive revisions to paragraph (12), formerly rule 14a–8(c)(12),[31] we are adopting non-substantive revisions to conform the rule to the new plain-English approach.

The Commission, through the Division of Corporation Finance (the ''Division''), anticipates establishing a special electronic mailbox only for rule 14a–8 correspondence through which both shareholders and companies will be permitted to make electronic submissions under this rule, including follow-up correspondence.

III. The Interpretation of Rule 14a–8(c)(7): The ''Ordinary Business'' Exclusion

We proposed to reverse the position announced in the 1992 *Cracker Barrel* no-action letter concerning the Division's approach to employment-related shareholder proposals raising social policy issues.[32] In that letter, the Division announced that

The fact that a shareholder proposal concerning a company's employment

[14] *See, e.g.,* CALPERS Letter; State Teachers' Retirement Sys. (California), Jan. 12, 1998; Ethics in Investment Committee of the Sisters of Charity of Saint Elizabeth Station, Nov. 19, 1997; Mr. H. Carl McCall, Comptroller of the State of New York, Dec. 24, 1997; American Corporate Counsel Assoc., Dec. 31, 1997 (''ACCA Letter''); ASCS Letter; Eastman Kodak Co., Nov. 25, 1997; Banc One Corp., Dec. 9, 1998. Some commenters, however, did not believe that the new format would significantly improve the rule's operation. *See, e.g.,* ABA Letter; New York State Bar Assoc., Dec. 10, 1997 (''New York State Bar Letter'').

[15] Rule 14–8(c)(1) [17 CFR 240.14a–8(c)(1)].

[16] *See* ABA Letter; ICCR Letter; Investment Company Institute, Dec. 30, 1997 (''ICI Letter'').

[17] Rule 14a–8(c)(2) [17 CFR 240.14a–8(c)(2)].

[18] Rule 14a–8(c)(3) [17 CFR 240.14a–8(c)(3)].

[19] Rule 14a–8(c)(6) [17 CFR 240.14a–8(c)(6)].

[20] One commenter thought the proposed language could be read as precluding companies from excluding proposals that companies lack power to implement. *See* ABA Letter. To the contrary, the revised rule continues to refer to situations where a company lacks ''power'' to implement the proposal. Thus, for example, exclusion may be justified where implementing the proposal would require intervening actions by independent third parties. *See,* e.g., SCEcorp (Dec. 20, 1995) (proposal that unaffiliated fiduciary trustees amend voting agreements). Under current staff interpretations, however, exclusion would not normally be justified if the proposal merely requires the company to *ask* for cooperation from a third party. *See, e.g., Northeast Utilities System* (Nov. 7, 1996) (proposal that the company ask a third party to coordinate annual meetings held by public companies).

[21] Rule 14a–8(c)(7) [17 CFR 240.14a–8(c)(7)].

[22] Two commenters suggested that we include a non-exclusive list of examples of matters particular to investment companies that would be excludable per se under the ordinary business exception. *See* ICI Letter; Gordon Altman Butowsky Weitzen Shalov & Wein, Dec. 16, 1997. We have not followed the suggestion. We believe that investment companies are not sufficiently different from other types of issuers to make it appropriate for us to designate a predefined set of topics that would be excepted from the shareholder proposal process established under Rule 14a–8.

[23] *See, e.g.,* ICCR Letter; Jessie Smith Noyes Foundation, Nov. 14, 1997 (''Jessie Smith Noyes Letter''); Long View Collective Investment Fund, Jan. 5, 1998 (''Long View Letter''); ABA Letter; The Chase Manhattan Corp., Jan. 14, 1998 (''Chase Manhattan Letter'').

[24] Rule 14a–8(c)(8) [17 CFR 240.14a–8(c)(8)].

[25] *See* ABA Letter.

[26] Rule 14a–8(c)(9) [17 CFR 240.14a–8(c)(9)].

[27] One commenter thought that the word ''directly'' may appear to signal a narrowing of the exclusion. *See* ABA Letter. We believe that the revisions accurately convey our current interpretations of the rule; of course, by revising the rule we do not intend to imply that proposals must be identical in scope or focus for the exclusion to be available. *See, e.g., SBC Communications* (Feb. 2, 1996) (shareholder proposal on calculation of non-cash compensation directly conflicted with company's proposal on a stock and incentive plan).

[28] Rule 14a–8(c)(10) [17 CFR 240.14a–8(c)(10)].

[29] Rule 14a–8(c)(11) [17 CFR 240.14a–8(c)(11)].

[30] In Exchange Act Release No. 20091 (Aug. 16, 1983) [48 FR 38218], we stated that a proposal may be excluded under the rule if it has been ''substantially implemented.''

[31] As explained in Section VI below, we have decided not to modify the percentage of the shareholder vote that a proposal must receive in order to be entitled to re-submission in future years.

[32] *See Cracker Barrel Old Country Stores, Inc.* (Oct. 13, 1992).

policies and practices for the general workforce is tied to a social issue will no longer be viewed as removing the proposal from the realm of ordinary business operations of the registrant. Rather, determinations with respect to any such proposals are properly governed by the employment-based nature of the proposal.

We are adopting our proposal to reverse the *Cracker Barrel* position, which provided that all employment-related shareholder proposals raising social policy issues would be excludable under the ''ordinary business'' exclusion.[33] The Division will return to its case-by-case approach that prevailed prior to the *Cracker Barrel* no-action letter.

In applying the ''ordinary business'' exclusion to proposals that raise social policy issues, the Division seeks to use the most well-reasoned and consistent standards possible, given the inherent complexity of the task. From time to time, in light of experience dealing with proposals in specific subject areas, and reflecting changing societal views, the Division adjusts its view with respect to ''social policy'' proposals involving ordinary business. Over the years, the Division has reversed its position on the excludability of a number of types of proposals, including plant closings,[34] the manufacture of tobacco products,[35] executive compensation,[36] and golden parachutes.[37]

We believe that reversal of the Division's *Cracker Barrel* no-action letter, which the Commission had subsequently affirmed,[38] is warranted. Since 1992, the relative importance of certain social issues relating to employment matters has reemerged as a consistent topic of widespread public debate.[39] In addition, as a result of the extensive policy discussions that the *Cracker Barrel* position engendered, and through the rulemaking notice and comment process, we have gained a better understanding of the depth of interest among shareholders in having an opportunity to express their views to company management on employment-related proposals that raise sufficiently significant social policy issues.

Reversal of the *Cracker Barrel* no-action position will result in a return to a case-by-case analytical approach. In making distinctions in this area, the Division and the Commission will continue to apply the applicable standard for determining when a proposal relates to ''ordinary business.'' The standard, originally articulated in the Commission's 1976 release, provided an exception for certain proposals that raise significant social policy issues.[40]

While we acknowledge that there is no bright-line test to determine when employment-related shareholder proposals raising social issues fall within the scope of the ''ordinary business'' exclusion, the staff will make reasoned distinctions in deciding whether to furnish ''no-action'' relief. Although a few of the distinctions made in those cases may be somewhat tenuous, we believe that on the whole the benefit to shareholders and companies in providing guidance and informal resolutions will outweigh the problematic aspects of the few decisions in the middle ground.

Nearly all commenters from the shareholder community who addressed the matter supported the reversal of this position.[41] Most commenters from the corporate community did not favor the proposal to reverse *Cracker Barrel*, though many indicated that the change would be acceptable as part of a broader set of reforms.[42]

Going forward, companies and shareholders should bear in mind that the *Cracker Barrel* position related only to employment-related proposals raising certain social policy issues. Reversal of the position does not affect the Division's analysis of any other category of proposals under the exclusion, such as proposals on general business operations.

Finally, we believe that it would be useful to summarize the principal considerations in the Division's application, under the Commission's oversight, of the ''ordinary business'' exclusion. The general underlying policy of this exclusion is consistent with the policy of most state corporate laws: to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.

The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.[43]

The second consideration relates to the degree to which the proposal seeks to ''micro-manage'' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.[44] This consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.

A similar discussion in the Proposing Release of the primary considerations underlying our interpretation of the ''ordinary business'' exclusion as applied to such proposals raised some questions and concerns among some of the commenters. Because of that concern, we are providing clarification of that position.[45] One aspect of that

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[33] The reversal is effective as of May 21, 1998, and will apply to future Division no-action responses. It will apply to any rule 14a–8 no-action submission that the Division has received before May 21, 1998 if the Division has not issued a corresponding no-action response by the close of business on May 20, 1998.

[34] *See Pacific Telesis Group* (Feb. 2, 1989).

[35] *See Phillip Morris Companies, Inc.* (Feb. 13, 1990).

[36] *See Reebok Int'l Ltd.* (Mar. 16, 1992).

[37] *See Transamerica Corp.* (Jan. 10, 1990).

[38] *See* Letter dated January 15, 1993 from Jonathan G. Katz, Secretary to the Commission, to Sue Ellen Dodell, Deputy Counsel, Office of Comptroller, City of New York.

[39] *See e.g.*, Investors Focus on Diversity at Texaco Annual Meeting: Company Faces 94 Discrimination Filings, *The Washington Post*, May 14, 1997; Shareholders Press Shoney's on Bias Issue, *The New York Times*, Dec. 26, 1976).

[40] *See* Exchange Act Release No. 12999 (Nov. 22, 1976) [41 FR 52994].

[41] *See e.g.*, Calvert Group, Nov. 26, 1997 (''Calvert Letter''); Center for Responsible Investing, Rec'd Nov. 3, 1997; Captains Endowment Assoc., Rec'd Nov. 6, 1997; Social Investment Forum, Jan. 2, 1998 (''Social Investment Forum Letter'').

[42] *See, e.g.*, ASCS Letter; ACCA Letter; BRT Letter; AlliedSignal Inc., Nov. 24, 1997; Ashland Inc., Nov. 21, 1997; LPA Letter; Sullivan & Cromwell, Dec. 29, 1997 (''Sullivan & Cromwell Letter'').

[43] *See, e.g., Reebok Int'l Ltd.* (Mar. 16, 1992) (noting that a proposal concerning senior executive compensation could not be excluded pursuant to rule 14a–8(c)(7)).

[44] Exchange Act Release No. 12999 (Nov. 22, 1976).

[45] The exclusion has been interpreted previously by the Commission. *See, e.g.*, Exchange Act Release No. 20091 (Aug. 16, 1983) [48 FR 38218]; Exchange Act Release No. 12999 (Nov. 22, 1976) [41 FR 52994]; Exchange Act Release No. 4950 (Oct. 9, 1953) [18 FR 6646]. It has also been interpreted by the courts. *See, e.g., Grimes* v. *Ohio Edison Co.*, 992 F.2d 455 (2d Cir. 1993); *Roosevelt* v. *E.I. Du Pont De Nemours & Co.*, 958 F.2d 416 (D.C. Cir. 1992);

discussion was the basis for some commenters' concern that the reversal of *Cracker Barrel* might be only a partial one. More specifically, in the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micro-manage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific time-frames or to impose specific methods for implementing complex policies. Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to ''ordinary business.''[46] We did not intend such an implication. Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations.[47]

Further, in a footnote to the same sentence citing examples of ''micromanagement,'' we included a citation to *Capital Cities/ABC, Inc.,* (Apr. 4, 1991) involving a proposal on the company's affirmative action policies and practices.[48] Some commenters were concerned that the citation might imply that proposals similar to the *Capital Cities* proposal today would automatically be excludable under ''ordinary business'' on grounds that they seek excessive detail. Such a position, in their view, might offset the impact of reversing the *Cracker Barrel* position. However, we cited *Capital Cities/ABC, Inc.* only to support the general proposition that some proposals may intrude unduly on a company's ''ordinary business'' operations by virtue of the level of detail that they seek. We did not intend to imply that the proposal addressed in *Capital Cities,* or similar proposals, would automatically amount to ''ordinary business.'' Those determinations will be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.

IV. Rule 14a–4: Discretionary Voting Authority

We had proposed amendments to rule 14a–4, and related amendments to rule 14a–5, to provide clearer guidelines for companies' exercise of discretionary voting authority in connection with annual shareholder meetings.[49] We are adopting our proposals with some modifications.

As we explained in the Proposing Release, rule 14a–4 did not clearly address the exercise of discretionary voting authority if a shareholder proponent chooses not to use rule 14a–8's procedures for placing his or her proposal in the company's proxy materials. This may occur if the proponent notifies the company in advance of the meeting of his or her intention to present the proposal from the floor of the meeting, and commences his or her own proxy solicitation, without ever invoking rule 14a–8's procedures. Our amendments to rule 14a–4(c)(1), and new paragraphs 14a–4 (c)(2) and (c)(3), are designed to provide companies with clearer guidance on the scope of permissible discretionary voting power in the context of a non-14a–8 proposal.

A. Rule 14a–4(c)(1)

We are adopting essentially as proposed new rule 14a–4(c)(1), which replaces a ''reasonable time'' standard with a clear date after which notice to the company of a possible shareholder proposal would not jeopardize a company's ability to exercise discretionary voting authority on that new matter when and if raised at the annual meeting. Most commenters who addressed this proposal expressed favorable views.[50] Amended paragraph 14a–4(c)(1) allows a company voting discretionary authority where the company did not have notice of the matter by a date more than 45 days before the month and day in the current year corresponding to the date on which the company first mailed its proxy materials for the prior year's annual meeting of the shareholders, or by a date established by an overriding advance notice provision.[51]

As an example, assume a company mailed this year's proxy materials on March 31, 1998 for an annual meeting on May 1, 1998. Next year, the company also schedules an early May annual meeting. The notice date established by new rule 14a–4(c)(1) for non-14a–8 proposals is 45 days before March 31, or February 14. Thus February 14, 1999 would represent the notice date for the purposes of amended rule 14a–4(c)(1) unless a different date is established by an overriding advance notice provision in the company's charter or bylaws.[52]

A few commenters thought that advance notice of 45 days might provide an insufficient amount of time for some companies with longer printing and mailing schedules.[53] However, we do not believe that it is necessary to extend the 45-day advance notice period, since most companies should have some flexibility under state law to prolong the period through advance notice provisions. We stated in the Proposing Release that we did not intend to interfere with the operations of state law authorized definitions of advance notice set forth in corporate bylaws and/or articles of incorporation, and a number of commenters supported this approach.[54] Accordingly, an advance notice provision would override the 45-day period under rule 14a–4, resulting

Medical Committee for Human Rights v. *SEC,* 432 F.2d 659 (D.C. Cir. 1970); *New York City Employee's Retirement Sys.* v. *SEC,* 843 F. Supp. 858, *rev'd* 45 F.3d 7 (2d Cir. 1995); *Amalgamated Clothing and Textile Workers Union* v. *Wal-Mart Stores, Inc.,* 821 F. Supp. 877, 891 (S.D.N.Y. 1993).

[46] *See, e.g.,* ICCR Letter; LongView Letter; Letter from Professor Harvey J. Goldschmid of Columbia University School of Law, and Ira M. Millstein, Senior Partner, Weil, Gotshal & Manges LLP, Dec. 23, 1997 (''Goldschmid and Millstein Letter''). *Compare* Chase Manhattan Letter.

[47] *See, e.g., Roosevelt* v. *E.I. Du Pont De Nemours & Co.,* 958 F.2d at 424–427 (one-year difference in timing of CFC production phase-out does not implicate significant policy, but longer period might implicate significant policy). In *Amalgamated Clothing and Textile Workers Union,* 821 F. Supp. at 891, the court required Wal-Mart to include a proposal in its proxy materials that sought information on the company's affirmative action policies and practices, although it also required the proponents to make certain revisions designed to ensure that the proposal did not seek excessive detail.

[48] *See* Proposing Release, Footnote 79.

[49] Discretionary voting authority is the ability to vote proxies that shareholders have executed and returned to the company, on matters not specifically reflected on the proxy card, and on which shareholders have not had an opportunity to vote by proxy. While not necessarily limited to annual meetings involving the election of directors, this has been the context in which companies have expressed concerns about proponents' attempts to ''end run'' around the rule 14a–8 process.

[50] *See, e.g.,* ICCR Letter; TIAA–CREF Letter; LongView Letter, BRT Letter; ACCA Letter; Barclays Global Investors, Dec. 4, 1997; United Brotherhood of Carpenters and Joiners of America (''Carpenters Letter''); International Union of Operating Engineers, Dec. 29, 1997 (''Engineers Letter''); International Brotherhood of Teamsters, Dec. 23, 1997 (''Teamsters Letter''). A few commenters did not favor the proposal. *See e.g.,* Gannett Corp., Nov. 20, 1997; CALPERS Letter; Union of Needletrades, Industrial and Textile Employees, Jan. 2, 1998 (''UNITE Letter'').

[51] An advance notice provision is a requirement in a company's charter or bylaws that a shareholder proponent notify the company of his/her intention to present a proposal a certain number of days or weeks prior to the shareholders' meeting or the mailing of proxies.

[52] As amended, rule 14a–5(e) requires companies to disclose this date in each annual meeting proxy statement or its equivalent. *See* Section V below.

[53] *See, e.g.,* ACCA Letter; Citicorp, Dec. 23, 1997 (''Citicorp Letter'').

[54] *See, e.g.,* Air Products and Chemicals, Inc., Dec. 22, 1997; NationsBank, Nov. 21, 1997; BRT Letter; Sullivan & Cromwell Letter. Other commenters who generally supported proposed new paragraph 14a–4(c)(1) did not note an objection to this aspect of the rules operation. *See e.g.,* Carpenters Letter, Longview Letter; Engineers Letter; ICCR Letter; TIAA–CREF Letter.

in a shorter[55] or longer period.[56] The rule continues to require inclusion of a specific statement, in either the proxy statement or proxy card, of an intent to exercise discretionary voting authority in these circumstances.

Paragraph 14a–4(c)(1) as adopted continues to incorporate a ''reasonable time'' standard if the company did not hold an annual meeting of shareholders during the prior year, or if the date of the annual meeting has changed by more than 30 days from the prior year. While one commenter suggested an alternative mechanism designed to provide a more specific ''default'' date, we were concerned that such an alternative approach might make the rule unjustifiable complex.[57]

B. Rule 14a–4(c)(2)

Proposed new paragraph 14a–4(c)(2) addressed a company's ability to exercise discretionary voting authority for an annual shareholders' meeting notwithstanding its receipt of ''timely'' advance notice of a non-14a–8 shareholder proposal as defined by paragraph 14a–4(c)(1).[58] We are adopting new paragraph (c)(2), but with some modifications of the original proposal.

As originally proposed, paragraph 14a–4(c)(2) would have permitted the exercise of discretionary voting authority by company management if the company's proxy materials were to include: (i) in the proxy statement, a discussion of the nature of the matters as to which adequate advance notice has been received, and how the company intends to exercise its discretion to vote on each such matter should it be presented to shareholders at the meeting, and (ii) on the proxy card, a cross-reference to the discussion in the proxy statement and a box allowing shareholders to withhold discretionary authority from management to vote on the designated matter(s). The pre-conditions to reliance on the rule are discussed below.

1. Proxy Statement Disclosure

On the first pre-condition of the proposed rule, requiring disclosure of the nature of potential non-14a–8 shareholder proposals, a number of commenters objected to our use of the word ''discussion.''[59] In their view, the word ''discussion'' appears to signal a departure from the Division's current position expressed in its *Idaho Power* and *Borg-Warner* no action letter responses.[60] Under those no-action responses, companies must only ''advise'' shareholders of, rather than ''discuss,'' the nature of proposals that may be raised. Because we intended no departure from the disclosure element of the Division's no-action position, paragraph (c)(2) as adopted replaces the word ''discussion'' with ''advice.'' We remind you that the disclosure prescribed by amended rule 14a–4(c)(2), as with any disclosure item, must take into account the disclosure requirements of the proxy anti-fraud rule.[61]

2. No Separate Voting Box

On the second pre-condition of proposed paragraph 14a–4(c)(2), a number of commenters objected to the inclusion of a separate voting ''box'' permitting shareholders to withhold discretionary authority from management on a non-14a–8 shareholder proposal as to which adequate advance notice had been received in the context of an annual meeting or its equivalent. Some stated that a voting box permitting shareholders to withhold discretionary voting authority in some circumstances may be confusing if shareholders are also independently solicited by the proponent in support of the same proposal.[62] We agree that inclusion of the proposed box on companies' proxy cares may be confusing in some circumstances.[63]

Other commenters objected to the separate voting box because they believe that the potential availability of the box would in effect create a new system for submitting shareholder proposals without having to comply with the restrictions under rule 14a–8.[64] In their view, the prospect of obtaining a voting box with a cross-reference to disclosure of the nature of the potential proposal in the proxy statement would encourage the submission of more shareholder proposals outside rule 14a–8's mechanisms.

Accordingly, we have decided not to include the new voting box as part of new rule 14a–4(c)(2). A shareholder's execution of a proxy card will confer discretionary voting authority if the requirements of the rule are satisfied.

3. Percentage of Shareholders to be Solicited

Several commenters also objected to proposed new paragraph 14a–4(c)(2) on grounds that it would permit a company to exercise discretionary voting authority at an annual shareholders meeting even if the shareholder proponent had independently solicited the percentage of shareholders required to carry the proposal.[65] These commenters believe that a company should not be permitted to vote uninstructed proxies if the proponent has put the proposal ''in play'' by providing a proxy statement and form of proxy to a significant percentage of the company's sharehownership. On this point, proposed paragraph 14a–4(c)(2) represented a departure from the

[55] A company that mails its proxy materials before the expiration of the period established by an advance notice bylaw would continue to be subject to the notice even though it has already mailed its proxies.

[56] One commenter suggested that we move the parenthetical referring to the effect of advance notice provisions from the middle of the first sentence of paragraph 14a–4(c)(1) as proposed to the end of that sentence in order to clarify that an advance notice provision would override the 45-day period established by the rule whether the provision runs from the meeting date or from the mailing date. *See* Sullivan & Cromwell Letter. We agree and have made the revision.

[57] *See* Sullivan & Cromwell Letter.

[58] A few commenters also thought that we should further clarify that new paragraph 14a–4(c)(2) comes into play only if the company receives timely notice of a non-14a–8 proposal for the purposes of paragraph (c)(1). We added clarifying language to the end of paragraph (c)(1) and the beginning of paragraph (c)(2) in response to these comments.

[59] *See e.g.,* Chevron Corp, Nov. 25, 1997; USX Corp., Dec. 18, 1997.

[60] *Idaho Power Co.* (Mar 13, 1996); *Borg-Warner Security Corp.* (Mar. 14, 1996).

[61] *See* rule 14a–9 [17 CFR 240.14a–9].

[62] *See, e.g.,* Georgeson Letter; ICCR Letter; UNITE Letter; Davis, Cowell & Bowe, LLP, Jan. 2, 1998. One commenter gave the following example. An insurgent sends out a proxy card seeking shareholder votes on its shareholder resolution. A shareholder who receives the insurgent's card votes in favor of the proposal, and executes and returns the insurgent's card. But then the company either solicits, or resolicits, the same shareholder, and includes a ''withhold'' box on management's proxy card relating to the same non-14a–8 proposal. Since the shareholder does not wish to grant management discretionary voting authority on the proposal, it checks the box. But then, in the commenter's view, it may be unclear whether the shareholder has executed a subsequent proxy that revokes the shareholder's execution of the insurgent's card under applicable state law. *See* ICCR Letter at 32–33.

[63] A few commenters from the shareholder community suggested that we overcome possible confusion by requiring companies to permit shareholders to vote ''for'' or ''against'' non-14a–8 proposals. Commenters from the corporate community that addressed the matter opposed such an approach, and we believe that the amendments adopted today adequately accomplish our goal of providing clearer guidelines in this area. Contrary to the statements by some commenters, it is not necessarily a precondition for the exercise of discretionary voting authority under the Division's current no-action letters that companies include an extra item on their proxy cards permitting shareholders to vote ''for'' or ''against'' non-14a–8 proposals. *See Idaho Power* and *Borg-Warner.*

[64] *See, eg.,* BRT Letter; ASCS Letter; J.C. Penny Company, Dec. 19, 1997; Champion Int'l Corp., Dec. 18, 1997; International Paper, Nov. 19, 1997.

[65] *See, e.g.,* Mr. Jack Sheinkman, Vice-Chair Amalgamated Bank of New York, and President Emeritus Amalgamated Clothing and Textile Workers Union AFL–CIO, CLC, Nov. 7, 1997; Service Employees Int'l Union, Dec. 31, 1997; Engineers Letter; Carpenters Letter; National Electrical Benefit Fund, Dec. 22, 1997 (''NEBF Letter'').

''percentage of shares solicited'' standard articulated in the Division's *Idaho Power* and *Borg-Warner* no-action positions.

In response to these comments, and in light of our decision not to adopt the proposal to require that the Company include an additional box on its proxy cards for withholding discretionary voting authority, we have decided to codify the ''percentage of shares solicited'' standard of the Division's current no-action positions. The final rule therefore precludes a company from exercising discretionary voting authority on matters as to which it has received adequate advance notice if the proponent provides the company as part of that notice with a statement that it intends to solicit the percentage of shareholder votes required to carry the proposal, followed with specified evidence that the stated percentage had actually been solicited.

As we explained in the Proposing Release, this aspect of the Division's no-action position had been the source of uncertainty for companies. A company may not know whether a shareholder intends to begin to solicit proxies independently, or how many shareholders will be solicited if a solicitation is actually commenced. We understand that in a number of instances companies were forced to guess whether its ability to exercise discretionary authority had been restricted. A number of commenters from both the corporate and shareholder communities suggested that we overcome the potential for uncertainty by requiring proponents to provide advance written notice if they intend to deliver a proxy statement and form of proxy to holders of at least the minimum number of the company's voting shares that is required to carry the proposal, including measures to help ensure that such notice is bona fide.[66]

We have revised new paragraph (c)(2) to reflect these comments, and the rule as adopted requires a shareholder proponent to provide the company with written notice within the timeframe established by paragraph 14a–4(c)(1), that is, earlier than 45 days or in compliance with advance notice provisions. In order to help ensure that the notice has been provided in good faith, paragraph 14a–4(c)(2) as adopted also requires the proponent to repeat the statement (that it intends to solicit proxies to prevail) in its proxy materials to underscore the applicability of rule 14a–9, the anti-fraud rule. To further emphasize this point, and to provide interested parties with the ability to proceed against a proponent that does not fulfill its good faith promise to solicit the required number of shareholders, the rule requires the proponent to provide the company with a statement from the solicitor or other person with knowledge indicating that the proponent has taken the steps necessary to solicit the percentage of the company's shareownership required to approve the proposal. A statement executed by the shareholder insurgent will satisfy this requirement only to the extent that it was actually involved in carrying out the solicitation.

C. Rule 14a–4(c)(3)

We are also adopting a new paragraph 14a–4(c)(3) to further clarify the rule's operation in connection with special shareholders' meetings and other solicitations. Rules 14a–4(c)(1) and 14a–4(c)(2) as proposed to be amended, and as adopted, establish a clearer framework for companies' exercise of discretionary voting authority for annual shareholder meetings or their functional equivalents. We did not intend for that framework to apply to other solicitations, or to solicitations by persons other than management, such as special meetings or consent solicitations unrelated to the election of directors, which would continue to be governed by the ''reasonable time'' standard that had applied to all solicitations under former rule 14a–4(c)(1). Although there does not appear to have been confusion among commenters on this point, new paragraph (c)(3), and new introductory language to new paragraphs (c)(1) and (c)(2), should help clarify the point.

Tracking much of the language of former paragraph 14a–4(c)(1), new paragraph (c)(3) provides for the exercise of discretionary voting authority ''[f]or solicitations other than for annual meetings or for solicitations by persons other than the registrant, [on] matters which the persons making the solicitation do not know, a reasonable time before the solicitation, are to be presented at the meeting, if a specific statement to that effect is made in the proxy statement or form of proxy.''[67]

D. Filing in Preliminary Form

Finally, in the Proposing Release, we stated that during the 1996 proxy season the Division permitted several companies to avoid filing proxy materials in preliminary form despite receipt of adequate advance notification of a non-14a–8 shareholder proposal, so long as these companies disclosed in their proxy statements the nature of the proposal and how management intended to exercise discretionary voting authority if the proposal were actually to be presented to a vote at the meeting. We also stated that, in light of the proposed amendments to rule 14a–4, we might reverse that informal position, so that companies receiving notice of a non-14a–8 proposal before the filing of their proxy materials would be required to file their materials in preliminary form to preserve discretionary voting authority under rule 14a–4(c)(2). A number of commenters opposed reversal of the position, stating that in ordinary circumstances little would be gained by staff review of this material, and that potential delays resulting from preliminary filings could unjustifiably interfere with companies' mailing schedules.[68] The Division has decided not to reverse its position at this time, but may evaluate the position again in the future after monitoring proxy filings under the amended rules.

V. Other Amendments

We are adopting other modifications to rules 14a–8 and 14a–5.

We are adopting as proposed the answer to Question 1 of the amended rule defining a proposal as a request or requirement that the board of directors take an action.[69] One commenter objected to the proposal on grounds that the definition appeared to preclude all shareholder proposals seeking information.[70] In formulating the definition, it was not our intention to preclude proposals merely because they seek information, and the fact that a proposal seeks only information will not alone justify exclusion under the definition.

Also as proposed, we are increasing the dollar value of a company's voting shares that a shareholder must own in order to be eligible to submit a shareholder proposal—from $1,000 to $2,000—to adjust for the effects of inflation since the rule was last revised.[71] There was little opposition to

[66] *See, e.g.,* NEBF Letter, Carpenters Letter; UNITE Letter, Engineers Letter; Long View Letter; Citicorp Letter; Questar Corp., Dec. 31, 1997; Harrah's Entertainment, Inc., Dec. 31, 1997; *see also* Goldschmid and Millstein Letter.

[67] *See United Mine Workers* versus *Pittston Co.,* [1989–1990 Transfer Binder] Fed. Sec. L. Rep. (CCH) P 94,946 (D.D.C. Nov. 24, 1989); and *Larkin* versus *Baltimore Bancorp,* 769 F. Supp. 919 (D. Md. 1991).

[68] *See, e.g.,* ABA Letter; BRT Letter; ASCS Letter; Goldschmid and Millstein Letter. A few commenters within the shareholder community supported reversal of the position. *See, e.g.,* Engineers Letter; Carpenters Letter.

[69] For favorable comments, see, *e.g.,* TIAA–CREF Letter; ABA Letter; GE Stockholders' Alliance, Oct. 16, 1997. But see, *e.g.,* ICCR Letter.

[70] *See* Calvert Letter.

[71] *See* The answer to Question 2.

the proposed increase among commenters, although several do not believe the increase is great enough to be meaningful, especially in light of the overall increase in stock prices over the last few years.[72] Nonetheless, we have decided to limit the increase to $2,000 for now, in light of rule 14a–8's goal of providing an avenue of communication for small investors. There was no significant support for any modifications to the rule's other eligibility criteria, such as the one-year continuous ownership requirement.

A number of commenters supported, and few opposed, our proposal to establish a uniform 14-day period in which shareholders would be required to respond to a company's notification that the shareholder has failed to comply with one or more procedures under rule 14a–8, such as the submission deadlines and the rule's for establishing proponent eligibility.[73] We are adopting the 14-day period as proposed. In response to one commenter's suggestion, we have added a sentence to the rule clarifying that a company need not provide notice of a deficiency that cannot be remedied. If the company intends to exclude the proposal, it nonetheless would later have to make a submission under rule 14a–8, and provide a copy to the proponent.[74]

We are also adopting amendments to rule 14a–5(e), with a few modifications from our proposals. As proposed to be amended, that rule would require companies to disclose the date after which proposals submitted outside the framework of rule 14a–8 are considered untimely for the purposes of amended rule 14a–4(c)(1).[75]

Two commenters objected to our proposal to amend rule 14a–5(e) to require disclosure of the date by which shareholders must notify the company of any non-14a–8 proposals under amended rule 14a–4(c)(1).[76] They were concerned that disclosure of the date would appear to formalize a new system for submitting shareholder proposals in competition with the mechanisms of rule 14a–8, and would encourage the submission of proposals outside of that process. We do not agree that mere disclosure of the date would likely have that effect, and we believe that disclosure is necessary because shareholders often would not have enough information to deduce the date reliably on their own. We are also adopting the other proposed modifications to rule 14a–5(e) designed to streamline the rule's operation.

One commenter pointed out that it is unclear from the rule as drafted whether the new disclosure in the company's proxy statement should reflect the ''default'' date under amended rule 14a–4(c)(1), or instead the date established by an overriding advance notice provision, if any.[77] We have revised the rule to clarify that companies should disclose the date established by an overriding advance notice provision, and in the absence of such a provision, the ''default'' date for submitting non-14a–8 proposals, which normally would be 45 days before the date the company mailed its proxy materials for the prior year. Because the rule also requires companies to disclose the deadline for submitting rule 14a–8 proposals, companies' disclosure should clearly distinguish between the two dates.

Finally, in the answer to Question 8 of amended rule 14a–8, we proposed to include an advisory that the proponent or the proponent's representative make sure that he/she follows applicable procedures proper under state law for appearing at the meeting and/or presenting the proposal. Most commenters who addressed the proposal viewed the advisory as a helpful aid.[78] We have included the advisory as proposed.

VI. Proposals Not Adopted

We have decided not to adopt some of our original proposals, due in part to concerns expressed by some commenters. These proposals generally received support from some commenters, but equally strong opposition from others.

Personal Grievance Exclusion

Paragraph (4) under Question 9, formerly rule 14a–8(c)(4), permits companies to exclude proposals furthering personal grievances or special interests. We had proposed to modify the way the Division administers the rule so that the staff would concur in the exclusion of a proposal on this ground only if the proposal on its face were to relate to a personal grievance or special interest. In other circumstances, under our proposal, the Division would express ''no view'' in its no-action response. The proposal reflected our view that the Division's ability to make the necessary factual findings is limited in the context of evaluating an otherwise ''facially neutral'' proposal, and that companies and shareholders themselves possess much of the factual information relevant to the applicability of the ''personal grievance'' exclusion.

Shareholders expressed serious concerns about this proposal.[79] A number of commenters from the shareholder community were concerned that companies might use the increased flexibility provided by a ''no view'' no-action response to exclude proposals that do not in actuality further personal grievances of special interests. In their view, a shareholder, in these circumstances, might be forced to incur the expense of litigation to prevent exclusion of the proposal. Some shareholders, for instance, were concerned that companies might rely on the rule to exclude proposals focusing on social policy matters.[80] We agree that the proposal might increase the likelihood of disputes between shareholders and companies. We have therefore decided not to implement the proposal, and will continue to administer the rule consistently with our current practice of making case-by-case determinations on whether the rule permits exclusion of particular proposals.

Resubmission Thresholds

If a proposal fails to receive a specified level of support, paragraph (12) under Question 9, formerly rule 14a–8(c)(12), permits a company to exclude a proposal focusing on substantially the same subject matter for a three-year period. In order to avoid possible exclusion, a proposal must receive at least 3% of the vote on its first submission, 6% on the second, and 10% on the third. We had proposed to raise the percentage thresholds respectively to 6%, 15%, and 30%.

Many commenters from the shareholder community expressed serious concerns about this proposal.[81]

[72] *See, e.g.,* ASCS Letter; ABA Letter; BRT Letter; see also ICCR Letter.

[73] *See, e.g.,* ABA Letter; ASCS Letter; TIAA–CREF Letter; GE Stockholders' Alliance, Oct. 16, 1997. *But see* ICCR Letter; Carpenters Letter.

[74] *See* Rule 14a–8(j)(Question10).

[75] *See* Section IV above. The new information, if applicable, would be disclosed under Item 5 of Form 10–Q or 10–QSB (''Other Information'').

[76] *See* ABA Letter; New York State Bar Letter.

[77] *See* W.R. Grace & Co., Oct. 28, 1997.

[78] *See, e.g.,* CALPERS Letter; ICCR Letter; ASCS Letter.

[79] *See e.g.,* ICCR Letter; Teamsters Letter; Captains Endowment Ass'n, rec'd Nov. 6, 1997; Davis, Cowell & Bowe LLP, Jan. 2, 1998 (''Davis, Cowell & Bowe Letter'').

[80] Social issue proposals are generally not excludable under paragraph (4). In 1983, we amended the rule to clarify that it would not apply, without other factors, to exclude a proposal ''relating to an issue in which proponent was personally committed or intellectually and emotionally interested.'' Exchange Act Release No. 20091 (Aug. 16, 1983)[48 FR 38218].

[81] *See, e.g.,* ICCR Letter; NYCERS Letter; Calvert Letter; Social Investment Forum Letter; the School Sisters of Notre Dame, Oct. 20, 1997; the Conference on Corporate Responsibility of Indiana and Michigan, Oct. 14, 1997; CALPERS Letter (indicating that it might support more modest

We have decided not to adopt the proposal, and to leave the thresholds at their current levels.

Proposed Override Mechanism

We had proposed a new mechanism that would have permitted 3% of a company's shareownership to override the ''ordinary business'' exclusion and the ''relevance'' exclusion, paragraphs (7) and (5) under Question 9.

Several commenters opposed the proposal.[82] Other commenters supported the override concept as proposed, but expressed concerns about specific aspects, including whether the proposed 3% threshold may be too low and lead to erosion of the ''ordinary business'' and ''relevance'' exclusions that would be subject to an override.[83] Some shareholders thought the opposite, that 3% support of a company's shareownership would be too difficult for a shareholder proponent to obtain.

We have decided not to adopt the proposed ''override'' mechanism. Because we are not adopting the ''override,'' we also are not adopting ancillary amendments designed to help implement the mechanism, including the proposed qualified exemption under the proxy rules, the proposed safe harbor from the beneficial ownership reporting requirements under section 13(d) of the Exchange Act, and the proposed shortening of companies' deadlines for making their rule 14a–8 no-action submissions to the Division.

The ''Relevance'' Exclusion

Paragraph (5) under Question 9 permits companies to exclude proposals

> Relating to operations which account for less than 5 percent of the registrant's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the registrant's business.

We had proposed to revise the rule to apply a purely economic standard. Under the proposal, the exception for proposals that are ''otherwise significantly related'' would have be deleted. A company would have been permitted to exclude proposals relating to matters involving the purchase or sale of services or products that represent $10 million or less in gross revenue or total costs, whichever is appropriate, for the company's most recently completed fiscal year.

Few commenters indicated strong support for the proposed amendments, and we are not making any substantive changes to the rule. Many commenters within the corporate community agreed in concept with our proposal to base the rule on an objective economic standard, and to eliminate the subjective ''not otherwise significantly related'' part of the rule.[84] But most of those commenters thought that the proposed $10 million threshold was so low that companies would too infrequently be in a position to rely on the exclusion. Comments from the shareholder community were mixed.[85] Some shareholders opposed the elimination of the ''not otherwise significantly related'' part of the rule, while other shareholders expressed varying degrees of support for the approach, with some expressing concern that companies might apply the rule to exclude proposals on subjects that are difficult to quantify, despite the ''safeguards'' that we included as part of the proposed amendments.

Statements in Opposition: Commission Review

Finally, we had proposed eliminating rule 14a–8(e), which requires a company to provide a proponent with an advance copy of any statement in opposition to the proposal that it intends to include in its proxy materials. This provision also provides a mechanism for shareholders to bring materially false or misleading statements to the Division's attention. A number of commenters from the shareholder community opposed elimination of these procedures because they believed that the potential for proponent objections deters companies from making materially false or misleading statements, and encourages negotiation between the company and proponent.[86] We have decided not to adopt that proposal, and are retaining the mechanisms of former rule 14a–8(e) in the context of the answer to Question 13 of amended rule 14a–8.

VII. Final Regulatory Flexibility Analysis

We have prepared this Final Regulatory Flexibility Analysis under 5 U.S.C. 603 concerning the amendments to rules 14a–8, 14a–4, and 14a–5 as a follow-up to the Initial Regulatory Flexibility Analysis (''IRFA'') that we prepared in connection with the Proposing Release.[87] We received few comments, and no significant empirical data, in response to the requests for further information included in the IRFA.

The purpose of the amendments is to streamline the operation of the rule, and address concerns raised by both shareholder and corporate participants. We are adopting the amendments pursuant to Sections 14 and 23 of the Exchange Act[88] and Section 20(a) of the Investment Company Act of 1940[89] (Investment Company Act'').

Specifically, we are:

- Recasting rule 14a–8 into a more plain-English Question & Answer format;
- Reversing the *Craker Barrel* interpretive position on employment-related proposals raising significant social policy issues; and
- Amending rule 14a–4 to provide shareholders and companies with clearer guidance on companies' exercise of discretionary voting authority.

We have decided not to adopt other elements of our original proposals. We are *not adopting* our original proposals to:

- Increase the percentage of the vote a proposal must receive before it can be resubmitted in future years if it is not approved;
- Streamline the exclusion for matters considered irrelevant to corporate business,[90]
- Modify our administration of the rule permitting companies to exclude proposals furthering personal grievances of special interests; or
- Implement an ''override'' mechanism that would have permitted 3% of the share ownership to override a company's decision to exclude a proposal under certain of the bases for exclusion set forth under Question 9 of amended rule 14a–8.[91]

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increases in the thresholds); but see TIAA–CREF Letter (supporting the increases at the levels proposed). These commenters were concerned that the increases would operate to exclude too great a percentage of proposals—particularly those focusing on social policy issues which tend to receive lower percentages of the shareholder vote.

[82] Former paragraphs (c)(7) and (c)(5) of rule 14a–8. *See, e.g.,* ABA Letter; ACCA Letter; LPA Letter; AT&T, Dec. 24, 1997; Household Int'l, Inc., Jan. 6, 1998; Federal Express Corp., Jan. 2, 1998; ICI Letter (concerned that proposal if adopted might be costly and disruptive for investment companies).

[83] *See, e.g.,* ASCS Letter; BRT Letter; FMC Corp., Dec. 5, 1997; Ford Motor Company, Dec. 23, 1997; New York State Bar Letter.

[84] *See, e.g.,* ASCS Letter; BRT Letter; Unocal Corp., Nov. 24, 1997.

[85] *See, e.g.,* TIAA–CREF Letter; CALPERS Letter; Carpenters Letter; Jessie Smith Noyes Letter; NYCERS Letter; ICCR Letter.

[86] *See, e.g.,* ICCR Letter; LongView Letter. *See also* ICI Letter.

[87] *See* Proposing Release, Section V.

[88] 15 U.S.C. 78m, 78n, & 78u.

[89] 15 U.S.C. 80a–1 *et seq.*

[90] Paragraph (5) under Question 9, former rule 14a–8(c)(5).

[91] Because we are not adopting the proposed ''override'', we also are not adopting certain measures, designed to enable shareholders to use it, including the proposed qualified exemption from the proxy rules, and safe harbor from beneficial ownership reporting obligations under Section 13(d) of the Exchange Act.

The amendments will affect small entities that are required to file proxy materials under the Exchange Act or the Investment Company Act. Exchange Act rule 0–10 defines ''small business'' as a company whose total assets on the last day of its most recent fiscal year were $5 million or less.[92] Investment Company Act rule 0–10 defines ''small entity'' as an investment company with net assets of $50 million or less as of that date.[93] We are currently aware of approximately 1,000 reporting companies that are not investment companies with assets of $5 million or less. There are approximately 800 investment companies that satisfy the ''small entity'' definition. Only approximately one-third of all investment companies have shareholder meetings and file proxy materials annually.

Therefore, we believe approximately 250 small entity investment companies may be affected by the amendments.

Plain-English Question & Answer Format

Our revision of rule 14a–8 to create a more understandable Question & Answer format should help decrease the time and expense incurred by both shareholders and companies attempting to comply with its provisions companies frequently consult with legal counsel in preparing no-action submissions under rule 14a–8. The rule's added clarity may obviate the need for a shareholder or company to consult with counsel, depending on the issues raised by the submission. Under some circumstances, however, companies' submissions must include supporting opinions of counsel.

No comments submitted empirical data demonstrating how much it costs companies to consider and prepare an individual no-action submission under rule 14a–8. Question 13 of a Questionnaire that we made available in February 1997 [94] asked respondent companies how much money they spend on average each year determining whether to include or exclude shareholder proposals and following Commission procedures in connection with any proposal that they wish to exclude (including internal costs as well as any outside legal and other fees). While responses may have accounted for consideration of more than one proposal, the costs of making a determination whether to include a proposal reported by 80 companies averaged approximately $37,000.[95] We do not believe, however, that the cost is likely to vary depending on the size of the company. That is, the cost to a small entity is likely to be the same as the cost to a larger entity, depending on the number of proposals received and how many the company seeks to exclude under the staff no-action letter process.

Because the rule's added clarity may make it easier for shareholders to understand the procedures for submitting shareholder proposals, the amendments may encourage shareholders to submit more shareholder proposals to companies each year. In turn, companies may be required to make more rule 14a–8 no-action submissions to the Commission.

In the period from September 30, 1996 to September 30, 1997, we received submissions from a total of 245 companies, and only 6 (i.e., 2%) were ''small businesses.'' While we received no empirical data on the number of small businesses that receive shareholder proposals each year, one commenter with substantial experience submitting shareholder proposals to companies reported that small companies seldom receive shareholder proposals.[96]

We also received no empirical information in response to our request for data on the marginal cost of including an additional shareholder proposal in companies' proxy materials. However, the Questionnaire asked each company respondent how much money on average it spends in the aggregate on printing costs (plus any directly related costs, such as additional postage and tabulation expenses) to include shareholder proposals in its proxy materials. While individual responses may have accounted for the printing of more than one proposal, the average cost reported by 67 companies was approximately $50,000.[97] By contrast, one commenter noted that the cost for companies, excluding the largest corporations, should average about $10,000 per proposal.[98] We expect that any additional printing costs are lower for small entities, since small entities typically should have to print fewer copies of their proxy materials because they have fewer shareholders.

A company that receives a proposal has no obligation to make a submission under rule 14a–8 unless it intends to exclude the proposal from its proxy materials. Accordingly, any costs of including an additional proposal should be offset, at least partially, by not having to make a rule 14a–8 submission. No commenters responded to our request for empirical data on the potential cost savings.

Reversal of Cracker Barrel

In the 1992 *Cracker Barrel* no-action letter, the Division stated that henceforth it would concur in the exclusion of all employment-related shareholder proposals raising social policy issues under rule 14a–8(c)(7), the ''ordinary business'' exclusion. Before the announcement of the position, the Division analyzed employment related proposals tied to social issues on a case-by-case basis, concurring in the exclusion of some, but not others. Reversal of the position will result in a return to the case-by-case analysis that prevailed before the position was announced.

Our decision to reverse the *Cracker Barrel* position on employment-related shareholder proposals may therefore result in an increase in the number of employment-related proposals tied to social issues that are submitted to companies each year, and that companies must include in their proxy materials. During the 1997 proxy season, the Division received approximately 30 submissions involving employment-related proposals tied to social issues, none from ''small businesses.'' [99]

While it is unclear whether the number of proposals submitted to small businesses and included in their proxy statements will increase as a result of the reversal of *Cracker Barrel*, we have analyzed under ''Plain English Question & Answer Format'' above the potential costs to companies of considering and including additional proposals in their proxy materials.

Discretionary Voting Authority

The amendments to rule 14a–4 should favorably affect companies, including ''small businesses,'' because they would provide clearer ground rules as to the ability to exercise discretionary voting power when a shareholder presents a proposal without invoking rule 14a–8. We do not routinely record information on the number of ''small businesses'' that receive non-rule 14a–8 proposals

[92] 17 CFR 240.0–10.

[93] 17 CFR 270.0–10.

[94] *See* Proposing Release, Footnote 14.

[95] This average is based on respondents reporting costs greater than zero. Reported costs ranged from a low of $10 to a high of approximately $1,200,000. The median cost was $10,000.

[96] ICCR Letter at 9.

[97] This average is based on respondents reporting costs greater than zero. Reported costs ranged from a low of $200 to a high of nearly $900,000. The median cost was $10,000.

[98] *See* ICCR Letter at 9–10.

[99] No commenters provided information on the likely impact reversal of the position will have on the number of shareholder proposals submitted to companies each year.

each year, since non-14a–8 proposals do not necessarily lead to a submission to the Commission. The Investor Responsibility Research Center (''IRRC'') has reported to the Commission staff, however, that it is aware of a total of 19 independent proxy solicitations during calendar years 1996 and 1997 in support of non-14a–8 proposals, and none appear to have involved ''small businesses.'' In addition, one commenter indicated that, since 1991, there have been 66 independent shareholder solicitations in support of shareholder resolutions.[110] None of the companies subject to the 66 solicitations appear to have been ''small businesses.''

To the extent that ''small businesses'' receive such proposals, we believe that the amendments to rule 14a–4 will favorably affect them by reducing uncertainty, and decreasing the likelihood that such companies would have to incur the delay and expense of rescheduling the shareholders meeting, or resoliciting shareholders. Some commenters thought that the proposal to require companies wishing to preserve voting authority to include an extra voting box on their proxy cards might encourage the submission of more non-14a–8 shareholder proposals. We have decided not to adopt that aspect of our original proposal. Some shareholders thought that the amendments as proposed might effectively inhibit independent proxy solicitations because they would have permitted companies to retain voting authority even if the shareholder solicited the percentage of shareownership required to carry the proposal. We also have decided not to adopt that aspect of our original proposal.

Under our amendments to rule 14a–4, a company wishing to preserve discretionary voting authority on certain proposals that might be presented to a vote may be required to advise shareholders of the nature of such proposals. We note, however, that this precondition is consistent with the Division's no-action positions predating the adoption of the amendments. No commenters provided empirical data on incremental costs likely to result from this amendment to rule 14a–4. Daniels Financial Printing informed the staff that in most cases adding up to three-fourths of a page in the proxy statement would not increase the cost to the company, and that adding more than three-fourths of a page could increase costs by about $1,500 for an average sized company.

Under our amendments to rule 14a–4, a shareholder undertaking an independent proxy solicitation would be required to provide a company with advance written notice of its intention to solicit the percentage of the company's shareownership to carry the proposal, followed by other measures to help ensure that the notice has been provided in good faith. These amendments would impose no additional costs on companies receiving such notice, since no action by them is required. The amendments should impose only de minimis additional costs on shareholders who undertake independent proxy solicitations.[101]

Our amendment to rule 14a–5 would require companies to disclose an additional date in their proxy statements. Disclosure of the date should require no more than an additional sentence, and therefore should result in no, or negligible, additional printing costs.

We considered significant alternatives to the proposed amendments for small entities with a class of securities registered under the Exchange Act. We considered, for instance, exempting small businesses from any obligation to include shareholder proposals in their proxy materials. Such an exemption, however, would be inconsistent with the current purpose of the proxy rules, which is to provide and regulate a channel of communication among shareholders and public companies. Exempting small entities would deprive their shareholders of this channel of communication.

We also considered other alternatives identified in Section 603 of the Regulatory Flexibility Act to minimize the economic impact of the amendments on small entities. We considered the establishment of different compliance requirements or timetables that take into account the resources available to small entities. Different timetables, however, may make it difficult for the Division to issue responses in a timely manner, and could otherwise impede the efficient operation of the rule.

We also considered the clarification, consolidation, or simplification of the rule's compliance requirements for small entities. As explained more fully in section II of this release, we are recasting and reformatting rule 14a–8 into a more understandable, Question & Answer format. As explained in Section IV above, we are adopting clearer guidelines for companies' exercise of discretionary voting authority under rule 14a–4. These modifications should simplify and facilitate compliance by all companies, including small entities. We do not believe that there is any appropriate way further to facilitate compliance by small entities without compromising the current purposes of the proxy rules.

We also considered the use of performance rather than design standards. The rules that we are amending are not specifically designed to achieve certain levels of performance. Rather, they are designed to serve other policies, such as to ensure adequate disclosure of material information, and to provide a mechanism for shareholders to present important and relevant matters for a vote by fellow shareholders. Performance standards accordingly would not directly serve the policies underlying the rules. We do not believe that any current federal rules duplicate, overlap, or conflict with the rules that we propose to amend.

VIII. Cost-Benefit Analysis

This cost-benefit analysis follows a preliminary analysis request for comments and empirical information included in the Proposing Release.[102] We received few comments and no significant empirical data, in response to our requests for further information.

The amendments to the rules on shareholder proposals should improve the efficiency of the process for determining which shareholder proposals must be included in proxy materials distributed by companies. They should help to make the rule understandable to the numerous shareholders and companies that refer to the rule each year, ensure that companies include certain employment-related proposals raising significant social policy issues in their proxy materials, and provide clearer guidelines for a company's exercise of discretionary voting authority when notified that a shareholder intends to present a proposal without invoking rule 14a–8's mechanisms.

Specifically, we are:

- Recasting rule 14a–8 into a more plain-English Question & Answer format;
- Reversing the *Cracker Barrel* interpretive position on employment-related proposals raising significant social policy issues; and
- Amending rule 14a–4 to provide shareholders and companies with clearer guidance on companies' exercise of discretionary voting authority.

[100] UNITE Letter.

[101] In order to comply, an insurgent is required to send to the company advance written notice of its intention to solicit the percentage of a company's shareownership required to carry the proposal, followed by evidence of the solicitation, and to include what should in most cases amount to little more than an additional sentence in the insurgent's proxy statement.

[102] *See* Proposing Release, Section VI.

We have decided not to adopt other elements of our original proposals. We are *not adopting* our original proposals to:

- Increase the percentage of the vote a proposal must receive before it can be resubmitted in future years if it is not approved;
- Streamline the exclusion for matters considered irrelevant to corporate business;[103]
- Modify our administration of the rule permitting companies to exclude proposals furthering personal grievances of special interests; or
- Implement an ''override'' mechanism that would have permitted 3% of the share ownership to override a company's decision to exclude a proposal under certain of the bases for exclusion set forth under Question 9 of amended rule 14a–8.[104]

We have considered whether the amendments we are adopting would promote efficiency, competition and capital formation. Rule 14a–8 requires companies to include shareholder proposals in their proxy materials, subject to specific bases for excluding them. We believe that the rule enhances investor confidence in the securities markets by providing a means for shareholders to communicate with management and among themselves on significant matters.

Plain-English Question & Answer Format

Our revision of the rule to create a more understandable Question & Answer format should help decrease the time and expense incurred by both shareholders and companies attempting to comply with its provisions. Companies frequently consult with legal counsel in preparing no-action submissions under rule 14a–8. The rule's added clarity may obviate the need for a shareholder or company to consult with counsel, depending on the issues raised by the submission. Under some circumstances, however, companies' submissions must include supporting opinions of counsel.

No commenters submitted empirical data demonstrating how much it costs companies to consider and prepare an individual no-action submission under rule 14a–8. Question 13 of the Questionnaire asked respondent companies how much money they spend on average each year determining whether to include or exclude shareholder proposals and following Commission procedures in connection with any proposal that they wish to exclude (including internal costs as well as any outside legal and other fees). While responses may have accounted for consideration of more than one proposal, the costs reported by 80 companies averaged approximately $37,000.[105]

Because the revised rule's added clarity may make it easier for shareholders to understand the procedures for submitting shareholder proposals, the amendments may encourage shareholders to submit more shareholder proposals to companies each year. In turn, companies may be required to make more rule 14a–8 no-action submissions to the Commission. A study conducted by one commenter reports that, each year, shareholder proposals come to a vote at 226 companies from among the 1,500 largest U.S. companies.[106]

We also received no information in response to our request for data on the marginal cost of including an additional shareholder proposal in companies' proxy materials. However, the Questionnaire asked each company respondent how much money on average it spends in the aggregate on printing costs (plus any directly related costs, such as additional postage and tabulation expenses) to include shareholder proposals in its proxy materials. While individual responses may have accounted for the printing of more than one proposal, the average cost reported by 67 companies was approximately $50,000.[107] By contrast, one commenter thought that this estimate is too high, although large companies in his view would incur relatively higher costs.[108]

A company that receives a proposal has no obligation to make a submission under rule 14a–8 unless it intends to exclude the proposal from its proxy materials.[109] Accordingly, any costs of including an additional proposal should be offset, at least partially, by not having to make a rule 14a–8 submission. No commenters responded to our request for empirical data on the potential cost savings.

Reversal of Cracker Barrel

In the 1992 *Cracker Barrel* no-action letter, the Division stated that henceforth it would concur in the exclusion of all employment-related shareholder proposals raising social policy issues under rule 14a–8(c)(7), the ''ordinary business'' exclusion. Before the announcement of the position, the Division analyzed employment related proposals tied to social issues on a case-by-case basis, concurring in the exclusion of some, but not others. Reversal of the position will result in a return to the case-by-case analysis that prevailed before the position was announced.

Our decision to reverse the *Cracker Barrel* position on employment-related shareholder proposals may therefore result in an increase in the number of employment-related proposals tied to social issues that are submitted to companies each year, and that companies must include in their proxy materials. During the 1997 proxy season, the Division received approximately 30 submissions involving employment-related proposals tied to social issues.[110]

We have analyzed under ''Plain English Question & Answer Format'' above the potential costs to companies of considering and including additional proposals in their proxy materials.

Shareholder proposals could have a positive or negative impact, or no impact, on the price of a company's securities.[111] Relatively few shareholder proposals are approved by shareholders each year, and the few that are approved typically focus on corporate governance matters rather than social issues.[112] Based on information provided to us by IRRC, we understand that for calendar year 1997, 22 proposals obtained

[103] Paragraph (5) under Question 9, former rule 14a–8(c)(5).

[104] Because we are not adopting the proposed ''override'', we also are not adopting certain measures designed to enable shareholders to use it, including the proposed qualified exemption from the proxy rules, and safe harbor from beneficial ownership reporting obligations under Section 13(d) of the Exchange Act.

[105] This average is based on respondents reporting costs greater than zero. Reported costs ranged from a low of $10 to a high of approximately $1,200,000. The median cost was $10,000.

[106] *See* Shareholder Rights Analysis: The Impact of Proposed SEC Rules on Resubmission of Shareholder Resolutions, Social Investment Forum Foundation, Dec. 10, 1997.

[107] This average is based on respondents reporting costs greater than zero. Reported costs ranged from a low of $200 to a high of nearly $900,000. The median cost was $10,000.

[108] *See* ICCR Letter at 9–10.

[109] In the period from September 30, 1996 to September 30, 1997, we received approximately 400 submissions under rule 14a–8.

[110] No commenters provided information on the likely impact reversal of the position will have on the number of shareholder proposals submitted to companies each year.

[111] *See, e.g.,* Michael P. Smith, Shareholder Activism by Institutional Investors: Evidence from CalPERS, *The Journal of Finance,* Vol. LI, No. 1, March 1996; Sunil Wahal, Pension Fund Activism and Firm Peformance, *Journal of Financial and Quantitative Analysis,* Vol. 31, No. 1, March 1996.

[112] Even if a proposal does not obtain shareholder approval, however, it may nonetheless influence management, especially if it receives substantial shareholder support. A proposal may also influence management even if it is not put to a shareholder vote. We understand that in some instances management has made concessions to shareholders in return for the withdrawal of a proposal.

shareholder approval out of a total of 376 proposals submitted to shareholder votes. Ten were proposals to repeal classified boards (i.e., boards with staggered terms). Ten sought redemption of companies' shareholder rights plans. One focused on ''golden parachute'' payments to executives (i.e., large payments typically contingent upon corporate change of control). One sought to restrict director pension benefits.

Proposals addressing corporate governance matters tend to receive the most substantial shareholder support and may have an identifiable impact on shareholder wealth. Examples are proposals on voting and nomination procedures for board members, and proposals to restrict or eliminate companies' shareholder rights plans (i.e., ''posion pills''). The amendments we are adopting do not focus on those type of proposals, and should not affect shareholders' ability to include them in companies proxy materials. Additionally, shareholder proposals on social issues may improve investor confidence in the securities markets by providing investors with a sense that as shareholders they have a means to express their views to the management of the companies in which they invest.

Discretionary Voting Authority

The amendments to rule 14a-4 should favorably affect companies because they should provide clearer ground rules as to the ability to exercise discretionary voting power when a shareholder presents a proposal without invoking rule 14a-8.

We do not collect information on the number of companies that receive non-rule 14a-8 proposals each year, since such proposals do not necessarily lead to a submission to the Commission. However, IRRC has reported to the Commission staff that, during the 1997 calendar year, it is aware of only two independent solicitations in support of non-14a-8 shareholder resolutions, down from 17 solicitations for calendar year 1996. In addition, one commenter indicated that, since 1991, there have been 66 independent shareholder solicitations in support of shareholder resolutions.[113]

To the extent ''small businesses'' receive such proposals, we believe that the amendments to rule 14a-4 will favorably affect them by reducing uncertainty, and decreasing the likelihood of incurring the delay and expense of rescheduling the shareholders meeting and/or resoliciting shareholders. Reducing the potential for uncertainty should also help to decrease the likelihood of related litigation.

One company estimated the cost of sending supplemental proxy material to its shareholders at about $170,000.[114] Thus, if the amendments permit companies to avoid resolicitations on five occasions, the savings would amount to about $850,000.[115]

Another commenter submitted information on the legal costs of representing insurgent shareholders in connection with court actions under the proxy rules.[116] According to that commenter, attorneys' fees and costs incurred by the insurgent ranged from $17,517 to $75,421. It is not clear whether these actions involved rule 14a-5 or discretionary voting authority, and they do not include the legal costs of other parties or any other associated expenses.

Some commenters thought that the proposal to require companies wishing to preserve voting authority to include an extra voting box on their proxy cards might encourage the submission of more non-14a.8 shareholder proposals, as well as confusion among shareholders. We have decided not to adopt that aspect of our original proposal. Other commenters thought that the proposals might effectively inhibit independent proxy solicitations because they would have provided companies with a means to retain voting authority even if the shareholder solicited the percentage of shareownership required to carry the proposal. We also have decided not to adopt that aspect of our original proposal.

Under our amendments to rule 14a-4, a company, wishing to preserve discretionary voting authority on certain proposals that might be presented to a vote, may be required to advise shareholders of the nature of such proposals. We note, however, that this precondition is consistent with the Division's no-action positions predating the adoption of these amendments. No commenters provided empirical data on incremental costs likely to result from these amendments to rule 14a-4. Daniels Financial Printing informed the staff that is most cases adding up to three-fourths of a page in the proxy statement would not increase the cost to the company, and that adding more than three-fourths of a page could increase costs by about $1,500 for an average sized company.

Under our amendments to rule 14a-4, a shareholder undertaking an independent proxy solicitation would be required to provide a company with advance written notice of its intention to solicit the percentage of the company's shareownership to carry the proposal, followed by other measures to help ensure that the notice has been provided in good faith. These amendments would impose no additional costs on companies receiving such notice, since no action by them is required. The amendments should impose only de minimis additional costs on a shareholder undertaking an independent proxy solicitation.[117]

Our amendment to rule 14a-5 would require companies to disclose an additional data in their proxy statements. Disclosure of the date should require no more than an additional sentence, and therefore should result in no, or negligible, additional printing costs.

Section 23(a) of the Exchange Act [118] requires the Commission to consider any anti-competitive effects of any rules it adopts thereunder and the reasons for its determination that any burden on competition imposed by such rules is necessary or appropriate to further the purposes of the Exchange Act. The Commission has considered the impact this rulemaking will have on competition and believes that the amendments will not impose a significant burden on competition.

IX. Paperwork Reduction Act

Regulation 14A [119] and the Commission's related proxy rules, including rules 14a-8, 14a-4, and 14a-5, were adopted pursuant to Section 14(a) of the Exchange Act. Section 14(a) directs the Commission to adopt rules ''as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title.'' Schedule 14A prescribes information that a company must include in its proxy statement to ensure that shareholders are provided material information relating to voting decisions.

[113] UNITE Letter.

[114] *See* Harrah's Entertainment, Inc., Dec. 31, 1997

[115] We have no basis for estimating reliably how many resolicitations, if any, are likely to be avoided in any given year as a result of the amendments.

[116] Davis, Cowell & Bowe Letter at 4.

[117] In order to comply, an insurgent is required to send to the company advance written notice of its intention to solicit the percentage of a company's shareownership required to carry the proposal, followed by evidence of the solicition, and to include what should in most cases amount to little more than an additional sentence in the insurgent's proxy statement.

[118] 15 U.S.C. 78w(a)

[119] 17 CFR 240.14a-101.

The amendments to rules 14a-8, 14a-4(c), and 14a-5 should make it easier for shareholder proponents to include in companies' proxy materials employment-related shareholder proposals raising significant social policy matters, and provide companies subject to the proxy rules with clearer ground rules for the exercise of discretionary voting authority. The amendments should also make rule 14a-8 easier to understand the follow. The amendments focus primarily on rule 14a-8, which requires companies to include shareholder proposals in their proxy materials, subject to certain bases for excluding them. We received no Paperwork Reduction Act comments relating to the amendments.

As set forth in the Proposing Release,[120] certain provisions of rules 14a–8, 14a–4, and 14a–5 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 et seq.). The Commission had submitted the amendments to those rules to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. § 3507(d) and 5 CFR. 1320.11. The title for the collection of information is ''Regulation 14A.'' Except as explained below, the amendments should have no impact on the total estimated burden hours for Regulation 14A.[121]

As originally proposed, amended rule 14a–4 would have in some circumstances required companies to include an extra voting box in their proxy cards in order to preserve discretionary voting authority. We are not, however, adopting that requirement, which we believe would have increased the total annual burden by only a negligible amount, or not at all.[122] We are adopting a requirement under rule 14a–4 that a shareholder insurgent in some circumstances provide a company with advance written notice of its intention to solicit the percentage of a company's shareownership necessary to approve the proposal, followed by evidence of the solicitation, and by negligible additional disclosures in the insurgent's proxy statement.[123] We estimate that these additional requirements, in the context of other amendments adopted today, will increase the annual burden under Regulation 14A for a shareholder insurgent by approximately one hour per shareholder proponent, and that approximately 10 proponents will have to comply each year. Accordingly, we have increased our estimated total compliance burden for Regulation 14A by a total of 10 hours, to 810,935 hours.

Providing the information required by Regulation 14A is mandatory under Section 14(a) of the Exchange Act. The information will not be kept confidential. Unless a currently valid OMB control number is displayed on the Schedule 14A, the Commission may not sponsor or conduct or require response to an information collection. The OMB control number is 3235–0059. The collection is in accordance with 44 U.S.C. § 3507.

X. Statutory Basis And Text of Amendments

We are adopting amendments to Rules 14a–8, 14a–4, and 14a–5 under the authority set forth in Sections 13, 14 and 23 of the Securities Exchange Act of 1943, and Section 20(a) of the Investment Company Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

a. By amending § 240.14a–4 by revising the introductory text of paragraph (c) and paragraph (c)(1), redesignating paragraphs (c)(2) through (c)(5) as paragraphs (c)(4) through (c)(7), and adding new paragraphs (c)(2) and (c)(3), to read as follows:

§ 240.14a–4 Requirements as to proxy.

* * * * *

(c) A proxy may confer discretionary authority to vote on any of the following matters:

(1) For an annual meeting of shareholders, if the registrant did not have notice of the matter at least 45 days before the date on which the registrant first mailed its proxy materials for the prior year's annual meeting of shareholders (or date specified by an advance notice provision), and a specific statement to that effect is made in the proxy statement or form of proxy. If during the prior year the registrant did not hold an annual meeting, or if the date of the meeting has changed more than 30 days from the prior year, then notice must not have been received a reasonable time before the registrant mails its proxy materials for the current year.

(2) In the case in which the registrant has received timely notice in connection with an annual meeting of shareholders (as determined under paragraph (c)(1) of this section), if the registrant includes, in the proxy statement, advice on the nature of the matter and how the registrant intends to exercise its discretion to vote on each matter. However, even if the registrant includes this information in its proxy statement, it may not exercise discretionary voting authority on a particular proposal if the proponent:

(i) Provides the registrant with a written statement, within the time-frame determined under paragraph (c)(1) of this section, that the proponent intends to deliver a proxy statement and form of proxy to holders of at least the percentage of the company's voting shares required under applicable law to carry the proposal;

(ii) Includes the same statement in its proxy materials filed under § 240.14a–6; and

(iii) Immediately after soliciting the percentage of shareholders required to carry the proposal, provides the registrant with a statement from any solicitor or other person with knowledge that the necessary steps have been taken to deliver a proxy statement and form of proxy to holders of at least the percentage of the company's voting shares required under applicable law to carry out the proposal.

(3) For solicitations other than for annual meetings or for solicitations by persons other than the registrant, matters which the persons making the solicitation do not know, a reasonable time before the solicitation, are to be presented at the meeting, if a specific statement to that effect is made in the proxy statement or form of proxy.

3. By amending § 240.14a-5 by revising paragraph (e), and adding paragraph (f), to read as follows:

§ 240.14a-5 Presentation of information in proxy statement.

* * * * *

(e) All proxy statements shall disclose, under an appropriate caption, the following dates:

(1) The deadline for submitting shareholder proposals for inclusion in the registrant's proxy statement and

[120] *See* Proposing Release, Section VII.

[121] 17 CFR 240.14a–101.

[122] See Section IV above.

[123] *Id.*

form of proxy for the registrant's next annual meeting, calculated in the manner provided in § 240.14a-8(d)(Question 4); and

(2) The date after which notice of a shareholder proposal submitted outside the processes of § 240.14a-8 is considered untimely, either calculated in the manner provided by § 240.14a-4(c)(1) or as established by the registrant's advance notice provision, if any, authorized by applicable state law.

(f) If the date of the next annual meeting is subsequently advanced or delayed by more than 30 calendar days from the date of the annual meeting to which the proxy statement relates, the registrant shall, in a timely manner, inform shareholders of such change, and the new dates referred to in paragraphs (e)(1) and (e)(2) of this section, by including a notice, under Item 5, in its earliest possible quarterly report on Form 10–Q (§ 249.308a of this chapter) or Form 10–QSB (§ 249.308b of this chapter), or, in the case of investment companies, in a shareholder report under § 270.30d-1 of this chapter under the Investment Company Act of 1940, or, if impracticable, any means reasonably calculated to inform shareholders.

4. By revising § 240.14a-8 to read as follows:

§ 240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to ''you'' are to a shareholder seeking to submit the proposal.

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word ''proposal'' as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the ''record'' holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§ 240.13d–101), Schedule 13G (§ 240.13d–102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter) and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit: Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10–Q (§ 249.308a of this chapter) or 10–QSB (§ 249.308b of this chapter), or in shareholder reports of investment companies under § 270.30d–1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and mail its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and mail its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to

Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a–8 and provide you with a copy under Question 10 below, § 240.14a–8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds it shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law could result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earning sand gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Relates to election:* If the proposal relates to an election for membership on the company's board of directors or analogous governing body;

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.142–9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it mails its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a–6.

Dated: May 21, 1998.

By the Commission.

Margaret McFarland,

Deputy Secretary.

[FR Doc. 98–14121 Filed 5–27–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 98–50]

RIN 1515–AC28

Emissions Standards for Imported Nonroad Engines

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations, in conformance with regulations of the U.S. Environmental Protection Agency (EPA), in order to include marine spark-ignition engines among those imported nonroad engines that are subject to compliance with applicable EPA emissions standards required by law. In addition, the Customs Regulations in this regard are further amended by eliminating the unnecessary, extensive replication of the particular admission requirements for subject nonroad engines that are already contained in the EPA regulations.

EFFECTIVE DATE: May 28, 1998.

FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Field Operations, (202–927–0192).

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), which has long authorized the Environmental Protection Agency (EPA) to regulate on-highway motor vehicle and engine emissions, was amended in 1990 to extend EPA's regulatory authority to include as well nonroad engines and related vehicles and equipment (see 42 U.S.C. 7521–7525, 7541–7543, 7547, 7549, 7550, 7601(a)).

In brief, EPA was given authority, inter alia, to regulate those classes or categories of new nonroad engines and associated vehicles and equipment that contribute to air pollution, if such nonroad emissions were determined to be significant.

To this end, the EPA issued regulations in 40 CFR parts 89 and 90 that established emissions standards for new nonroad compression-ignition engines at or above 50 horsepower (37 kilowatts) as well as new nonroad spark-ignition engines at or below 25 horsepower (19 kilowatts) (see 59 FR 31306 (June 17, 1994) and 60 FR 34582 (July 3, 1995), respectively, for the background and development of these EPA regulations).

By a final rule document published in the **Federal Register** on August 27, 1996 (61 FR 43960), Customs amended its regulations to add a new § 12.74 (19 CFR 12.74) that conformed to the regulations adopted by the EPA in order to ensure the compliance of the aforementioned imported nonroad engines with applicable EPA emissions standards required by law.

The EPA has now issued regulations in 40 CFR part 91, establishing emissions standards as well for new marine spark-ignition engines (see 61 FR 52088 (October 4, 1996) for the background and development of the EPA regulations).

Accordingly, § 12.74 is hereby amended to include marine spark-ignition engines among those imported nonroad engines that are subject to applicable EPA emissions standards. Furthermore, Customs has determined to abbreviate significantly § 12.74 by simply referencing the EPA regulations concerned, and eliminating the unnecessary, extensive replication of the particular admission requirements for subject nonroad engines that are already contained in the EPA regulations.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely conform the Customs Regulations to existing law and regulation as noted above, pursuant to 5 U.S.C. 553(b)(B), notice and public

procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor do these amendments meet the criteria for a ''significant regulatory action'' under E.O. 12866.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Vehicles.

Amendments to the Regulations

Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12, and the specific authority citation for § 12.74, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

* * * * *

2. Section 12.74 is revised to read as follows:

§ 12.74 Nonroad engine compliance with Federal antipollution emission requirements.

(a) *Applicability of EPA regulations.* The requirements governing the importation of nonroad engines subject to conformance with applicable emissions standards of the U.S. Environmental Protection Agency (EPA) are contained in EPA regulations, issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*). These EPA regulations should be consulted for detailed information as to the admission requirements for subject nonroad engines, as follows:

(1) For nonroad compression-ignition engines at or above 37 kilowatts, see 40 CFR part 89, subpart G;

(2) For nonroad spark-ignition engines at or below 19 kilowatts, see 40 CFR part 90, subpart G; and

(3) For marine spark-ignition engines, see 40 CFR part 91, subpart H.

(b) *Admission of nonconforming nonroad engines.* (1) *EPA declaration required.* EPA Form 3520–21, ''Importation of Nonroad Engines and Nonroad Engines Incorporated Into Nonroad Equipment or Vehicles, Subject to Federal Air Pollution Regulations'', must be completed by the importer and retained on file by him before making a customs entry for such nonroad engines/equipment/vehicles.

(2) *Retention and submission of records to Customs.* Documents supporting the information required in the EPA declaration must be retained by the importer for a period of at least 5 years in accordance with § 162.1c of this chapter and shall be provided to Customs upon request.

(c) *Release under bond.* (1) *Conditional admission.* If the EPA declaration states that the entry for a nonconforming nonroad engine is being filed under one of the exemptions described in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, under which the engine must be conditionally admitted under bond, the entry for such engine shall be accepted only if a bond is given on Customs Form 301 containing the conditions set forth in § 113.62 of this chapter for the presentation of an EPA statement that the engine has been brought into conformity with Federal emissions requirements.

(2) *Final admission.* Should final admission be sought and granted pursuant to EPA regulations for an engine conditionally admitted initially under one of the exemptions described in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the importer or consignee shall deliver to the port director the prescribed statement. The statement shall be delivered within the period authorized by EPA for the specific exemption, or such additional period as the port director of Customs may allow for good cause shown. Otherwise, the importer or consignee shall deliver or cause to be delivered to the port director the subject engine, either for export or other disposition under applicable Customs laws and regulations (see paragraph (e) of this section). If such engine is not redelivered within 5 days following the allotted period, liquidated damages shall be assessed in the full amount of the bond, if a single entry bond, or if a continuous bond, the amount that would have been taken under a single entry bond (see 40 CFR 89.612–96(d), 90.613(c) & (d), 91.705(c) & (d)).

(3) *Exemptions.* The specific exemptions under which a nonconforming nonroad engine may be conditionally admitted, and for which a Customs bond is required, are as follows:

(i) Repairs or alterations (see 40 CFR 89.611–96(b)(1), 90.612(b)(1), 91.704(b)(1));

(ii) Testing (see 40 CFR 89.611–96(b)(2), 90.612(b)(2), 91.704(b)(2));

(iii) Precertification (see 40 CFR 89.611–96(b)(3), 89.906); and

(iv) Display (see 40 CFR 89.611–96(b)(4), 90.612(b)(3), 91.704(b)(3)).

(d) *Notice of inadmissibility or detention.* If an engine is found to be inadmissible either before or after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, an engine which cannot be released merely due to a failure to furnish with the entry any documentary information as required by EPA shall be held in detention by the port director for a period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing information. An additional 30-day extension may be granted by the port director upon application for good cause shown. If at the expiration of a period not over 60 days the required documentation has not been filed, a notice of inadmissibility will be issued.

(e) *Disposal of engines not entitled to admission; prohibited importations.* A nonroad engine denied admission under EPA regulations shall be disposed of consistent with such EPA regulations and in accordance with applicable Customs laws and regulations. The importation of nonroad engines otherwise than as prescribed under EPA regulations is prohibited.

Douglas M. Browning,

Acting Commissioner of Customs.

Approved: May 6, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–14164 Filed 5–27–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 98–51]

RIN 1515–AC26

Automated Clearinghouse Credit

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to provide for payments of funds to Customs by Automated Clearinghouse (ACH) credit. Under ACH credit, a payer

will be able to transmit daily statement, deferred tax, and bill payments electronically through a financial institution directly to a Customs account maintained by the Department of the Treasury. ACH credit allows the payer to exercise more control over the payment process, does not require the disclosure of bank account information to Customs, and expands the types of payments that may be made through ACH.

DATES: This interim rule is effective June 29, 1998. Comments must be received before July 27, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ben Robbin, Financial Systems Division, Financial Management Services Center, Office of Finance, U.S. Customs Service (317–298–1520, ext. 1428).

SUPPLEMENTARY INFORMATION:

Background

Part 206 of the Financial Management Service (FMS) Regulations (31 CFR Part 206) concerns, among other things, the management of Federal agency receipts and disbursements and applies to all Government departments and agencies within the Executive Branch. Section 206.4(a) of the FMS Regulations (31 CFR 206.4(a)) sets forth the general rule that all funds are to be collected and disbursed by electronic funds transfer (EFT) when cost-effective, practicable, and consistent with current statutory authority. Section 206.2 of the FMS Regulations (31 CFR 206.2) defines EFT as follows:

> *Electronic funds transfer (EFT)* means any transfer of funds, other than a transaction originated by cash, check or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, Fed Wire transfers, Automated Clearing House (ACH) transfers, transfers made at automatic teller machines (ATM) and Point-of-Sale (POS) terminals (to include use of the Government small purchase card), and other means of credit card transactions.

Section 24.25 of the Customs Regulations (19 CFR 24.25) concerns ''statement processing'' and ''automated clearinghouse (ACH)'' and thus, by virtue of the latter, in part implements the policy reflected in the FMS Regulations referred to above. Paragraph (a) of § 24.25 describes statement processing as a voluntary automated program which allows participants in the Automated Broker Interface (ABI) to group entry/entry summaries and entry summaries on a daily basis and to pay the related duties, taxes and fees with a single payment. Paragraph (a) of § 24.25 further provides that the preferred method for such single payment is by ACH, except where the importer of record has provided (normally, to a customs broker who files the entry on behalf of the importer) a separate check payable to Customs for the Customs charges.

The ACH payment process currently set forth in § 24.25 is a debit payment method (hereinafter referred to as ''ACH debit'') whereby ABI filers provide Customs with the bank routing and account number from which ACH payments are to be electronically debited by a Treasury-designated ACH processor bank upon receipt of an electronic message sent by Customs. However, following implementation of statement processing and ACH debit on January 1, 1990, Customs found that the ACH debit procedure did not achieve all of the intended results because some daily statement payers have remained reluctant to provide the U.S. Government with their bank account information and, therefore, such parties still make their daily statement payments by check. Moreover, the current ACH debit process is limited to daily statement payments and thus does not cover bill payments under § 24.3 of the Customs Regulations (19 CFR 24.3) and deferred tax payments under § 24.4 of the Customs Regulations (19 CFR 24.4), which are accepted primarily through check (through a Customs lockbox) and Fed Wire respectively, and for which Customs believes some payers would prefer to use the ACH environment.

The FMS and Riggs National Bank of Washington, D.C. have developed another ACH payment procedure for the Federal Government, referred to herein as ''ACH credit''. This process allows the Federal Government to receive ACH payments initiated directly by the private sector payer. This process benefits payers by allowing them to effect payment without having to disclose bank account information to the Government and by allowing them to maintain more control over the origination and timing of their payments. The ACH credit process benefits the Government in that transit routing and bank account authorization does not have to be obtained from the remitter and the Government does not have to do anything to effect an individual payment.

Customs has received authorization from the FMS to receive ACH credit payments, and appropriate modifications have been made to the Automated Commercial System (ACS) to accept the transfer of payment and remittance information from Riggs Bank and to apply those payments to the appropriate receivables. Since the ACH credit procedure represents a significant enhancement of the electronic entry and payment process and provides important benefits to both Customs and the trade community, Customs believes that it should be made available to the public, for use on a voluntary basis, at the earliest practicable date and that it should encompass not only daily statement payments but also bill payments and deferred tax payments.

The purpose of this document is to provide an appropriate regulatory context for the ACH credit procedure. The ACH credit procedure and the regulatory changes reflected in this document are discussed in more detail below.

How ACH Credit Works

Companies and other payers interested in enrolling in the ACH credit program must indicate such interest by providing the following information to Customs: Payer name and address; payer contact name(s); payer telephone number(s) and facsimile number; payer identification number (importer number, Social Security number, or Customs assigned number); and 3-digit filer code. This information should be sent to the Financial Management Services Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, by mail or facsimile transmission (317–298–1013). Pre-printed enrollment forms for this purpose, together with detailed information regarding the ACH credit program, are available from the Financial Management Services Center contact person identified earlier in this document.

The payer and its financial institution are responsible for determining the methodology used for originating the ACH credit payment (telephone or computer generated instructions, diskettes, etc.) and the methodology used for notifying the payer that its account has been charged. The financial institution that the payer uses must be capable of structuring ACH credit transactions according to the payment and addendum conventions prescribed by the National Automated

Clearinghouse Association, that is, the financial institution must use either the CCD+ or the CTX payment formats and must use the TXP data segment for the payment-related information within the addendum record for each daily statement or deferred tax or bill payment. Payments transmitted by ACH credit must be formatted as described in the format instructions provided by the Financial Management Services Center.

Following receipt of the enrollment information, the Financial Management Services Center provides the payer with specific ACH credit routing and format instructions and advises the payer that the following information must be provided to its financial institution when originating its payments: Company name; company contact person name and telephone number; company identification number (coded Internal Revenue Service employer identification number or DUNS number or Customs assigned number); company payment description; effective date; receiving company name (*i.e.* U.S. Customs); transaction code; Customs transit routing number and Customs account number (provided to the payer by Customs); payment amount; payer identifier (importer number or Social Security number or Customs assigned number or filer code if the payer is a broker who is the importer of record); document number (daily statement number, entry or warehouse withdrawal number for a deferred tax payment, or bill number); payment type code (which identifies the payment as a daily statement payment or deferred tax payment or bill payment); settlement date (no later than the payment due date); and document payment amount.

Before effecting any payments of funds through the ACH credit process, the payer is instructed by Customs to follow a trial run ''prenotification'' procedure, involving a non-funds message transmission through its financial institution to the Customs account, in order to validate the routing instructions. Once the routing instructions are validated, the Financial Management Services Center notifies the payer that the prenotification transaction has been accepted and that payments may be originated on or after the tenth calendar day following the prenotification acceptance date.

The payer obtains the source data (the document number and amount) for the ACH credit payment transaction from the daily statement or from the entry or warehouse withdrawal documentation in the case of a deferred tax or from the Customs bill. The payer, through its financial institution, originates payment information to the Customs account no later than one business day prior to the payment due date (daily statement payments are due no later than ten working days after release or withdrawal of the merchandise; deferred tax payments are due on the 14th day or 29th day of the month, with special rules if the due date falls on a weekend or Federal holiday; bills must be paid no later than the late payment date appearing on the bill). The next day (the settlement date), the payer's account is charged by its financial institution and the payment is credited by Customs and applied to the appropriate daily statement or entry or warehouse withdrawal or bill as of that settlement date.

If daily statement payments are involved, a statement filer who is not the importer of record (and thus will not be making or authorizing the payment) must still obtain the preliminary statement through ABI and must still present the preliminary statement and the corresponding entry summaries (when paper is required) to the Customs location, as provided in § 24.25(c). However, the process differs in the case of payments to be made by ACH credit in that such a filer will provide the payer with the statement number and the statement amount at least one business day prior to the due date.

The payer is responsible for following the routing and format instructions provided by the Financial Management Services Center, and for ensuring the accuracy of the information provided to its financial institution, when originating its payment. Erroneous information provided by the payer (for example, non-standard formatting, incorrect document number, payment amount different from the amount due) will delay the prompt posting of the payment to the receivable. If a payer repeatedly provides erroneous information when originating payments, the payer may be advised in writing to refrain from using ACH credit and to submit its payments by bank draft or check pursuant to § 24.1 or by the ACH debit payment method under § 24.25.

Regulatory Implementation

In view of the fact that ACH credit is a voluntary program intended to provide flexibility, efficiency and related benefits to the trade community and to Customs, it appears appropriate to implement the ACH program as an interim rule, subject to public comment procedures before adoption of a final rule. Moreover, since present § 24.25 concerns only statement processing and describes ACH debit procedures whereas ACH credit will also apply to deferred tax and bill payments, Customs believes that it is preferable (1) to deal with ACH credit in a separate new § 24.26 and (2) to make conforming changes to present § 24.25 to reflect the adoption of the new section, including, where appropriate, the addition of the word ''debit'' to clarify the meaning of the references to ACH in that section.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

Inapplicability of Prior Public Notice and Comment Procedures

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. The ACH credit process implemented by this regulation is an entirely voluntary payment procedure that provides benefits to the public in that it facilitates the electronic entry and payment process, addresses some concerns of the public regarding existing electronic payments procedures, and has the overall effect of reducing the regulatory burden on the public.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments,

approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0218.

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

The collection of information in these regulations is in § 24.26. This information is required in connection with an election to use the ACH credit procedure for making electronic payments of funds to Customs. The information will be used by the U.S. Customs Service to ensure that payments to Customs are properly transmitted, received, and credited. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting and/ or recordkeeping burden: 17 hours.

Estimated average annual burden per respondent/ recordkeeper: .083 hours.

Estimated number of respondents and/or recordkeepers: 200.

Estimated annual number of responses: 200.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs and costs of operations, maintenance, and purchase of services to provide information. Comments should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Imports, Taxes.

Amendments to the Regulations

For the reasons set forth above, Part 24, Customs Regulations (19 CFR Part 24), is amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURES

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1450, 1624; 31 U.S.C. 9701.

* * * * *

§ 24.25 [Amended]

2. In § 24.25:

a. The third sentence of paragraph (a) is amended by adding after ''(ACH)'' the words ''debit or ACH credit'';

b. The sixth sentence of paragraph (a) is amended by adding the words ''debit (see paragraph (b)(2) of this section)'' after ''ACH'' the first time it appears and adding at the end of the sentence before the period the words ''; ACH credit is described in § 24.26'';

c. The heading of paragraph (b)(2) is amended by adding after ''Clearinghouse'' the word ''debit'';

d. The first sentence of paragraph (b)(2) is amended by adding after ''through ACH'' the word ''debit''; and

e. The first sentence of paragraph (c)(4) is amended by removing the words ''ACH payment authorization'' and adding, in their place, the words ''ACH debit payment authorization or ACH credit payment''.

3. Section 24.26 is added to read as follows:

§ 24.26 Automated Clearinghouse Credit.

(a) *Description.* Automated Clearinghouse (ACH) credit is an optional payment method that allows a payer to transmit statement processing payments (see § 24.25) or deferred tax payments (see § 24.4) or bill payments (see § 24.3) electronically, through its financial institution, directly to the Customs account maintained by the Department of the Treasury.

(b) *Enrollment procedure.* A payer interested in enrolling in the ACH credit program must indicate such interest by providing the following information to the Financial Management Services Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278: Payer name and address; payer contact name(s); payer telephone number(s) and facsimile number; payer identification number (importer number or Social Security number or Customs assigned number); and 3-digit filer code.

(c) *Routing and format instructions.* Following receipt of the enrollment information, the Financial Management Services Center will provide the payer with specific ACH credit routing and format instructions and will advise the payer that the following information must be provided to its financial institution when originating its payments: Company name; company contact person name and telephone number; company identification number (coded Internal Revenue Service employer identification number or DUNS number or Customs assigned number); company payment description; effective date; receiving company name; transaction code; Customs transit routing number and Customs account number; payment amount; payer identifier (importer number or Social Security number or Customs assigned number or filer code if the payer is a broker who is the importer of record); document number (daily statement number, entry or warehouse withdrawal number for a deferred tax payment, or bill number); payment type code; settlement date; and document payment amount.

(d) *Prenotification procedure.* Before effecting any payments of funds through the ACH credit process, the payer must follow a prenotification procedure, involving a non-funds message transmission through its financial institution to the Customs account, in order to validate the routing instructions. When the routing instructions are validated, the Financial Management Services Center will notify the payer that the prenotification transaction has been accepted and that payments may be originated on or after the tenth calendar day following the prenotification acceptance date.

(e) *Payment origination procedures.* (1) *General.* Once the payer has received authorization to begin originating ACH credit payments under paragraph (d) of this section, the payer, through its financial institution, must originate each payment transaction to the Customs account no later than one business day prior to the payment due date. The payer's account will be charged by the financial institution on the settlement date identified in the transaction. The payer is responsible for following the routing and format instructions provided by Customs and for ensuring the accuracy of the information when originating each payment. Improperly formatted or erroneous information provided by the payer will delay the prompt posting of the payment to the receivable.

(2) *Procedures for daily statement filers.* The procedures set forth in § 24.25(c) for ABI filers using statement processing remain applicable when payment is effected through ACH credit. However, when the ABI filer is a customs broker who is not the importer of record and thus is not responsible for the payment, the ABI filer must provide

the statement number and statement amount to the importer of record at least one business day prior to the due date so that the importer of record can originate the payment.

(f) *Date of collection.* The date that the ACH credit payment transaction is received by Customs shall be the collection date which equates to the settlement date. The appropriate daily statement or entry or warehouse withdrawal or bill shall be identified as paid as of that collection date.

(g) *Removal from the ACH credit program.* If a payer repeatedly provides improperly formatted or erroneous information when originating ACH credit payments, the Financial Management Services Center may advise the payer in writing to refrain from using ACH credit and to submit its payments by bank draft or check pursuant to § 24.1 or, in the case of daily statement payments, to use the ACH debit payment method under § 24.25.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: May 5, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–14166 Filed 5–27–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 162 and 178

[T.D. 98–49]

RIN 1515–AB98

Prior Disclosure

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations governing ''prior disclosure'', including implementation of the Customs modernization provisions of the North American Free Trade Implementation Act (Mod Act) concerning prior disclosure by a person of a violation of law committed by that person involving the filing or attempted filing of a drawback claim, or an entry or introduction, or attempted entry or introduction of merchandise into the United States by fraud, gross negligence, or negligence. Pursuant to the ''prior disclosure'' provision of 19 U.S.C. 1592(c)(4) as amended by the Mod Act, and 19 U.S.C. 1593a(c)(3), if a person commits a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a and discloses the circumstances of the violation before, or without knowledge of, the commencement of a formal investigation of such violation, merchandise shall not be seized and any monetary penalty to be assessed shall be limited. ''Commencement of a formal investigation'' for purposes of 19 U.S.C. 1592 and 1593a is defined in these regulations. The document also amends the regulations to give Fines, Penalties and Forfeitures Officers discretion to defer Customs disclosure verification proceedings until the disclosing party has an opportunity to explain all the circumstances underlying the disclosed violation.

EFFECTIVE DATE: June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch (202) 927–2344.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (Pub. L. 103–182). The Customs modernization portion of this Act (Title VI), popularly known as the Customs Modernization Act, or ''the Mod Act'' became effective when it was signed. Section 621 of Title VI amended section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) (hereinafter referred to as section 592), and section 622 of Title VI added new section 593a. On September 26, 1996, Customs published in the **Federal Register** (61 FR 50459) a notice of proposed rulemaking to amend the Customs Regulations governing prior disclosure as it relates to sections 592 and 593a. Pursuant to the ''prior disclosure'' provision of 19 U.S.C. 1592(c)(4) as amended by the Mod Act, and 19 U.S.C. 1593a(c)(3), if a person commits a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a and discloses the circumstances of the violation before, or without knowledge of, the commencement of a formal investigation of such violation, merchandise shall not be seized and any monetary penalty to be assessed shall be limited.

It is noted that it is the policy of the Customs Service to encourage the submission of prior disclosures.

The notice of proposed rulemaking invited public comments on the proposals, which would be considered before adoption of a final rule. The public comment period closed on November 25, 1996.

Analysis of Comments

A total of thirty-seven commenters responded to the solicitation of comments during the public comment period. Many commenters applauded Customs efforts to re-organize and simplify the regulations involving prior disclosure. Ten of the commenters set forth specific recommendations to change the proposed amendments on a ''section by section'' basis. Five of these ten commenters made general comments which were not directly related to a specific section of the proposal. The remaining twenty-seven commenters set forth the single recommendation to amend the proposal to include a regulatory prohibition that would specify that a valid prior disclosure precludes the assessment of a liquidated damage claim for the disclosed violation.

The specific ''section by section'' recommendations and/or suggestions, general recommendations and/or suggestions, and the Customs responses thereto, are set forth below.

Proposed § 162.74(a)

Comment: One commenter suggests that § 162.74(a)(2) be amended to preclude ''oral'' prior disclosures. If adopted, the commenter recommends deleting all other references to oral prior disclosures in the proposal. No reason is articulated for suggesting this change.

Customs Response: We can find no valid reason for precluding a party from making an oral prior disclosure. Of course, as with a party making a written prior disclosure, a party who elects to make an oral disclosure must meet the regulatory criteria governing ''disclosure of the circumstances of the violation'' before, or without knowledge of the commencement of a formal investigation of such violation, in order to obtain prior disclosure benefits.

Comment: One commenter suggests that Customs change proposed § 162.74(a)(2) to reflect that the ''appropriate Customs officer,'' rather than the Fines, Penalties and Forfeitures Officer, be the deciding official regarding whether the party had included substantially the information set forth in paragraph (b) of proposed § 162.74. The commenter is of the opinion that the decision-making authority should be vested in a Customs officer not connected to a potential penalty action. For similar reasons, another commenter suggests that the port director should be the deciding official instead of the Fines, Penalties and Forfeitures Officer.

Customs Response: We disagree. Inasmuch as the evaluation of information regarding the potential assessment of penalties under 19 U.S.C. 1592 or 19 U.S.C. 1593a is within the province of the Fines, Penalties and Forfeitures Officer, we are of the opinion that the Fines, Penalties and

Forfeitures Officer is the appropriate Customs official to determine whether the criteria set forth in proposed § 162.74(b) is met.

Comment: One commenter suggests that proposed § 162.74(a)(2) be amended to include language that indicates that a disclosing party is presumed to have no knowledge of the commencement of a formal investigation of the disclosed violation, unless Customs can rebut such presumption by virtue of one or more of the events set forth in proposed § 162.74(i).

Customs Response: Proposed § 162.74(i) sets forth events which give rise to presumptions of knowledge of the commencement of a formal investigation of the disclosed violation(s). Inasmuch as circumstances may exist that demonstrate ''knowledge,'' but that are not included in the list of events set forth in proposed § 162.74(i), we do not believe that adoption of this suggestion is warranted. Moreover, we believe creating such a presumption would conflict with 19 U.S.C. 1592 and 1593a, which places the burden to demonstrate lack of knowledge on the disclosing party.

Comment: One commenter recommends that the Fines, Penalties and Forfeitures Officer should not be listed in proposed § 162.74(a)(2) as the sole officer to decide whether the disclosing party made a ''disclosure of the circumstances of a violation'' (*i.e.*, the criteria set forth in proposed § 162.74(b)), and that any such decisions should be subject to review or appeal. Further, for the sake of grammatical continuity, the commenter recommends deletion of the word ''that'' after the word ''satisfied'' in proposed § 162.74(a)(2).

Customs Response: For reasons discussed above, we are of the opinion that the Fines, Penalties and Forfeitures Officer is the appropriate Customs official to determine whether or not the party has met the criteria set forth in proposed § 162.74(b). With respect to a right of review or appeal of such determinations, Customs notes that such rights already are ensured by virtue of the disclosing party's right to petition if Customs issues a prepenalty or penalty notice initiating or assessing regular penalties. Lastly, we note that we have adopted the commenter's grammatical recommendation.

Proposed § 162.74(b)

Comment: One commenter recommends that the word ''violator'' in proposed § 162.74(b)(4) be changed to ''disclosing party.''

Customs Response: The recommendation is adopted.

Comment: One commenter suggests that proposed § 162.74(b)(4) should be clarified to indicate that requests for extensions apply to all information specified in proposed § 162.74(b).

Customs Response: We disagree. The adoption of the suggestion is contrary to the principle of ''shared responsibility'' and would eliminate the obligation to initially provide any information regarding a claimed prior disclosure.

Comment: One commenter suggests that Customs change proposed § 162.74(b)(4) to reflect that extension requests should normally be granted by Customs except in certain specified circumstances.

Customs Response: Customs believes that this change is not necessary. We note that the commenter did not specify circumstances that would warrant a denial of a request for an extension, and we believe that the creation of such circumstances would not be in the interests of either the disclosing party or the Customs Service.

Comment: One commenter recommends that proposed § 162.74(b)(4) be changed to specify that information provided to Customs pursuant to this provision may not be used to initiate or develop a criminal investigation or proceeding. The commenter suggests that use of such information to develop criminal cases impinges on the disclosing party's Constitutional 5th Amendment rights.

Customs Response: Customs disagrees. In addition to the fact that a party *elects* to make a claimed prior disclosure, it should be noted that current law requires referral of suspected criminal violations to the concerned U.S. Attorney's office. Consequently, the decision to prosecute a suspected violation of criminal statutes rests with the concerned U.S. Attorney's office rather than the Customs Service.

Proposed § 162.74(c)

Comment: One commenter suggests a change in the language in this section to make it clearer that the disclosing party may decide to wait to tender the actual loss of duties until Customs advises the party of its calculation of the actual loss of duties. The commenter is of the opinion that the current language is ambiguous, and that some ports have insisted that lost duties be tendered at the time of disclosure. Further, the commenter recommends that the period for tendering an actual loss of duties after having been notified by Customs of such loss be extended from 30 days to 60 days, and that the party may request an extension of time to tender.

Customs Response: We agree that the language suggested by the commenter regarding the timing of a tender is less ambiguous than the proposed language and have revised this section in accordance with the commenter's recommendation. On the other hand, we see no reason to change the 30 day period to tender an actual loss calculated by Customs to 60 days. We note that the proposed regulations do provide the Fines, Penalties and Forfeitures Officer with the authority to extend the 30 day period if it is determined that there is good cause to do so.

Comment: One commenter recommends adding a subsection to proposed § 162.74(c) to provide for refund in the event that Customs determines that the amount tendered is not, in fact, an actual loss of duties. Three other commenters recommend that proposed § 162.74(c) be revised to provide the disclosing party with a mechanism to challenge or protest Customs calculation of the actual loss of duties. Two of these three commenters suggest that the inability to challenge Customs actual loss calculation discourages prior disclosures.

Customs Response: We agree that where legitimate disputes exist between a Customs field office and a disclosing party regarding the amount of the actual loss of duties due the government, there should be some mechanism for review at Customs Headquarters—provided that the Customs claimed loss of duty is substantial (*i.e.*, exceeds $100,000); the disclosing party deposits the Customs claimed actual duty loss amount; greater than one year remains under the statute of limitations; and that the Headquarters review is limited solely to the basis for Customs determination of the actual duty loss. In addition, we note that granting such review is within the discretion of Customs Headquarters, and that such review is conditioned upon the disclosing party's compliance with all other provisions of the prior disclosure regulations. We also note that where Headquarters review is afforded, such review is not limited to the revenue loss claims raised by the Customs field office or disclosing party, but could involve an independent Headquarters determination. Lastly, although the Headquarters decision on such review may result in a partial or total refund of the deposited duty loss amount, the regulations indicate that, in any case where such review is afforded, the Headquarters decision is final and not subject to administrative or judicial appeal. In effect, the disclosing party who elects to request such Headquarters review should be aware that, if granted,

the party is waiving any right to contest Headquarters actual loss of duties determination—either administratively or judicially.

Proposed § 162.74(d)

Comment: One commenter recommends that proposed § 162.74(d)(2) be revised to require that Customs furnish a receipt that indicates the time and date of Customs receipt of claimed prior disclosure documents delivered in person. The commenter suggests that it is somewhat anomalous to require a person delivering documents to Customs to request a receipt, and that as part of ''shared responsibility'' it seems more appropriate to provide that the person delivering the documents would be furnished a receipt.

Customs Response: Customs agrees that the proposed regulation should be amended to reflect that a receipt will be furnished to the person delivering documents, but in keeping with the spirit of ''shared responsibility,'' we remain of the opinion that the receipt will be furnished upon request.

Comment: One commenter claims that proposed § 162.74(d)(3) is silent as to the specific time and date when a claimed oral prior disclosure becomes effective. The commenter provides revised language which indicates that orally provided information is ''deemed to have occurred at the time the oral communication is made.''

Customs Response: We disagree with the premise of this recommendation. The proposed regulation does, in fact, provide that claimed oral prior disclosures are ''deemed to have occurred at the time Customs was provided with the information which substantially complies with the requirements set forth in paragraph (b) of this section.''

Proposed § 162.74(e)

Comment: Two commenters point out an apparent inconsistency between proposed § 162.74(e)(2) and proposed § 162.74(a)(1), in that the latter proposed section provides for making a claimed prior disclosure to a ''Customs officer,'' whereas the former proposed section provides for making a ''multi-port'' claimed prior disclosure to ''all concerned Fines, Penalties and Forfeitures Officers.'' One of the commenters suggests that Port Director be substituted for Fines, Penalties and Forfeitures Officer.

Customs Response: We agree that there is an apparent inconsistency between the two proposed sections. Customs is revising proposed § 162.74(e)(2) to reflect that although a ''multi-port'' claimed prior disclosure may be made to a Customs officer, unless the claimed prior disclosure is made directly to the concerned Fines, Penalties and Forfeitures Officer, it is incumbent upon the Customs officer to refer the claimed prior disclosure to the concerned Fines, Penalties and Forfeitures Officer so that consolidation of the matter can be arranged in accordance with internal procedures. We believe that a disclosing party should not be limited to providing the claimed prior disclosure to the concerned port director.

Proposed § 162.74(f)

Comment: One commenter recommends that the word ''violator'' in proposed § 162.74(f) be changed to ''disclosing party.''

Customs Response: The recommendation is adopted.

Comment: One commenter recommends that the Fines, Penalties and Forfeitures Officer be eliminated in proposed § 162.74(f) as the Customs official responsible for requests for the withholding of initiation of disclosure verification proceedings. No specific reason is suggested for this change.

Customs Response: Inasmuch as the concerned Fines, Penalties and Forfeitures Officer is the Customs officer who is responsible for ascertaining the validity of the claimed prior disclosure, we see no reason to adopt the recommended change.

Comment: One commenter suggests that proposed § 162.74(f) be revised to include language indicating that requests to withhold initiation of disclosure verification proceedings of the claimed prior disclosure should be granted ''except for good cause.''

Customs Response: The suggestion is not adopted. In the event that Customs learns of a serious abuse of discretion regarding such requests, Customs can take measures to eliminate the problem through either internal guidelines, regulatory revisions or whatever other action is deemed appropriate.

Comment: One commenter suggests that proposed § 162.74(f) be revised to provide the Fines, Penalties and Forfeitures Officer with the discretion to defer notification to the Office of Investigations of a claimed prior disclosure. The commenter is of the opinion that the deferral of notification should be predicated on a number of factors, such as the gravity of the disclosed violation, any pattern of non-compliance, etc.

Customs Response: The notification to the Office of Investigations of the claimed disclosure serves to prevent delay in the administrative disposition of the disclosure, in that the Office of Investigations can take immediate action to initiate or coordinate disclosure verification proceedings as well as ascertain whether or not Customs already had commenced a formal investigation of the claimed prior disclosure. Consequently, Customs is of the opinion that the proposed regulation remain unchanged.

Comment: One commenter recommends that proposed § 162.74(f) be changed to reflect that a disclosing party may also request that Customs audits be included in a request to withhold initiation of disclosure verification proceedings.

Customs Response: Inasmuch as audits initiated solely to verify disclosures would often be considered part of the disclosure verification proceedings, Customs is of the opinion that the suggested change is unnecessary.

Comment: One commenter suggests that Customs add to the end of the first sentence in proposed § 162.74(f) ''and the Office of Investigations is requested to determine whether or not investigation is pending or contemplated.'' The commenter does not provide a reason for the suggested change.

Customs Response: In view of the fact that internal procedures already exist regarding the handling of claimed prior disclosures by the Office of Investigations, Customs is of the opinion that the suggested change is unnecessary.

Proposed § 162.74(g)

Comment: Two commenters indicate that, based upon Congressional discussions involving the Customs Modernization Act, proposed § 162.74(g) should include language to require that records of a ''commencement of a formal investigation'' be maintained in the Office of Investigations, Customs Headquarters or some other central unit. One of these two commenters also suggests that the regulation specify the official who is charged with recording the ''commencement'' information. Also, this commenter suggests that the words ''with regard to the disclosing party'' be added after the word ''commenced'' in the first sentence of the proposed section. A third commenter recommends that this section be revised to indicate that only Customs agents from the Office of Investigations can commence formal investigations for prior disclosure purposes. Three other commenters recommend that the proposed section be revised to require that a formal

investigations control number be assigned to the written commencement document or otherwise require the Office of Investigations to open an investigation. Lastly, one other commenter suggests revisions to the proposed section which specify the form and nature of the ''commencement'' document.

Customs Response: Customs is of the opinion that proposed § 162.74(g) fully comports with the Customs Modernization Act's statutory language and intent regarding the definition of the term ''commencement of a formal investigation.'' The proposed language requires that the Customs Service evidence the commencement by a writing, as well as specifies that the disclosing party will receive written evidence of such a ''commencement'' in any required notice issued to the party pursuant to 19 U.S.C. 1592 or 1593a, in the event the claimed prior disclosure is denied. We do not agree that the law mandates that agents of the Office of Investigations are the only Customs officials capable of commencing a formal investigation for the purposes of prior disclosure. Further, in Customs view, additional requirements involving custody of such records, or record forms/formats, record maintenance or case control numbers are not properly the province of regulation, but rather, concern internal procedures developed by the agency. We do agree with the suggestion to include the phrase ''with regard to the disclosing party'' after the word ''commenced'' in the first sentence, and have revised the proposed section to reflect adoption of this recommendation.

Comment: One commenter states that proposed § 162.74(g) should indicate that a Customs Form 28 (Request for Information) and Customs Form 29 (Notice of Action) cannot be considered written evidence of a ''commencement of a formal investigation.'' The commenter is of the opinion that these documents will have a ''chilling'' effect on the prior disclosure provisions if they are permitted to be construed as ''formal commencement'' documents, in that they, for the most part, merely request information or propose rate or value advances.

Customs Response: As indicated above, Customs is of the opinion that dictating the form of the ''commencement'' writing is not properly the province of regulation. We do agree that Customs Forms 28 and 29 which merely request information or propose rate or value advances could not be considered ''commencement'' documents for prior disclosure purposes unless they articulate that a possibility of a violation existed.

Comment: One commenter recommends deleting the phrase ''denied prior disclosure treatment on the basis of the commencement of a formal investigation of the disclosed violation'' in the second sentence of proposed § 162.74(g). The commenter points out that ''commencement of a formal investigation is merely one fact bearing on the ultimate resolution of the matter.''

Customs Response: Customs agrees with the commenter that ''commencement of a formal investigation of the disclosed violation'' is one of several issues concerning the disposition of the claimed prior disclosure (*e.g.*, a disclosing party may be unable to obtain prior disclosure benefits if the party fails to ''disclose the circumstances of the violation'' in accordance with § 162.74(b)—and this may occur in cases where Customs had not commenced a formal investigation). Nevertheless, this provision of proposed § 162.74(g) addresses those instances where the denial of the prior disclosure *is* predicated on the commencement of the formal investigation of the disclosed violation. In such cases, the regulation requires a copy of a writing evidencing the commencement of a formal investigation of the disclosed violation. Accordingly, the recommendation is not adopted.

Comment: One commenter recommends that proposed § 162.74(g) be revised to indicate that any required notice issued pursuant to 19 U.S.C. 1592 or 1593a should specify the event listed in proposed § 162.74(i) that provided the disclosing party with knowledge of the commencement of a formal investigation of the disclosed violation. The commenter believes that inclusion of such a provision would eliminate disputes regarding the issue of knowledge of the commencement.

Customs Response: We disagree. Customs notes that the purpose underlying proposed § 162.74(g) is to provide a definition of the ''commencement of a formal investigation'' for prior disclosure purposes. We note that notices issued to the disclosing party pursuant to 19 U.S.C. 1592 or 1593a may commence a formal investigation of the disclosed violation and may be issued prior to the claimed disclosure. It should also be noted that the law establishes the burden to demonstrate lack of knowledge of the commencement of the formal investigation upon the disclosing party.

Comment: One commenter suggests that proposed § 162.74(g) be revised to require that the disclosing party be notified of the acceptance or denial of the claimed prior disclosure as soon as Customs makes that decision, and that documentary evidence of the ''commencement of a formal investigation'' should be furnished to the disclosing party well in advance of the initiation of penalty proceedings.

Customs Response: Customs believes that the statutory and regulatory procedures already in place are sufficient to advise parties of the validity of a claimed prior disclosure. Also, it is well established that an invalid prior disclosure may subject the disclosing party to penalties.

Proposed § 162.74(h)

Comment: One commenter recommends that proposed § 162.74(h) be revised to clarify that once an investigation begins with respect to a disclosed violation, the disclosing party still may obtain prior disclosure treatment for other violations not covered by the commenced formal investigation.

Customs Response: Customs does not believe that clarification is necessary. The proposed section makes clear that additional disclosed violations not covered in the disclosing party's original prior disclosure may receive prior disclosure benefits, provided that such additional disclosures were made before ''the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of such additional violations existed.''

Proposed § 162.74(i)

Comment: Five commenters recommend that proposed § 162.74(i) be revised to require that for the ''presumption of knowledge'' to be effective any Customs notification of the disclosed violation to the disclosing party that precedes the claimed prior disclosure must be evidenced by a ''writing.'' Four of the five commenters maintain that such a requirement will avoid unnecessary conflict or misunderstandings concerning the content or circumstances of an oral notification by Customs. Two of the five commenters are of the opinion that a written notification requirement also should require a return receipt. In addition, two of the five commenters recommend that proposed § 162.74(i) be revised to ensure that ''general inquiries'' (*e.g.*, Customs Forms 28 and 29) are not used as evidence of prior knowledge of the commencement of a formal investigation of the disclosed

violation. One of these two commenters suggests inclusion of the phrase ''so informed the person of that reasonable belief,'' immediately following the statutory citations in proposed § 162.74(i)(1)(i) in order to clarify that ''general inquiries'' would not constitute a presumption of knowledge.

Customs Response: Customs notes that although the Customs Modernization Act prior disclosure changes added the requirement that a ''commencement of a formal investigation'' must be evidenced by a writing, the Modernization Act changes did not impose such a writing requirement regarding ''knowledge of the commencement of a formal investigation'' involving Customs notification to the disclosing party. Customs believes that the language of the proposed regulatory section makes clear that ''general inquiries'' or mere ''contact'' with a Customs officer prior to the submission of the claimed prior disclosure is insufficient to create a ''presumption of knowledge'' of the commencement of a formal investigation of the disclosed violation. In those instances where oral notification pursuant to proposed § 162.74(i) renders the presumption operative, the concerned Customs official must meet other criteria—such as informing the person of the type of or circumstances of the disclosed violation.

Customs is of the opinion that its position regarding ''presumption of knowledge'' is consistent with the underlying Modernization Act theme of ''shared responsibility''—if a party receives oral notification from a Customs officer of the type of or circumstances of the violation(s) at issue *before* making the claimed prior disclosure, Customs believes that prior disclosure benefits should not accrue—unless, of course, the party is able to rebut the presumption of knowledge as provided for under the proposed regulatory provision. Also, it should be noted that even if one or more of the events have taken place as set forth in the proposed § 162.74(i), a party still may wish to submit a claimed disclosure—either because the party believes it can rebut the presumption of knowledge, or because the party seeks to obtain substantial mitigation in an ensuing penalty proceeding (despite the fact that the information provided to Customs does not qualify for disclosure benefits).

Comment: One commenter suggests changing proposed § 162.74(i) so that it cannot be read to permit denial of prior disclosure benefits in those instances where one of the events or notifications under the proposed regulatory section takes place, but no formal investigation has been commenced. Another commenter recommends that Customs should eliminate the language in the proposed section which places the burden of proving ''lack of knowledge'' on the disclosing party.

Customs Response: Customs believes the proposed section is clear. The second sentence of proposed § 162.74(i) sets forth the requirement that the commencement of a formal investigation must occur before there can be a presumption of knowledge. Consequently, Customs sees no need to adopt the first commenter's suggestion. With respect to the burden of proving lack of knowledge, we reject the commenter's suggestion to eliminate this burden inasmuch as both concerned statutory provisions (*i.e.*, 19 U.S.C. 1592(c)(4) and 19 U.S.C. 1593a(c)(3)(c)) establish the burden of proving lack of knowledge.

General Comments

Comment: One commenter recommends that prior disclosure benefits should extend to violations of the customs laws other than violations of 19 U.S.C. 1592 or 1593a.

Customs Response: Customs notes that the proposed regulations are being promulgated based upon the statutory authority establishing ''prior disclosure'' for violations of 19 U.S.C. 1592 and 1593a. Currently, such statutory authority for permitting ''prior disclosure'' of other violations of the customs laws does not exist. Nevertheless, it should be noted that in some instances, a party who discloses a violation of the customs laws (other than 19 U.S.C. 1592 or 1593a) may be entitled to substantial mitigation in the administrative disposition of the offense under existing Customs guidelines for such violations.

Comment: Twenty-six commenters recommend that the proposed amendments be revised to prohibit an assessment of liquidated damages for a violation revealed in a 19 U.S.C. 1592 or 1593a prior disclosure. The vast majority of these commenters are of the opinion that it is unfair for the Customs Service to assess liquidated damages against a Foreign-Trade Zone (FTZ) operator for breach of the FTZ operator's bond based on information obtained from a prior disclosure submitted by an operator. These commenters believe that inasmuch as most valid prior disclosures by FTZ operators involve a tender of all lost revenue, Customs is made whole and that the subsequent assessment of liquidated damages should not be allowed. The FTZ commenters are of the opinion that the proposed regulations unfairly discriminate against FTZ operators, and serve to deter such parties from submitting prior disclosures.

Customs Response: Customs notes that unlike the assessment of civil penalties, the assessment of liquidated damages for a breach of bond terms is based upon the contractual agreement with the bondholder. Accordingly, although Customs may, under existing guidelines, reduce liquidated damage amounts in administrative proceedings—particularly in those cases where a valid prior disclosure is submitted, the agency does not believe the suggestion should be adopted.

Comment: One commenter suggests that the proposed regulations include a statement that indicates that the submission of valid prior disclosures is encouraged.

Customs Response: Customs notes that the commenter's suggested statement is not provided for by statute, but rather is a recommended statement of agency policy. Inasmuch as it is the policy of the Customs Service to encourage the submission of prior disclosures in accordance with the proposed regulatory requirements, we have added such a sentence to the preamble of this document.

Comment: One commenter is of the opinion that the annual reporting burden set forth in the section under Paperwork Reduction Act heading is understated. The commenter believes that it also would be helpful for the estimated number of respondents shown to be based on the actual number of prior disclosures filed annually in the last several years.

Customs Response: Customs notes that the figures set forth in the notice of proposed rulemaking are Customs best estimates of both the annual reporting burden, estimated annual number of respondents and estimated average annual burden per respondent. Inasmuch as a prior disclosure may involve one Customs entry with one line item, or several thousand Customs entries involving hundreds of line items, it is virtually impossible to predict either the frequency at which disclosures will be made, or the amount of time necessary to complete a disclosure. It should also be noted that the simplicity or complexity of the ''disclosed violation,'' as well as the number of line items at issue may involve a completion time that is either substantially more or less than the ''one hour for each Customs entry'' set forth in the notice of proposed rulemaking. In view of these considerations and the voluntary nature of the prior disclosure

provisions, Customs is of the opinion that its estimates comport with the regulatory requirements of the Paperwork Reduction Act.

Comment: One commenter believes that it would be helpful to acknowledge in this document that there may be instances where the disclosing party requires several months—or even longer—to submit all of the required information to complete its disclosure of the circumstances of the violation.

Customs Response: Customs acknowledges that in certain cases a claimed prior disclosure may involve numerous transactions, multiple ports, and/or complex issues and information—all of which require adequate research and compilation time. The agency is of the opinion that the proposed regulations accommodate such prior disclosures by virtue of the ability of the party to request extensions of time to research and compile such information.

Comment: One commenter recommends that the proposed regulations include a provision that either establishes a procedure for appealing a denial of a claimed prior disclosure, or references such a procedure found elsewhere in the Customs Regulations. The commenter is of the opinion that such a provision or statement would serve to avoid unnecessary litigation.

Customs Response: Customs notes that, ordinarily, the denial of a prior disclosure is manifested by Customs initiation of administrative penalty proceedings at ordinary penalty amounts under either 19 U.S.C. 1592 or 1593a. Inasmuch as the disclosing party may avail itself of administrative petitioning rights in such cases (including the right to petition Customs denial of prior disclosure treatment), Customs believes it is unnecessary to enact a separate or additional appeal procedure.

Comment: Four commenters are of the opinion that Customs should reinstate the ''minor violations'' section of the regulations governing prior disclosure (former § 162.74(j)). The commenters believe that the proposed regulations should state that minor, non-fraudulent violations should not be subject to penalty, and one commenter believes that such infractions should not be referred to the Office of Investigations. Another commenter believes that the deletion of former § 162.74(j) will discourage prior disclosure of minor violations.

Customs Response: Customs notes that despite the deletion of former § 162.74(j), the agency does not anticipate any change of practice with respect to minor violations. It should be noted that inasmuch as ''minor violations'' already are addressed in Customs revised penalty guidelines (19 CFR Part 171, Appendix B), former § 162.74(j) is unnecessary.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes thereto as discussed above and as set forth below. This document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR § 178.2).

Regulatory Flexibility Act

Insofar as this amendment closely follows legislative direction, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final regulation was submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and approved under OMB control number 1515–0212. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule is in § 162.74. This information is required in connection with prior disclosure by a person of a violation of law committed by that person involving the filing or attempted filing of a drawback claim, or an entry or introduction, or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence. This information will be used by Customs to determine if the party discloses the circumstances of a violation before, or without knowledge of, the commencement of a formal investigation of such violation, so that merchandise would not be seized and any monetary penalty to be assessed would be limited. The collection of information is required to obtain a benefit. The likely respondents are business organizations including importers, exporters, and manufacturers.

The estimated average burden associated with the collection of information in this final rule is 1 hour per respondent or recordkeeper for each Customs entry involved in prior disclosure. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229, and to the OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Drafting Information: The principal author of this document was Keith B. Rudich, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 162

Customs duties and inspection, Law enforcement, Seizures and forfeitures.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Amendment to the Regulations

In accordance with the preamble, Parts 162 and 178 of the Customs Regulations (19 CFR Parts 162 and 178) are amended as set forth below:

PART 162—RECORDKEEPING, INSPECTION, SEARCH AND SEIZURE

1. The general authority citation for Part 162 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

2. Section 162.71 is amended by removing paragraph (e).

3. Section 162.74 is revised to read as follows:

§ 162.74 Prior disclosure.

(a) *In general.*—(1) A prior disclosure is made if the person concerned discloses the circumstances of a violation (as defined in paragraph (b) of this section) of 19 U.S.C. 1592 or 19 U.S.C. 1593a, either orally or in writing to a Customs officer before, or without knowledge of, the commencement of a

formal investigation of that violation, and makes a tender of any actual loss of duties in accordance with paragraph (c) of this section. A Customs officer who receives such a tender in connection with a prior disclosure shall ensure that the tender is deposited with the concerned local Customs entry officer.

(2) A person shall be accorded the full benefits of prior disclosure treatment if that person provides information orally or in writing to Customs with respect to a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a if the concerned Fines, Penalties and Forfeitures Officer is satisfied the information was provided before, or without knowledge of, the commencement of a formal investigation, and the information provided includes substantially the information specified in paragraph (b) of this section. In the case of an oral disclosure, the disclosing party shall confirm the oral disclosure by providing a written record of the information conveyed to Customs in the oral disclosure to the concerned Fines, Penalties and Forfeitures Officer within 10 days of the date of the oral disclosure. The concerned Fines, Penalties and Forfeiture Officer may, upon request of the disclosing party which establishes a showing of good cause, waive the oral disclosure written confirmation requirement. Failure to provide the written confirmation of the oral disclosure or obtain a waiver of the requirement may result in denial of the oral prior disclosure.

(b) *Disclosure of the circumstances of a violation.* The term ''discloses the circumstances of a violation'' means the act of providing to Customs a statement orally or in writing that:

(1) Identifies the class or kind of merchandise involved in the violation;

(2) Identifies the importation or drawback claim included in the disclosure by entry number, drawback claim number, or by indicating each concerned Customs port of entry and the approximate dates of entry or dates of drawback claims;

(3) Specifies the material false statements, omissions or acts including an explanation as to how and when they occurred; and

(4) Sets forth, to the best of the disclosing party's knowledge, the true and accurate information or data that should have been provided in the entry or drawback claim documents, and states that the disclosing party will provide any information or data unknown at the time of disclosure within 30 days of the initial disclosure date. Extensions of the 30-day period may be requested by the disclosing party from the concerned Fines, Penalties and Forfeitures Officer to enable the party to obtain the information or data.

(c) *Tender of actual loss of duties.* A person who discloses the circumstances of the violation shall tender any actual loss of duties. The disclosing party may choose to make the tender either at the time of the claimed prior disclosure, or within 30 days after Customs notifies the person in writing of his or her calculation of the actual loss of duties. The Fines, Penalties and Forfeitures Officer may extend the 30-day period if there is good cause to do so. The disclosing party may request that the basis for determining Customs asserted actual duty loss be reviewed by Headquarters, provided that the actual duty loss demanded by Customs exceeds $100,000 and is deposited with Customs, more than one year remains under the statute of limitations involving the shipments covered by the claimed disclosure, and the disclosing party has complied with all other prior disclosure regulatory provisions. A grant of review is within the discretion of Customs Headquarters in consultation with the appropriate field office, and such Headquarters review shall be limited to determining issues of correct tariff classification, correct rate of duty, elements of dutiable value, and correct application of any special rules (GSP, CBI, HTS 9802, etc.). The concerned Fines, Penalties and Forfeitures Officer shall forward appropriate review requests to the Chief, Penalties Branch, Customs Headquarters, Office of Regulations and Rulings. After Headquarters renders its decision, the concerned Fines, Penalties and Forfeitures Officer will be notified and the concerned Customs port will recalculate the loss, if necessary, and notify the disclosing party of any actual duty loss increases. Any increases must be deposited within 30 days, unless the local Customs office authorizes a longer period. Any reductions of the Customs calculated actual loss of duty shall be refunded to the disclosing party. Such Headquarters review decisions are final and not subject to appeal. Further, disclosing parties requesting and obtaining such a review waive their right to contest either administratively or judicially the actual loss of duties finally calculated by Customs under this procedure. Failure to tender the actual loss of duties finally calculated by Customs shall result in denial of the prior disclosure.

(d) *Effective time and date of prior disclosure.*—(1) If the documents that provide the disclosing information are sent by registered or certified mail, return-receipt requested, and are received by Customs, the disclosure shall be deemed to have been made at the time of mailing.

(2) If the documents are sent by other methods, including in-person delivery, the disclosure shall be deemed to have been made at the time of receipt by Customs. If the documents are delivered in person, the person delivering the documents will, upon request, be furnished a receipt from Customs stating the time and date of receipt.

(3) The provision of information that is not in writing but that qualifies for prior disclosure treatment pursuant to paragraph (a)(2) of this section shall be deemed to have occurred at the time that Customs was provided with information that substantially complies with the requirements set forth in paragraph (b) of this section.

(e) *Addressing and filing prior disclosure.*—(1) A written prior disclosure should be addressed to the Commissioner of Customs, have conspicuously printed on the face of the envelope the words ''prior disclosure,'' and be presented to a Customs officer at the Customs port of entry of the disclosed violation.

(2) In the case of a prior disclosure involving violations at multiple ports of entry, the disclosing party may orally disclose or provide copies of the disclosure to all concerned Fines, Penalties and Forfeitures Officers. In accordance with internal Customs procedures, the officers will then seek consolidation of the disposition and handling of the disclosure. In the event that the claimed ''multi-port'' disclosure is made to a Customs officer other than the concerned Fines, Penalties and Forfeitures Officer, the disclosing party must identify all ports involved to enable the concerned Customs officer to refer the disclosure to the concerned Fines, Penalties and Forfeitures Officer for consolidation of the proceedings.

(f) *Verification of disclosure.* Upon receipt of a prior disclosure, the Customs officer shall notify Customs Office of Investigations of the disclosure. In the event the claimed prior disclosure is made to a Customs officer other than the concerned Fines, Penalties and Forfeitures Officer, it is incumbent upon the Customs officer to provide a copy of the disclosure to the concerned Fines Penalties and Forfeitures Officer. The disclosing party may request, in the oral or written prior disclosure, that the concerned Fines, Penalties and Forfeitures Officer request that the Office of Investigations withhold the initiation of disclosure verification proceedings until after the party has provided the information or data within the time limits specified in

paragraph (b)(4) of this section. It is within the discretion of the concerned Fines, Penalties and Forfeitures Officer to grant or deny such requests.

(g) *Commencement of a formal investigation.* A formal investigation of a violation is considered to be commenced with regard to the disclosing party on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received that caused the Customs Service to believe that a possibility of a violation existed. In the event that a party affirmatively asserts a prior disclosure (i.e., identified or labeled as a prior disclosure) and is denied prior disclosure treatment on the basis that Customs had commenced a formal investigation of the disclosed violation, and Customs initiates a penalty action against the disclosing party involving the disclosed violation, a copy of a ''writing'' evidencing the commencement of a formal investigation of the disclosed violation shall be attached to any required prepenalty notice issued to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a.

(h) *Scope of the disclosure and expansion of a formal investigation.* A formal investigation is deemed to have commenced as to additional violations not included or specified by the disclosing party in the party's original prior disclosure on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received that caused the Customs Service to believe that a possibility of such additional violations existed. Additional violations not disclosed or covered within the scope of the party's prior disclosure that are discovered by Customs as a result of an investigation and/or verification of the prior disclosure shall not be entitled to treatment under the prior disclosure provisions.

(i) *Knowledge of the commencement of a formal investigation.*—(1) A disclosing party who claims lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation a formal investigation has been commenced and:

(i) Customs, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a, so informed the person of the type of or circumstances of the disclosed violation; or

(ii) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, had, either orally or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(iii) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, requested specific books and/or records of the person relating to the disclosed violation; or

(iv) Customs issues a prepenalty or penalty notice to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a relating to the type of or circumstances of the disclosed violation; or

(v) The merchandise that is the subject of the disclosure was seized; or

(vi) In the case of violations involving merchandise accompanying persons entering the United States or commercial merchandise inspected in connection with entry, the person has received oral or written notification of Customs finding of a violation.

(2) The presumption of knowledge may be rebutted by evidence that, notwithstanding the foregoing notice, inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
* * * * *		
§ 162.74	Prior disclosure	1515–0212
* * * * *		

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: May 12, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–14154 Filed 5–27–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 97F–0283]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Monester of alpha-Hydro-omega-Hydroxy-Poly(Oxyethylene) Poly(Oxypropylene) Poly(Oxyethylene) (15 Mole Minimum) Blocked Copolymer

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations for safe use of monoester of alpha-hydro-omega-hydroxy-poly(oxyethylene) poly(oxypropylene) poly(oxyethylene) (15 mole minimum) blocked copolymer derived from low erucic acid rapeseed oil as a component of defoaming agents used in the washing of sugar beets for processing into sugar. This action responds to a petition filed by Akzo Nobel Chemical, Inc.

DATES: The regulation is effective May 28, 1998; written objections and requests for a hearing by June 29, 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: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3167.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 11, 1997 (62 FR 37266), FDA announced that a food additive petition (FAP 6A4494) had been filed by Akzo Nobel Chemical, Inc., 5 Livingstone Ave., Dobbs Ferry, NY 10522–3407. The petition proposed to amend the food additive regulations in § 173.340 *Defoaming agents* (21 CFR 173.340) to provide for the safe use of monoester of α-hydro-ω-hydroxy-poly(oxyethylene) poly(oxypropylene) poly(oxyethylene)(15 mole minimum) blocked copolymer derived from low erucic acid rapeseed (LEAR) oil as a component of defoaming agents used in the washing of sugar beets for processing into sugar. (Although the additive was named in the filing notice using the Greek symbols for alpha and omega, the agency has chosen to spell out the words in the listing of the additive to facilitate electronic searches.)

FDA has evaluated data in the petition and other relevant material. Based on this information the agency concludes that the proposed use of monoester of alpha-hydro-omega-hydroxy-poly(oxyethylene) poly(oxypropylene) poly(oxyethylene) (15 mole minimum) blocked copolymer is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), 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 by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this action, as announced in the notice of filing for FAP 6A4494 (62 FR 37266). 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 a environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. No comments were received during the 30-day comment period specified in the filing notice for comments on the environmental assessment submitted with the petition.

Any person who will be adversely affected by this regulation may at any time on or before June 29, 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.

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

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.340 is amended by revising paragraph (a)(4) and in the table in paragraph (a)(4) by revising the first heading and by alphabetically adding the entry for ''monoester of alpha-hydro-omega-hydroxy-poly(oxyethylene) poly(oxypropylene) poly(oxyethylene) (15 mole minimum) blocked copolymer derived from low erucic acid rapeseed oil'' under the newly revised heading ''Substances'' to read as follows:

§ 173.340 Defoaming agents.

* * * * *

(a) * * *

(4) The substances listed in this paragraph (a) (4), provided they are components of defoaming agents limited to use in processing beet sugar only, and subject to the limitations imposed:

Substances	Limitations
* * *	* * * *
Monoester of alpha-hydro-omega-hydroxy-poly(oxyethylene) poly(oxypropylene) poly(oxyethylene) (15 mole minimum) blocked copolymer derived from low erucic acid rapeseed oil.	

* * * * *

Dated: May 19, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–14105 Filed 5–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 96F–0489]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene, as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food. This action responds to a petition filed by Ciba Specialty Chemicals Corp.

DATES: The regulation is effective May 28, 1998. Submit written objections and request for a hearing by June 29, 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: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 2, 1997 (62 FR 100), FDA announced that a food additive petition (FAP 7B4529) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 5,7-bis(1,1-dimethylethyl-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the food additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), 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 by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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.

Any person who will be adversely affected by this regulation may at any time on or before June 29, 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.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene (CAS Reg. No. 181314–48–7).	For use only: 1. At levels not to exceed 0.1 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter. The finished polymers may only be used in contact with food of the types identified in § 176.170(c) of this chapter, Table 1, under Categories I, II, IV–B, VI–A, VI–B, VII–B, and VIII, and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.02 percent by weight of propylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 3.1a, 3.2a, 3.2b, 3.4, or 3.5, and ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, or 3.6 (where the density of each of these polymers is at least 0.94 gram per cubic centimeter), or 5. The finished polymers may only be used in contact with food of the types identified in § 176.170(c) of this chapter, Table 1, under Categories III, IV–A, V, VI–C, VII–A, and IX, and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter; provided that the finished food-contact articles have a volume of at least 18.9 liters (5 gallons). 3. At levels not to exceed 0.02 percent by weight of ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, 3.4, 3.5, or 3.6 (where the density of each of these polymers is less than 0.94 gram per cubic centimeter). The finished polymers may only be used in contact with food of the types identified in § 176.170(c) of this chapter, Table 1, under Categories III, IV–A, V, VI–C, VII–A, and IX, and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter; provided that the average thickness of such polymers in the form in which they contact food shall not exceed 50 micrometers (0.002 inch).
* * *	* * * *

Dated: May 11, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–14104 Filed 5–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego; 98–011]

RIN 2115–AA97

Safety Zone; Oceanside, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Pacific Ocean adjacent to Oceanside, California, for the 2nd Annual Oceanside Grand Prix Powerboat Race on 31 May 1998. The race zone will encompass the water from the Oceanside harbor entrance and the southerly city limits of Oceanside, approximately .5 miles from the shoreline and running approximately parallel thereto, in an area more particularly described as follows: beginning at a point located at latitude 33°09′87″ N. longitude 117°22′81″ W; thence northeast to a point located at latitude 33°10′14″ N, longitude 117°22′33″ W; thence northwest to a point located at latitude 33°11′49″ N, longitude 117°23′36″ W; thence north to a point located at latitude 33°11′64″ N. longitude 117°23′36″ W; thence southeast to the point of the beginning.

This safety zone is established to protect the lives and property of the race participants and spectators by establishing an exclusionary zone around the race course. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 1:30 p.m. (DST) on May 31, 1998, and continues until 2:45 p.m. (DST) on May 31, 1998, unless cancelled earlier by the Captain of the Port.

ADDRESSES: Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064.

FOR FURTHER INFORMATION CONTACT: LT Mike Arguelles, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6484.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publication of a notice of proposed rulemaking and delay of its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of vessels operating in the area of the race. The safety zone boundaries and 2nd Annual Oceanside Grand Prix arrangements were not finalized until a date fewer than 30 days prior to the event date. Following normal rulemaking procedures in this case would be impracticable.

Drafting Information

The drafters of this regulation are Lieutenant Mike Arguelles, Project Officer, U.S. Coast Guard Marine safety Office San Diego, and LTJG Derek A. D'Orazio, Project Attorney, Maintenance

and Logistics Command Pacific Legal Office.

Discussion of Regulation

This regulation is necessary to protect the lives and property of the race participants and spectators by establishing an exclusionary zone around the 2nd Annual Oceanside Grand Prix. During race times, vessels will be traveling at high rates of speed which will hinder their reaction time to obstacles. This safety zone will be marked by the sponsor, and enforced by U.S. Coast Guard personnel with the assistance of the Oceanside Harbor Police. Persons and vessels are prohibited form entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted for review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). Due to the short duration and limited scope of the safety zone the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of Department of Transportation is unnecessary.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612, and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C as revised in 59 FR 38654, July 29, 1994, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for 33 CFR part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section 165.T11–033 is added to read as follows:

§ 165.T11–033 Safety Zone: Oceanside, CA

(a) *Location*. The following area constitutes a safety zone in the navigable waters in the vicinity of Oceanside, CA: beginning at a point located at latitude 33°09′87″ N, longitude 117°22′81″ W; thence northeast to a point located at latitude 33°10′14″ N, longitude 117°22′33″ W; thence northwest to a point located at latitude 33°11′49″ N, longitude 117°23′36″ W; thence north to a point located at latitude 33°11′64″ N, longitude 117°23′36″ W; thence southeast to the point of the beginning.

(b) *Effective Dates*. This section becomes effective at 1:30 a.m. (DST) on May 31, 1998, and continues until 2:45 p.m. (DST) on May 31, 1998, unless cancelled earlier by the Captain of the Port.

(c) *Regulations*. In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Dated: 30 April 1998.

J. A. Watson,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 98–14162 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–15–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202, 203, 204 and 211

[Docket No. 98–2A]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office is issuing final regulations for fees it charges for special services. The Office is initiating new fees and amending other existing fees based on the actual costs to the Office of providing such services. The Office is establishing these fees so it can more nearly recover the costs of providing these services to the public.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, or Patricia L. Sinn, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202)707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Section 708 of title 17, United States Code, authorizes the Register of Copyrights to charge fees for services the Copyright Office provides as described in section 708(a)(1)–(9), such as registration, recordation, and certification. Nonspecified fees, called ''special,'' or ''discretionary'' fees, are addressed in section 708(a)(10). This section authorizes an assessment for ''any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service.'' *Id*.

Examples of such services include special handling, full term storage of deposits, and provision of services on an expedited basis. The Office last increased fees in 1994 to reflect costs of performing certain services. See 58 FR 38369 (July 28, 1994).

On April 1, 1998, the Office published a Notice of Proposed Rulemaking (NOPR) seeking public comments on amendments to existing fees and establishing new fees for certain services. See 63 FR 15802 (April 1, 1998). As described in the NOPR the Office completed a comprehensive economic analysis of the operating costs involved in providing special services to users to determine whether or not these fees should be adjusted. Using its own

analysis, reflection on analysis done by the Government Accounting Office, and the results of studies conducted by private sector consultants, the Office determined that it must adjust fees for special services in order to more nearly recapture the actual costs for providing them. It also determined that it must charge fees for other services such as appeals and servicing underfunded deposit accounts.

In addition to publishing the proposed new fee schedule in the **Federal Register**, the Office made it available online and mailed an announcement about the proposed fee increase to deposit account holders.

II. Comments

The Motion Picture Information Service (MPIS) submitted the only comment the Copyright Office received in response to the NOPR. The commenter asserts that the deposit account system is inconvenient and should be abolished and ''replaced with a simple cash, check, debit card, or credit card system.'' The commenter states that this would bring the Office into line with current business practices, and would eliminate inconvenience and administrative burdens for both the public and the Office. MPIS comment at 1.

III. Final Regulations

The Copyright Office realizes that there are benefits for both claimants and the Office by accepting credit cards for payment of copyright fees. It has just completed a two-year pilot program in which credit cards were accepted for the filing of claims and recording of documents under the provisions of the Uruguay Round Agreements Act (URRA). Public Law 103–465; 108 Stat. 4809 (1994). It is now in the process of evaluating the resources needed in order to plan for implementation of a credit card system.

The Office also believes some customers prefer the convenience of deposit accounts and will continue to use them even if credit cards are accepted. The fees on deposit accounts will only be assessed when there are insufficient funds in the account to cover current requests for services. The Office mails monthly statements to deposit account holders notifying them of the status of their accounts.

The Office received no comments on any of the other proposed fees. It is adopting the proposed fee schedule in its entirety, effective July 1, 1998, other than the short fee charge which will not take effect until a date which will be announced later.

List of Subjects

37 CFR Part 201

Copyright, General Provisions.

37 CFR Part 202

Copyright, Registration.

37 CFR Part 203

Freedom of Information Act.

37 CFR Part 204

Privacy.

37 CFR part 211

Mask work protection, Fees.

In consideration of the foregoing, parts 201, 202, 203, 204, and 211 of 37 CFR chapter II are amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.32 is amended by revising the special services fee chart to read as follows:

§ 201.32 Fees for Copyright Office special services.

* * * * *

Special services	Fees
1. Service charge for deposit account overdraft	$70
2. Service charge for dishonored deposit account replenishment check	35
3. Service charge for short fee payment	20
4. Appeals	
a. First appeal	200
Additional claim in related group	20
b. Second appeal	500
Additional claim in related group	20
5. Secure test processing charge, per hour	60
6. Copying charge, first 15 pages, per page	1
Each additional page	.50
7. Inspection charge	65
8. Special handling fee for a claim	500
Each additional claim using the same deposit	50
9. Special handling for recordations of a document	330
10. Full-term storage of deposits	365
11. Surcharge for expedited Certifications and Documents Section services	
a. Additional certificates, per hour	75
b. In-process searches, per hour	75
c. Copy of assignment, per hour	75
d. Certification, per hour	75
e. Copy of registered deposit	
First hour	95
Each additional hour	75
f. Copy of correspondence file	
First hour	95
Each additional hour	75
12. Surcharge for expedited Reference & Bibliography searches	
First hour	125
Each additional hour	95

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

3. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 202.23 [Amended]

4. Section 202.23(e)(1) and (2) are amended by removing ''$270.00'' each place it appears and adding in its place ''$365.00.''

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

5. The authority citation for part 203 continues to read as follows:

Authority: 17 U.S.C. 702; and 5 U.S.C. 552(a)(1).

§ 203.6 [Amended]

6. Section 203.6(b)(2) is amended by removing ''$7 for up to 15 pages and $.45 per page over 15.'' and adding in its place ''$15.00 for up to 15 pages and $.50 per page over 15.''.

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

7. The authority citation for part 204 continues to read as follows:

Authority: 17 U.S.C. 702; and 5 U.S.C. 552(a).

§ 204.6 [Amended]

8. Section 204.6(a) is amended by removing ''$7 for up to 15 pages and $.45 per page over 15.'' and adding in its place ''$15.00 for up to 15 pages and $.50 per page over 15.''

PART 211—MASK WORK PROTECTION

9. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702 and 908.

§ 211.3 [Amended]

10. In § 211.3(a)(1) and (2) remove ''$20.00'' each place it appears and add in is place ''$75.00.''

11. In § 211.3(a)(7), remove ''$330'' and add in its place ''$500.00.''

Dated: May 20, 1998.

Marybeth Peters,

Register of Copyright.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–14086 Filed 5–27–98; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–3870; Notice 7]

RIN 2127–AG81

Federal Motor Vehicle Safety Standards; School Bus Pedestrian Safety Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final Rule.

SUMMARY: The agency is amending Standard No. 131, *School Bus Pedestrian Safety Devices,* to permit the use of additional light sources on the surface of retroreflective stop signal arms and to permit a certain amount of the retroreflective surface to be obscured by mounting hardware. It also makes minor clarifications to the standard. This responds to a petition from Transpec, Inc., a maker of stop arms.

DATES: This rule will become effective on May 28, 1998. Petitions for reconsideration of this rule must be received no later than July 13, 1998.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number and be submitted in writing to: Administrator, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington DC, 20590. Telephone: (202) 366–5267

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. Charles Hott, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–0247.

For legal issues: Mr. Paul Atelsek, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, FAX (202) 366–3820.

SUPPLEMENTARY INFORMATION:

1. Background

Federal Motor Vehicle Safety Standard No. 131, *School bus pedestrian safety devices* requires each new school bus to be equipped with a stop signal arm. A stop signal arm is a device, patterned after a conventional ''STOP'' sign, that automatically extends outward from the bus to alert motorists that a school bus is stopping or has stopped.

To ensure the conspicuity of a stop signal arm, Standard No. 131 specifies that the device must either be reflectorized or be equipped with flashing lamps. If reflectorization is used to comply with the standard, ''the *entire* surface of both sides of the stop signal arm'' must be reflectorized (S5.3.1, emphasis added). NHTSA has interpreted this language to mean that Light Emitting Diodes (LEDs) outlining the word ''Stop'' on the stop arm blade would not be permitted under the reflectorization option because LEDs do not meet the requirements for reflectorized material.

Transpec, Inc. (Transpec) submitted a petition for rulemaking requesting that S5.3.1 of the standard be amended to allow the use of LEDs on stop signal arms. The petition sought to amend the section to permit red LEDs on the surface of the stop arm that are ''contained within a light channel not greater than 10mm (.394 inches) wide centered within the stroke width of each letter.'' Under the requested amendment, the minimum stroke width of letters containing LEDs would be increased from 20 mm (0.79 inches) to 25 mm (0.8984 inches). The LEDs would be required to flash at the rate specified for stop arm lamps conforming to S5.3.2. The petition also sought to permit a percentage of the surface area of the stop arm to be obscured by mounting brackets and other necessary components, with the aggregate area obscured by the LEDs and other components not to exceed 7.5 percent of the surface area of the stop arm.

2. The Notice of Proposed Rulemaking (NPRM)

On August 6, 1997, the agency published a NPRM proposing to amend the standard in most ways as requested by Transpec. It proposed to permit light to be emitted ''from the surface of each letter or from the area immediately surrounding each letter'' in the legend ''STOP.'' Lamps on the surface of the letter would have to be located on the centerline of each letter, or outline each letter of the legend. The lamps on the surface of the stop arm would have to flash in the same manner as specified for the lamps in non-reflectorized stop arms. The net stroke width (i.e., the stroke width minus the width of the legend lamps) of each letter containing lamps was proposed to be at least 15 mm, to assure that an acceptable amount of white letter reflectorized surface would be provided.

Rather than limit the permitted light sources to LEDs, the agency was more flexible than requested, proposing to permit almost any type of light source in the legend lamps. It proposed to permit white lamps as well as red lamps, but not both colors simultaneously, on the assumption that

white lamps might better illuminate the white letters. It also proposed amending S6.2.2.1 to eliminate the word ''filament,'' in order to permit other non-filament light sources to be used in the legend lamps. It also clarified that a requirement on the ''off'' cycle time of gaseous discharge lamps applied only to xenon short-arc discharge lamps.

The agency proposed to permit ''mounting brackets, bolts, or other components necessary to the mechanical or electrical operation of the stop signal arm'' to obscure up to 7.5 percent of the total surface area of either side of the stop arm, and up to 10 percent of the white border.

Finally, the NPRM clarified that when two stop arms are installed on the same side of a bus, the forward side of the rearmost stop signal shall not be reflectorized. This was done to avoid confusing drivers in the lanes of opposing traffic as to where they should stop relative to the school bus.

The agency also requested comment on a wide range of issues, including: (1) comments and test data about the effectiveness of LED-equipped stop signal arms as a means of enhancing stop arm conspicuity, (2) the use of other light sources, such as miniature incandescent and neon light sources, and their effectiveness, and the possibility of confusion from mixed light sources, (3) whether to allow use of either red or white LEDs or other light sources, or to allow only one color of emitted light, (4) whether 7.5 percent, the percentage of permitted obscuration requested by Transpec, is an appropriate amount, (5) what, if any, intensities and test procedures should be required for lamps used on stop arms. In addition, the agency noted that the Society of Automotive Engineers' standards referenced in FMVSS 131 are not current and asked if it would be useful to update some or all of these to the latest versions and if there would be any burden associated with making such changes, (6) whether light sources should be allowed to outline each letter rather than be centered on each letter, and (7) whether an immediate effective date is appropriate.

3. Summary of Comments

Comments were submitted by sixteen State departments of education or school districts, Mr. Harry Gough, P.E., and two stop arm manufacturers, Transpec and Specialty Manufacturing. Six of the school district comments were forwarded by Transpec. Two national student transportation organizations commented, the National School Transportation Association (NSTA) and the National Association of State Directors of Pupil Transportation Services (NASDPTS).

The Florida Department of Education conducted a comparative test program involving school buses and three stop arm designs: standard reflective stop arms with incandescent lights; stop-arms using strobe lights; and Transpec LED-equipped stop arms. Fifteen different Florida school districts tested the three stop arm designs for 20 school days each. Although the results were not statistically significant, the Florida study concluded that the LED and the strobe lighted stops were ''no less effective'' at stopping traffic than the incandescent lighted stop arms Florida currently uses. The study also concluded that the raw data tend to indicate ''some improvement'' at stopping traffic by both the strobe and the LED type stop arms over the incandescent lighted stop arm. The strobe lighted stop arm had a ''small advantage'' over the LED stop arm at stopping traffic.

All other commenting States and school districts that had conducted pilot tests liked the Transpec LED stop arm. Most stated that it reduced the number of illegally passing motorists and was more visible than the ''standard'' stop arm, although it was not always clear what they were comparing it to.

Most commenters that addressed the issue supported the idea of allowing other light sources. Transpec stated that NHTSA should establish performance requirements for other light sources, but that NHTSA's consideration of other light sources should not delay the implementation of LEDs.

No commenters objected to the use of other light sources. Transpec submitted the only comment to address the potential for confusion caused by the LEDs and other light sources. It stated that the potential confusion would not be so great as the confusion caused between the flashing lights and reflectorized versions already allowed by the standard.

A number of commenters expressed the opinion that only red lights should be permitted in or around the legend. NSTA, Transpec and Specialty all commented that these lights should be red because red is the color that is currently used in all traffic lights that denote that the motorist must stop. Transpec stated that white lights do not create in a driver the same sense of urgency as red lights. In addition, Transpec stated that white lights introduce a third lighting color (i.e., red, amber, and white) to the school bus that could detract from the ''STOP'' message.

Two commenters were concerned about the intensity of LEDs. Specialty believed that LEDs were less visible when viewed from an angle (as when viewed across multiple lanes) and that side angle viewing should be studied. It also believed that LEDs are less visible when viewed in direct sunlight. In contrast, a school district that had pilot tested the LED stop arm believed that LEDs were more effective than the incandescent lights in bright sunshine. Specialty provided test results showing that LEDs do not pass the light specifications for incandescent lamps in Society of Automotive Engineers Recommended Practice J1133, School Bus Stop Arms. Mr. Gough also stated that, based on testing, LEDs produce only one third the intensity of light as incandescent lamps. He stated that NHTSA should establish minimum intensity levels for LEDs.

Transpec indicated that it had developed a prototype LED-equipped stop arm with the LEDs outlining the word stop, but that the design was flawed because it had a ''Christmas tree'' effect (i.e., appearing as a random field of lights distracting the observer and resulting in diminished readability). Transpec urged NHTSA not to allow such a configuration of lights unless further testing was conducted.

The only commenter to address the appropriateness of allowing obscuration of up to 7.5 percent of the retroreflective surface of the stop arm was Specialty. Specialty stated that the proposed 7.5 percent figure was too great, and that obscuring more than 2 or 3 percent of the retroreflective material would significantly reduce the effectiveness of the stop arm because the retroreflective material does the work of alerting the motorist.

Comment was mixed on the appropriateness of obscuring up to 10 percent of the white border of the stop arm. Specialty believed that limiting the border obscurement to 10 percent may cause some difficulty in mounting because some stop arms would have to be positioned farther outward, which it believes would cause them to protrude so far out from the side of the school bus that the bus would exceed the maximum width under some State laws. Some states have laws that limit the distance a stop arm can extend from the side of a school bus. Requiring that no more than 10 percent of the border be obscured would lead to additional tooling cost for manufacturers. However, the NSTA stated that 10 percent was an appropriate maximum.

4. Discussion

A. Stop Arm Effectiveness

NHTSA agrees with the commenters who stated that effectiveness should be the prime consideration in whether or not to amend the standard. NSTA expressed doubt that adding lights would solve the problem of illegally passing motorists, but both it and the NASDPTS stated that NHTSA should base its decision on ultimate effectiveness. All field testing indicates that the Transpec stop arm is at least as effective as other stop arms that the agency permits in preventing motorists from illegally passing. The agency found the Florida study to be the most helpful because it was the largest study to provide comparative data.

Although statistically significant data would be preferable, the agency is not constrained from acting without it. The reactions to the field tests of the LED-equipped stop arm were positive, and NHTSA considers this a sufficient basis on which to act. The Clark County (Nev.) School District, for example, has employed over 230 school buses equipped with the LED stop arm over the past five months and feels they are superior. Considering the positive test results, the agency has decided to permit LED-equipped stop arms.

B. Alternative Light Sources

The agency agrees with Transpec that the standard should not prevent other light sources from being used in the legend of the stop arm. No commenter opposed other light sources. The agency notes that Standard No. 131 is a design standard only to the extent that it promotes uniformity. The agency did not propose to allow only LEDs as additional light sources, as Transpec's comment implies. Any light source that meets the performance requirements of this rule is permitted.

C. Intensity of Lights in the Legend

Specialty and Mr. Gough expressed concern over the lower intensity of LEDs and the inability to see them at angles or in bright sunlight, and encouraged the agency to set intensity requirements. Transpec also suggested that NHTSA set performance standards for light sources other than LEDs. However, at this time there are no industry standards for the intensity of lights used in the legend of school bus stop arms.

As stated above, the primary consideration is effectiveness. In the field testing, the LEDs that are currently used in the legend of stop arms did not appear to have a negative effect on a driver's ability to see the extended stop arm. Therefore, the agency does not believe there is currently a need to set intensity requirements. NHTSA will monitor the situation closely. Should manufacturers offer excessively dim lights that do not adequately substitute for the light ''lost'' by obscuring the retroreflective material, or excessively bright lights that interfere with the drivers' of other vehicles ability to see, the agency will consider developing intensity requirements.

D. Color of Light Sources

The agency finds persuasive the arguments of NSTA, Transpec and Specialty that lights in the legend should be red and not white. Red is the color that is currently used in all traffic lights that denote that the motorist must stop (e.g., brake lights, traffic lights, railroad crossing lights). Therefore, the rule has been modified from the proposal to state that red is the only light color that is acceptable in the legend of school bus stop arms.

E. Amount of Retroreflective Surface That May Be Obscured

Only Specialty commented on the amount of surface area and white border that could be obstructed on a school bus stop arm. The NPRM proposed that no more that 7.5 percent of the total surface area be obstructed. Specialty questioned whether 7.5 percent was needed, stating that no more than 2–3 percent of the total surface area of current stop arm designs will be obstructed by the wires and support clips running to surface mount lamps. Specialty also suggested that permitting the obscuration of 7.5 percent of the reflective surface could have a safety impact. It stated that the more retroreflective material that is obscured, the less noticeable the stop arm becomes. It concluded that obscuring more than 2–3 percent of the retroreflective material would significantly reduce the effectiveness of the stop arm.

During a May 7, 1998 telephone conversation with Specialty's Engineering Manager, Specialty revised its position on this issue. It referred to an industry-wide market survey of current stop arms showing that mounting brackets currently obscure up to 6.3 percent of the retroreflective material. Since a small amount of additional retroreflective material might be obscured by bolts and other necessary components, Specialty now takes the position that permitting up to 7.5 percent obscuration is appropriate, since it is needed by the industry for current designs, and would not significantly reduce the effectiveness of the stop arm.

Ultimately, there was no opposition to permitting 7.5 percent obscuration. The market survey referred to by Specialty adds support for the proposed amount by indicating that current stop arm designs require this provision. Therefore, the proposed 7.5 percent obscuration permitted for brackets, bolts, or other components is retained in the final rule.

F. Amount of White Border That May Be Obscured

The amount of white border that may be obstructed proved to be more controversial. The NPRM proposed allowing up to 10 percent of this border be obstructed. Specialty argued that more of the border should be allowed to be obstructed for two reasons.

First, Specialty attempted to define the role of the white border. It argued that the purpose of the white border is to provide a clear border definition and an enhanced contrast between the retroreflective material and the background (i.e., the area behind the stop arm). Specialty concluded that ''the border does not alert [the] motorist to the stop arm, the retroreflective material does that.''

This argument is not persuasive because, as stated in NHTSA's November 1, 1995 interpretation to Specialty, the ''entire surface'' of the stop arm is required to be reflectorized, including the white border. Since the white border is retroreflective, it contributes to the light returning to the drivers of other vehicles, while the area that NHTSA is allowing to be obstructed does not. As Specialty noted, the white border also provides contrast. Therefore, NHTSA also considers the border to be important in attracting the motorist's attention.

Second, Specialty argued that stop arms require mounting brackets to mount the stop arm to the school bus and the mounting brackets may obscure part of the border, and that requiring no more than 10 percent of the border to be obscured would lead to additional tooling costs for manufacturers to devise methods for putting the stop arm blades further outboard without violating State laws.

This argument is persuasive. It was not the intent of the NPRM to change the way existing stop arms are mounted on school buses. The intent was to provide a basis for the amount of white border that could be obstructed by mounting and operational hardware. Some obscuration is a practical necessity for mounting the stop arm blade in a cost-effective manner. Specialty did not offer the percentage of white border that is obstructed on

current stop arms. Agency staff looked at various models of stop arms and concluded that, at most, 15 percent of the white border is obstructed by mounting hardware. Therefore, S5.1.2 has been changed to permit 15 percent obscuration of the white border.

G. Outlining Versus Centering the Lamps in the Legend

Transpec was the only commenter to address the issue of placement of the lights in or around the legend. Its recommendation against placement on the border of the legend was based on its desire to avoid a ''Christmas tree effect'' it found in one of its prototypes. As stated in NHTSA's November 1, 1995 interpretation letter to Specialty, widely spaced lights ''could appear as a random field of lights (like a Christmas tree), distracting the observer and resulting in diminished readability.'' Transpec therefore recommends restricting light placement to a location ''centered'' within the letters.

The agency notes that this ''Christmas tree effect'' is caused more by excessive spacing between adjacent lights than by their placement relative to the legend. The effect can also be caused by lights centered in the legend's letters, if the spacing between the lights is too great. Conversely, the effect can be avoided with lights placed around the perimeter of the legend's letters if the lights are located close enough together.

The option for placing the lamps around the border is being retained in the final rule. The agency does not believe it is currently necessary to regulate the spacing of the lights in or around the legend. The optimum spacing might vary according to the lamp intensity, lamp size, and legend letter size. NHTSA will monitor the products being offered and will consider specifying light spacing if it finds stop arms being produced with LEDs that impair the effectiveness the stop arm, regardless of whether they are centered in, or arranged around the border of, the letters.

H. Effective Date

Some commenters urged delaying the effective date. Specialty recommended that the effective date of these amendments be delayed until extensive testing is conducted, out of a concern that pushing untested, potentially nonbeneficial technologies quickly to market would not be in the interest of the general public. The NSTA, the NASDPTS, Mr. Gough, and a few other commenters also encouraged NHTSA to conduct extensive testing before promulgating the rule.

Other commenters, notably Transpec and some States and school districts that liked Transpec's stop arm, urged an immediate effective date. The primary reason given was that to delay implementation would perpetuate confusion and ambiguity over Transpec's LED-equipped stop arm and delay arrival of a beneficial technology in the market.

The agency concludes that an immediate effective date is warranted. Field testing indicates that the Transpec stop arm is at least as effective as existing stop arms in stopping motorists from illegally passing stopped school buses. The commenters who encouraged more extensive testing did not have the benefit of the results of the Florida study and may not have realized the large number of smaller pilot test programs being conducted by the other States and school districts when they composed their comments. The agency considers this field testing to be sufficient.

This amendment is permissive only, so there is no burden associated with an immediate effective date. Since the LED-equipped stop arms seem effective, there is no reason to delay their entry into the marketplace.

I. Miscellaneous issues

There was no comment on several aspects of the proposal, and these elements are maintained in the final rule. These include: (1) the proposal to use a diminished ''net stroke width'' of the letters in the legend to account for the width of the lights centered within them; (2) the removal of the word ''filament'' in S6.2.2.1 to remove the restriction against non-filament light sources; (3) the addition of the words ''xenon short arc'' clarification that the requirements of S6.2.2.2 apply only to that type of gaseous discharge lamp; and (4) the addition of a requirement in S5.3.1.3 that the forward side of the rearmost stop signal not be reflectorized if there are forward and rearward stop arms.

Regulatory Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice was not reviewed under Executive Order 12866, because the Office of Management and Budget determined that it is not significant within the definitions of the Executive Order. NHTSA has analyzed this rulemaking and determined that it is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendment would be so minimal that a full regulatory evaluation is not required. Since the amendment would impose no new requirement but simply would allow for an alternative design, there are no cost impacts. Because stop arms with legend lamps are optional, the agency assumes those companies availing themselves of the option would be maximizing benefits with respect to any added costs associated with legend lamps.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this rulemaking on small entities. Based on this evaluation, I certify that the amendment will not have significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis has not been performed.

The following is NHTSA's statement providing the factual basis for certification (5 U.S.C. 605(b)). Because Standard No. 131 applies to vehicles rather than stop arms as items of motor vehicle equipment, the rule applies primarily to school bus manufacturers. The school bus industry is dominated by two companies that are not small entities, but there are a few school bus manufacturers that are small entities. All school buses are required to be equipped with stop arms. However, this rule imposes no requirements, but merely allows school bus manufacturers to have more choice in the stop arm designs they order. The rule is thus beneficial to vehicle manufacturers, and has no negative economic impact.

All stop arm manufacturers known to the agency are small entities. They might be affected in the sense that market share might shift among them if school bus manufacturers choose to purchase stop arms with legend lights. Transpec is the only company known by the agency to produce stop arms with legend lamps. However, NHTSA does not know if Transpec's design will be widely accepted in the marketplace, either by school bus manufacturers for installation on new buses, or in the aftermarket. In addition, this rule provides flexibility for other manufacturers to produce their own legend lamp-equipped stop arm designs. Therefore, the agency does not view this rule as either conferring a competitive advantage or imposing a negative impact on any stop arm manufacturer.

C. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order

12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule does not impose any unfunded mandates on State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532–38).

D. Civil Justice Reform

This rule has no retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50

2. Section 571.131 is amended by revising S5.2.1, S5.2.2, S5.3.1, S6.2.2.1, and S6.2.2.2, and by adding S5.3.1.1, S5.3.1.2, and S5.3.1.3 to read as follows:

§ 571.131 Standard No. 131, School Bus Pedestrian Safety Devices.

* * * * *

S5.2.1 The stop signal arm shall have a white border at least 12 mm (0.47 inches) wide on both sides, except as provided in S5.2.3. Mounting brackets, clips, bolts, or other components necessary to the mechanical or electrical operation of the stop signal arm may not obscure more than 15 percent of the border on each side of the stop arm. The portion of the border that may be obscured is in addition to that portion which may be obscured by the two red lamps specified in S5.3.2.

S.5.2.2 The stop signal arm shall have the word ''STOP'' displayed in white upper-case letters on both sides, except as provided in S5.2.3. The letters shall be at least 150 mm (5.9 inches) in height. The letters shall have a stroke width of at least 20 mm (0.79 inches), except as provided in S.5.3.1.1.

* * * * *

S5.3.1 Except as provided in S5.3.1.1, S5.3.1.2, or S5.3.1.3, the entire surface of both sides of each stop signal arm shall be reflectorized with Type III retroreflectorized material that meets the minimum specific intensity requirements of S6.1 and Table I.

* * * * *

S.5.3.1.1 The legend of the retroreflective stop arm may be illuminated in a manner such that light is emitted from the surface of each letter or from the area immediately surrounding each letter. Only red lamps may be used. They shall form the complete shape of each letter of the legend, and shall be affixed to all letters (or to the areas immediately surrounding all letters) in the legend. The shape of each letter shall remain constant and, if the lamps are contained within each letter, the net stroke width (stroke width minus the width of the lamp(s)) of each letter of the legend, specified in S5.2.2, shall not be less than 15 mm (0.59 inch). When the stop arm is extended, the lamps shall flash at the rate specified in S6.2.2, with a current ''on'' time specified in S6.2.2.1. All lamps shall be positioned in one of the two following ways:

(1) centered within the stroke of each letter of the legend, or

(2) outlining each letter of the legend.

S5.3.1.2 Nonreflectorized mounting brackets, clips, bolts, or other components necessary to the mechanical or electrical operation of the stop signal arm shall not obscure more than 7.5 percent of the total surface area of either side of the stop signal arm.

S5.3.1.3 When two stop signal arms are installed on a school bus, the forward side of the rearmost stop signal arm shall not be reflectorized.

* * * * *

S6.2.2.1 Lamps, except those subject to S6.2.2.2, shall have a current ''on'' time of 30 to 75 percent of the total flash cycle. The total current ''on'' time for the two terminals shall be between 90 and 110 percent of the total flash cycle.

S6.2.2.2 Xenon short-arc gaseous discharge lamps shall have an ''off'' time before each flash of at least 50 percent of the total flash cycle.

* * * * *

Issued: May 22, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–14110 Filed 5–22–98; 3:07 pm]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 63, No. 102
Thursday, May 28, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–90–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 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 certain Dornier Model 328–100 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to require use of the electrical fuel pump for take-off and landing and performance of an operational check of the electrical fuel pump following landing. This proposal also would require replacement of the jet booster pumps with new or modified jet booster pumps, which would terminate the requirement for the AFM revision. 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 failure of the jet booster pumps, which could result in reduced engine thrust during take-off or landing, and consequent increased risk of impact with terrain.

DATES: Comments must be received by June 29, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–90–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 FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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–90–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–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that, on an in-service airplane, the non-return flap valve of the jet booster pump failed, which resulted in inadequate fuel pressure being provided to fuel the engine and consequent loss of engine thrust. Further investigation revealed that the design of the jet booster pumps on certain Model 328–100 series airplanes is susceptible to this type of failure. This condition, if not corrected, could result in reduced engine thrust during take-off or landing, and consequent increased risk of impact with terrain.

Explanation of Relevant Service Information

Dornier has issued All Operators Telefax (AOT) AOT–328–28–014, Revision 1, dated October 16, 1996, which describes procedures for revising the Airplane Flight Manual (AFM) to require use of the electrical fuel pump for take-off and landing and performance of an operational check of the electrical fuel pump following landing.

In addition, Dornier has issued Service Bulletin SB–328–28–211, dated March 26, 1997, which describes procedures for replacement of certain jet booster pumps with new or modified jet booster pumps. Accomplishment of this replacement eliminates the need for the AFM revision.

Accomplishment of the actions specified in the AOT and service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this AOT and service bulletin as mandatory and issued German airworthiness directives 97–004, dated January 30, 1997, and 97–149, dated May 22, 1997, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement,

the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, 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 revising the Limitations Section of the FAA-approved AFM to require use of the electrical fuel pump for take-off and landing and performance of an operational check of the electrical fuel pump following landing. This proposed AD also would require replacement of the jet booster pumps with new or modified jet booster pumps, which would terminate the requirement of the AFM revision.

Cost Impact

The FAA estimates that 50 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 AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

It would take approximately 6 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $18,000, or $360 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:

Dornier Luftfahrt GmbH: Docket 98–NM–90–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3093 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 (d) 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 jet booster pumps, which could result in reduced engine thrust during take-off or landing, and consequent increased risk of impact with terrain, accomplish the following:

(a) Within 5 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of Dornier All Operators Telefax AOT–328–28–014, Revision 1, dated October 16, 1996, into the AFM to require use of the electrical fuel pump for take-off and landing and performance of an operational check of the electrical fuel pump following landing.

(b) Within 180 days after the effective date of this AD, replace the jet booster pumps having part number (P/N) 219335–2 with new or modified jet booster pumps, having P/N 219335–3, in accordance with Dornier Service Bulletin SB–328–28–211, dated March 26, 1997. Accomplishment of this replacement constitutes terminating action for the requirements of paragraph (a) of this AD; after the replacement has been accomplished, the previously required limitation may be removed from the AFM.

(c) As of the effective date of this AD, no person shall install a jet booster pump, part number 219335–2, on any airplane.

(d) 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.

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

Note 3: The subject of this AD is addressed in German airworthiness directives 97–004, dated January 30, 1997, and 97–149, dated May 22, 1997.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14037 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–19–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300–600 and A310 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to instruct the flightcrew to cross-check certain primary power setting parameters of the Thrust Control Computer (TCC) against tables of these values; and apply corrective action, if necessary. That AD also provides for optional terminating action for the AFM revisions. This proposed rule would require accomplishment of the previously optional terminating action. 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 incorrect primary power setting parameters of the TCC, which could result in insufficient thrust being applied during takeoff.

DATES: Comments must be received by June 29, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–19–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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–19–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–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 29, 1997, the FAA issued AD 98–01–09, amendment 39–10272 (63 FR 658, January 7, 1998), applicable to certain Airbus Model A300–600 and A310 series airplanes, to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to instruct the flightcrew to cross-check certain primary power setting parameters of the Thrust Control Computer (TCC) against tables of these values; and apply corrective action, if necessary. That AD also provides for an optional terminating action for the AFM revisions. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to ensure that the flightcrew is provided with procedures for cross-checking and correcting certain primary power setting parameters of the TCC; incorrect parameters could result in insufficient thrust being applied during takeoff.

Actions Since Issuance of AD 98–01–09

In the preamble to AD 98–01–09, the FAA specified that the actions required by that AD were considered interim action because French airworthiness directive 97–110–218(B) dated May 7, 1997, required modification of the TCC on A300–600 and A310 series airplanes, while AD 98–01–09 provided for optional modification of the TCC. The FAA also indicated that it would consider further rulemaking action since the planned compliance time for that action was sufficiently long so that notice and opportunity for prior public comment were practicable. This proposed AD will require accomplishment of the previously optional modification.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins:

- A310–22–2025, dated April 18, 1989;
- A310–22–2027, dated June 8, 1990;
- A310–22–2031, dated September 2, 1991;
- A310–22–2035, Revision 1, dated July 13, 1994;
- A300–22–6010, dated April 18, 1989;
- A300–22–6011, dated June 8, 1990; and
- A300–22–6017, dated September 2, 1991.

These service bulletins describe procedures for modification of the TCC to prevent sensitivity to electrical power transients. Accomplishment of the modification would eliminate the need for the AFM limitation. The modification of the TCC varies depending on the airplane model and engine configuration.

Accomplishment of the action specified in the service bulletins is intended to adequately address the identified unsafe condition. The Direction Genrale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 97–110–218(B), dated May 7, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type

certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. 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 Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–01–09 to continue to require a revision to the Limitations Section of the FAA-approved AFM, that instructs the flightcrew to cross-check certain primary power setting parameters of the TCC. This proposed AD also would add a requirement to modify the TCC, which would terminate the requirement for the AFM revision.

Cost Impact

The FAA estimates that 94 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revision that is currently required by AD 98–01–09 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required AFM revision on U.S. operators is estimated to be $5,640, or $60 per airplane.

The modification that is proposed in this AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,300 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $421,120, or $4,480 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have 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 removing amendment 39–10272 (63 FR 658, January 7, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–19–AD. Supersedes AD 98–01–09, Amendment 39–10272.

Applicability: Model A300–600 and A310 series airplanes equipped with General Electric CF6–80C2 engines on which Airbus Modification 7174, 7588, or 8246 has not been accomplished; and Model A300–600 and A310 series airplanes equipped with Pratt & Whitney PW 4000 engines on which Airbus Modification 7694 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 incorrect primary power setting parameters of the Thrust Control Computer (TCC), which could result in insufficient thrust being applied during takeoff, accomplish the following:

Restatement of Requirements of AD 98–01–09

(a) Within 15 days after January 22, 1998 (the effective date of AD 98–01–09, amendment 39–10272), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of A300–600 or A310 Flight Manual Temporary Revision 4.03.00/18, 4.03.00/19, 4.03.00/20, or 4.03.00/21, all dated November 4, 1996; as applicable; into the AFM.

Note 2: When the temporary revision specified in paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in the applicable temporary revision cited in paragraph (a).

New Requirements of this AD

(b) Within 15 months after the effective date of this AD, modify the TCC in accordance with the applicable Airbus service bulletins specified below. (The applicability of the service bulletins is specified in the effectivity section of each service bulletin.)

- A310–22–2025, dated April 18, 1989;
- A310–22–2027, dated June 8, 1990;
- A310–22–2031, dated September 2, 1991;
- A310–22–2035, Revision 1, dated July 13, 1994;
- A300–22–6010, dated April 18, 1989;
- A300–22–6011, dated June 8, 1990; or
- A300–22–6017, dated September 2, 1991.

Accomplishment of the modification of the TCC constitutes terminating action for the requirements of paragraph (a) of this AD. After the modification has been accomplished, the temporary revision may be removed from the AFM.

(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 3: 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 4: The subject of this AD is addressed in French airworthiness directive 97–110–218(B), dated May 7, 1997.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14036 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–187–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328 Series Airplanes Equipped with Honeywell GP–300 Guidance and Display Controller

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Dornier Model 328 series airplanes, that currently requires modification of certain Honeywell GP–300 guidance and display controllers. That AD was prompted by reports of smoke and fumes emitting from the Honeywell GP–300 guidance and display controller due to a defective light bulb; and a report of failure of the autopilot to disconnect manually. The actions specified by that AD are intended to prevent a defective light bulb from causing a short circuit that emits smoke and fumes into the cockpit; or causing damage to the circuit cards and various components, which may lock the autopilot into the engaged mode. Locking of the autopilot into the engaged mode could lead to the inability of the pilot to disconnect the autopilot, which could result in reduced controllability of the airplane. This action would require verification of proper installation of the modification, and repair, if necessary.

DATES: Comments must be received by June 29, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–187–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 Honeywell, Inc., Attn: Customer Support Materiel, P.O. Box 21111, Phoenix, Arizona 85036. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5220; fax (562) 627–5210.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5345; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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 97–NM–187–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. 97–NM–187–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 31, 1996, the FAA issued AD 96–12–13, amendment 39–9656 (61 FR 29465, June 11, 1996), applicable to certain Dornier Model 328 series airplanes, to require modification of certain Honeywell GP–300 guidance and display controller. That action was prompted by reports of smoke and fumes emitting from the Honeywell GP–300 guidance and display controller due to a defective light bulb; and a report of failure of the autopilot to disconnect manually. The requirements of that AD are intended to prevent a defective light bulb from causing a short circuit that emits smoke and fumes into the cockpit; or causing damage to the circuit cards and various components, which may lock the autopilot into the engaged mode. Locking of the autopilot into the engaged mode could lead to the inability of the pilot to disconnect the autopilot, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 96–12–13, the Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, has advised the FAA that the service bulletin issued by Honeywell and referenced in AD 96–12–13 has been misinterpreted by personnel at Honeywell service centers. The LBA advises that, on an in-service airplane, a miswired unit of the GP–300 control panel was found, which caused the panel to overheat and generate smoke. In addition, two miswired units were found during the manufacturing process. Such miswired units would prevent the overheat protection device from functioning and could lead to smoke and fumes in the cockpit.

Explanation of Relevant Service Information

The FAA has reviewed and approved Honeywell Service Bulletin 7015327–22–4, dated March 31, 1997, which describes procedures for verification of proper installation of the modification by re-testing the circuit card assemblies, and repair, if necessary. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 96–239/2, dated June 19, 1997, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 96–12–13 to continue to require modification of certain Honeywell GP–300 guidance and display controllers. The proposed AD also would add a requirement for verification of proper installation of the modification of Honeywell GP–300 guidance and display controller, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 50 Dornier Model 328–100 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 96–12–13, and retained in this proposed AD, take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $21,000, or $420 per airplane.

The new actions that are proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $12,000, or $240 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have 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 removing amendment 39–9656 (61 FR 29465, June 11, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Dornier Luftfahrt GmbH: Docket 97–NM–187–AD. Supersedes AD 96–12–13, Amendment 39–9656.

Applicability: Model 328–100 airplanes, equipped with Honeywell GP–300 guidance and display controller having part number (P/N) 7015327–901 or –902; 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 defective light bulb from causing a short circuit that emits smoke and fumes into the cockpit, or causing damage to the circuit cards and various components, which may lock the autopilot into the engaged mode, accomplish the following:

Restatement of Requirements of AD 96–12–13, Amendment 39–9656

(a) Within 60 days after June 26, 1996 (the effective date of AD 96–12–13, amendment 39–9656), modify the Honeywell GP–300 guidance and display controller, having P/N 7015327–901 or –902, in accordance with Honeywell Service Bulletin 7015327–22–2, dated March 4, 1996.

New Requirements of this AD

(b) Within 60 days after the effective date of this AD, verify that the wiring of the Honeywell GP–300 guidance and display controller is correct by conducting a re-test of the circuit card assemblies, in accordance with Honeywell Service Bulletin 7015327–22–4, dated March 31, 1997. If any discrepancy is found, prior to further flight, repair in accordance with the service bulletin.

(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 2: 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.

Note 3: The subject of this AD is addressed in German airworthiness directive 96–239/2, dated June 19, 1997.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14035 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–112–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 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 Dornier Model 328–100 series airplanes. This proposal would require a one-time inspection of the propeller de-ice system to verify the proper functioning of the engine indication and crew alert system (EICAS) for the de-ice system; and corrective action, if necessary. 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 failure of the EICAS to provide a warning to the flightcrew in the event of failure of the propeller de-ice system, which could result in damage to the airplane and consequent loss of controllability of the airplane.

DATES: Comments must be received by June 29, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–112–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 FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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–112–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–112–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Dornier Model 328–100 series airplanes. The LBA advises that it has received a report indicating that the propeller de-ice system on the airplane failed without appropriate indication of the failure to the flightcrew via the engine indication and crew alert system (EICAS). The failure of this system resulted in the accumulation of ice on both airplane propellers; the ice subsequently shed, which damaged the fuselage and other parts of the exterior of the airplane. Further investigation of the incident did not reveal an exact cause; although the LBA advises that this is considered to be an isolated incident, they consider a one-time fleet-wide inspection to be warranted. Such failure of the EICAS to provide a warning to the flightcrew in the event of failure of the propeller de-ice system, if not corrected, could result in damage to the airplane and consequent loss of controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Dornier Alert Service Bulletin ASB–328–30–013, Revision 1, dated February 21, 1997, which describes procedures for a one-time inspection of the propeller de-ice system, to verify that the EICAS provides appropriate warning to the flightcrew during operation of the propeller de-ice system in the event of failure. The LBA classified this alert service bulletin as mandatory and issued German airworthiness directive 97–066, dated March 13, 1997, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, 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 alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin does not specify corrective action if the inspection results do not verify proper functioning of the EICAS for the

propeller de-ice system, this proposal would require the repair of the EICAS to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that 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 $3,000, or $60 per airplane.

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

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:

Dornier Luftfahrt GmbH: Docket 98–NM–112–AD.

Applicability: All Model 328–100 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 failure of the engine indication and crew alert system (EICAS) to provide a warning to the flightcrew in the event of failure of the propeller de-ice system, which could result in damage to the airplane and consequent loss of controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time inspection of the propeller de-ice system to verify the proper functioning of the EICAS for the de-ice system, in accordance with Dornier Alert Service Bulletin ASB–328–30–013, Revision 1, dated February 21, 1997.

(b) If the inspection required by paragraph (a) of this AD indicates that the EICAS is malfunctioning, prior to further flight, repair the EICAS in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(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. 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 German airworthiness directive 97–066, dated March 13, 1997.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14027 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–100–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–200, and 747–SP Series Airplanes and Military Type E–4B 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 certain Boeing Model 747–100, –200, and 747–SP series airplanes and military type E–4B airplanes. This proposal would require repetitive inspections to detect cracking of the wing front spar web, and repair of cracked structure. This proposal also provides for optional terminating action for the repetitive inspection requirements. This proposal is prompted by reports indicating that fatigue cracks were found on the aft surface of the wing front spar web. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in a fuel leak, and consequent increased risk of a fire.

DATES: Comments must be received by July 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–100–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

Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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 97–NM–100–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. 97–NM–100–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that operators have found numerous fatigue cracks on the aft surface of the front spar web on Boeing Model 747 series airplanes. The cracks were found inside the wing fuel tank at Front Spar Station Inboard (FSSI) 688 where the inboard nacelle rib post and the 670 rib post attach to the web of the front spar. All of the cracks were found between these two rib posts inside the wing fuel tank. Metallurgical analyses indicate that the cracks were initiated by fatigue on the aft surface of the front spar web. The analyses also indicate that the various fatigue cracks initiated on the web itself, and not at the edges of the adjacent fastener holes. Such fatigue cracking, if not detected and corrected, could result in a fuel leak and consequent increased risk of a fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997, which describes procedures for repetitive ultrasonic inspections to detect cracking of the wing front spar web at the fastener rows behind and between the upper link fittings for the number 2 and 3 engine struts; and repair, if necessary. The service bulletin also describes procedures for an optional terminating modification, which, if accomplished, would eliminate the need for the repetitive inspections. The optional terminating modification involves replacing the cracked spar web with a shot-peened spar web. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Optional Terminating Modification

This proposed AD also would provide for an optional terminating modification of the wing front spar web . The FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect fatigue cracking before it represents a hazard to the airplane.

Cost Impact

There are approximately 190 airplanes of the affected design in the worldwide fleet. The FAA estimates that 95 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 64 work hours 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 $364,800, or $3,840 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional terminating modification, it would take approximately 518 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $17,000 per airplane. Based on these figures, the cost impact of the optional terminating modification proposed by this AD is estimated to be $48,080 per airplane.

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:

Boeing: Docket 97–NM–100–AD.

Applicability: Model 747–100, 747–200, and 747–SP series airplanes and military type E–4B airplanes; as listed in Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997; 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 (d) 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 detect and correct fatigue cracking of the wing front spar web, which could result in a fuel leak, and consequent increased risk of a fire, accomplish the following:

(a) Perform an ultrasonic inspection to detect cracking of the wing front spar web at the fastener rows behind and between the upper link fittings for the number 2 and 3 engine struts, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes identified as Group 1, 2, 3, or 5 in the alert service bulletin: Inspect prior to the accumulation of 12,500 total flight cycles, or within 15 months after the effective date of this AD, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 2,200 flight cycles.

(2) For airplanes identified as Group 4, 6, 7, 8, 9, or 10 in the alert service bulletin: Inspect prior to the accumulation of 18,000 total flight cycles, or within 15 months after the effective date of this AD, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(b) If any crack is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Accomplish the terminating action in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of this AD; or

(2) Repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) Replacement of the affected wing front spar web with a new shot-peened wing front spar web in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997, constitutes terminating action for the repetitive inspection requirements of this AD.

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

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

(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.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14028 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–116–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 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 certain Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require repetitive detailed visual inspections to detect cracks in the pylon thrust and sideload fitting of the wing, and replacement of any cracked pylon thrust and sideload fitting with a new fitting. 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 detect and correct cracks in the pylon thrust and sideload fitting of the wing, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by June 29, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–116–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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–116–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–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that during a zonal inspection on a Model A310 series airplane, a cracked pylon thrust and sideload fitting was detected on an in-service airplane which had accumulated 2,170 total flight cycles. Further investigation revealed that the cracks were caused by improper mounting of the fitting to the wing reinforcing plate and built-in stresses due to a surface flaw in the titanium thrust and sideload fitting. Such cracks in the pylon thrust and sideload fitting of the wing, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–57–0232, Revision 01 (for Model A300 series airplanes); A310–57–2075, Revision 01 (for Model A310 series airplanes); and A300–57–6079, Revision 02 (for Model A300–600 series airplanes); all dated January 12, 1998; which describe procedures for repetitive detailed visual inspections to detect cracks in the pylon thrust and sideload fitting of the wing, and replacement of any cracked pylon thrust and sideload fitting with a new fitting. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–358–232(B), dated November 19, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. 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 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 bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Foreign AD

The proposed AD would differ from the parallel French airworthiness directive in that it would not allow for adjustment in compliance time based on airplane utilization. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the average utilization of the affected fleet. In light of these factors, the FAA finds an 18-month compliance time for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 126 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $22,680, or $180 per airplane, per inspection cycle.

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

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:

Airbus Industrie: Docket 98–NM–116–AD.

Applicability: Model A300 series airplanes, as listed in Airbus Service Bulletin A300–57–0232, Revision 01, dated January 12, 1998; Model A310 series airplanes, as listed in Airbus Service Bulletin A310–57–2075, Revision 01, dated January 12, 1998; and Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57–6079, Revision 02, dated January 12, 1998; 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 detect and correct cracks in the pylon thrust and sideload fitting of the wing, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 2,800 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks in the pylon thrust and sideload fitting of the wing, in accordance with Airbus Service Bulletin A300–57–0232, Revision 01 (for Model A300 series airplanes); A310–57–2075, Revision 01 (for Model A310 series airplanes); or A300–57–6079, Revision 02 (for Model A300–600 series airplanes); all dated January 12, 1998; as applicable. Repeat the detailed visual inspection thereafter at intervals not to exceed 2,800 flight cycles.

(b) If any crack is detected during any inspection required by paragraph (a), prior to further flight, replace the pylon thrust and sideload fitting with a new fitting in accordance with Airbus Service Bulletin A300–57–0232, Revision 01 (for Model A300 series airplanes); A310–57–2075, Revision 01 (for Model A310 series airplanes); or A300–57–6079, Revision 02 (for Model A300–600 series airplanes); all dated January 12, 1998; as applicable. Thereafter, continue the inspections in accordance with the requirements of paragraph (a) of this AD.

(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 French airworthiness directive 97–358–232(B), dated November 19, 1997.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14040 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–136–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 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 certain McDonnell Douglas Model MD–90–30 series airplanes. This proposal would require modification of the wiring of the strake ice protection system (SIPS). This proposal is prompted by a report of a fire in the electrical and electronic compartment of a Model MD–90–30 series airplane. The actions specified by the proposed AD are intended to prevent an electrical short circuit of the wiring of the SIPS, which could result in a fire in the electrical and electronic compartment of the airplane.

DATES: Comments must be received by July 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–136–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 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.

FOR FURTHER INFORMATION CONTACT: George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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–136–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–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received a report of a fire in the electrical and electronic compartment of a Model MD–90–30 series airplane which resulted in injury to a mechanic. Investigation revealed that the fire was caused by an electrical short circuit at the termination of a wire shield near the connector of the strake controller. The short circuit has been attributed to damaged insulation of certain wiring of the strake ice protection system (SIPS). This wiring insulation was damaged during manufacture because a shield termination was not being performed correctly. For this reason, this same condition may exist on other airplanes of the same type. Damaged insulation of the wiring of the SIPS could fail, which could cause an electrical short circuit between the exposed wire conductors and the shielded ground. Such an electrical short circuit of the wiring of the SIPS, if not corrected, could result in a fire in the electrical and electronic compartment of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD90–30A021, dated March 31, 1998, which describes procedures for modification of the wiring of the SIPS at the connectors of the strakes and the strake controller. The modification involves removing the pigtail ground wires at the connectors of the strakes and the strake controller, installing shrink tubing over each power wire, and performing a resistance test of the electrical insulation. (The alert service bulletin refers to this resistance test as a ''resistance check.'') If any strake heating wiring fails the resistance test, the discrepant wiring is to be replaced with new wiring and retested.

Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the wiring of the strake ice protection system. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Cost Impact

There are approximately 66 Model MD–90–30 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 23 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of the required parts would be minimal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $20,700, or $900 per airplane.

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

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:

McDonnell Douglas: Docket 98–NM–136–AD.

Applicability: Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–30A021, dated March 31, 1998; 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 an electrical short circuit of the wiring of the strake ice protection system (SIPS), which could result in a fire in the electrical and electronic compartment of the airplane, accomplish the following:

(a) Within 180 days after the effective date of this AD, modify the wiring of the SIPS and perform a resistance test of the electrical insulation in accordance with McDonnell Douglas Alert Service Bulletin MD90–30A021, dated March 31, 1998. If any strake heating wiring fails the resistance test, prior to further flight, replace the discrepant wiring with new wiring, and repeat the resistance test, in accordance with the alert service bulletin.

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

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

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14039 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–101–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0100 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 certain Fokker Model F.28 Mark 0100 series airplanes. This proposal would require a one-time visual inspection and a one-time eddy current and/or dye penetrant inspection of the nose landing gear (NLG) main fitting to detect cracking; and rework of the NLG main fitting, if necessary. 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 cracking of the NLG main fitting, which could lead to collapse of the NLG during takeoff and landing and possible injury to the flightcrew and passengers.

DATES: Comments must be received by June 29, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–101–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–101–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–101–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 certain Fokker Model F.28 Mark 0100 series airplanes, equipped with certain Messier-Dowty (formerly Dowty Rotol) nose landing gears (NLG). The RLD advises that it received a report indicating that the NLG of an airplane broke off just below the NLG pintle pins immediately after touchdown of the nose wheel. The nose section of the aircraft came to rest on the fuselage and remaining portion of the NLG. Subsequently, the airline involved performed a detailed visual inspection of the NLG main fittings on all airplanes in its fleet and identified three more suspect NLG main fittings. Investigation of these fittings revealed that the cracking had originated on the inner side of the right-hand downlock plunger support web. The total number of flight cycles on the airplanes with the cracked NLG main fittings ranged from 9,300 to 17,600. The exact cause of the cracking has not been determined at this time. Such cracking of the NLG main fitting, if not corrected, could lead to collapse of the NLG during takeoff and landing, and possible injury to the flightcrew and passengers.

Explanation of Relevant Service Information

The manufacturer has issued Fokker Service Bulletin SBF100–32–112, dated November 14, 1997, and Messier-Dowty has issued Service Bulletin F100–32–92, dated November 14, 1997. These service bulletins describe procedures for a one-time visual inspection of the NLG main fitting to detect cracking. The service bulletins also describe procedures for a one-time eddy current and/or dye penetrant inspection if cracking is suspected following accomplishment of the visual inspection, and rework of the NLG main fitting, if cracking is found.

The RLD classified these service bulletins as mandatory and issued Dutch airworthiness directive BLA 1997–116 (A), dated November 28, 1997, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. 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 bulletins described previously.

This proposed AD also requires that operators report the results of the one-time inspection to Fokker Services B.V. Because the cause of the addressed cracking is not currently known, the intent of these required inspection reports is to enable Fokker to determine how widespread such cracking problems may be in the affected fleet. Based on the results of these reports, further corrective action may be warranted.

Differences Between the Proposed AD and the Dutch Airworthiness Directive

Operators should note that the parallel Dutch airworthiness directive specifies that the actions be accomplished for airplanes on which the nose landing gear (NLG) has accumulated more than 8,000 total flight cycles. However, because the exact cause of the cracking remains unknown, the FAA would require compliance with the actions in this proposed AD for all airplanes of this type design, including those that have accumulated less than 8,000 total flight cycles as of the effective date of this proposed AD, in order to ensure the integrity of the entire fleet.

Cost Impact

The FAA estimates that 127 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed visual inspection on U.S. operators is estimated to be $15,240, or $120 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed eddy current and/or dye penetrant inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed eddy current and/or dye penetrant inspection on U.S. operators is estimated to be $15,240, or $120 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–101–AD

Applicability: Model F.28 Mark 0100 series airplanes; equipped with Messier-Dowty Nose Landing Gear (NLG) having part number (P/N) 201071001 or P/N 201071002, on which the NLG main fitting has not been overhauled in accordance with Component Maintenance Manual 32–20–51; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) 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 cracking of the NLG main fitting, which could lead to collapse of the NLG during takeoff and landing and possible injury to the flightcrew and passengers, accomplish the following:

(a) Perform a one-time visual inspection to detect cracking of the NLG main fitting, in accordance with Fokker Service Bulletin SBF100–32–112, dated November 14, 1997, at the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD. If any cracking is found, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(1) For airplanes that have accumulated less than 15,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 8,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 15,000 or more total flight cycles as of the effective date of this AD: Inspect within 30 days after the effective date of this AD.

(b) Perform a one-time eddy current and/or dye penetrant inspection to detect cracking of the NLG main fitting, in accordance with Messier-Dowty Service Bulletin F100–32–92, dated November 14, 1997, at the applicable time specified in either paragraph (b)(1) or (b)(2) of this AD. Accomplishment of the inspection required by paragraph (b) of this AD, if accomplished prior to the inspection required by paragraph (a) of this AD, terminates the inspection required by paragraph (a) of this AD.

(1) For airplanes that have accumulated less than 15,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 8,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 15,000 or more total flight cycles as of the effective date of this AD: Inspect within 60 days after the effective date of this AD.

(c) If any crack is detected during the inspection required by paragraph (b) of this AD, prior to further flight, rework the NLG main fitting in accordance with Messier-Dowty Service Bulletin F100–32–92, dated November 14, 1997.

(d) Within 7 days after accomplishing the inspection required by either paragraph (a) or (b) of this AD, submit a report of the inspection results (both positive and negative findings) to Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) 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.

(f) 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 1997–116 (A), dated November 28, 1997.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14038 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–112–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B, and BN–2T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have required replacing the washers on the attachment bolts of the lower fitting of the main landing gear (MLG) on certain Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, and BN–2T series airplanes. The proposed AD was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent the bolts that attach the lower fitting of the MLG to the nacelle from becoming threadbound, which could result in structural failure of the MLG with consequent loss of control of the airplane during takeoff, taxi, or landing operations. Since issuing the NPRM, the Federal Aviation Administration (FAA) has realized that the Model BN–2T–4R airplanes were inadvertently omitted from the proposed AD. In addition, Pilatus Britten-Norman has revised the service information to include replacing the attachment bolts and nuts of the lower fitting of the MLG instead of re-using the existing bolts and nuts. This service information also adjusts the torque values of the nuts. The FAA has determined that the procedures included in the revised service information should be incorporated into the proposed AD, and that the comment period for the proposal should be reopened and the public should have additional time to comment.

DATES: Comments must be received on or before July 3, 1998.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–112–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.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: 44–1983 872511; facsimile: 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Chudy, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169

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 supplemental 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 supplemental notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–112–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of Supplemental NPRM's

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–112–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Britten-Norman BN–2, BN–2A, BN–2B, and BN–2T series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 19, 1998 (63 FR 13379). The NPRM proposed to require replacing the washers on the attachment bolts of the lower fitting of the MLG. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Pilatus Britten-Norman Service Bulletin BN–2/SB.231, Initial Issue, dated October 17, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Events Since Issuance of the NPRM

Since issuance of the NPRM, Pilatus Britten-Norman has informed the FAA that Service Bulletin BN–2/SB.231 has been revised to the Issue 2 status (dated October 1, 1997). This revision changes the procedures to specify replacing the attachment bolts and nuts of the lower fitting of the MLG instead of re-using the existing bolts and nuts. This service information also adjusts the torque loading values of the bolts.

In addition, the FAA has realized that the Model BN–2T–4R airplanes were inadvertently omitted from the proposed AD. The Model BN–2T–4R airplanes are of similar type design to those currently listed in the NPRM.

The FAA's Determination

After examining all information related to the subject described in this document, the FAA has determined that:

—The revised service information should be incorporated into the proposed AD;

—The unsafe condition could exist or develop on the Model BN–2T–4R airplanes and should be part of the applicability of the NPRM; and

—AD action should be taken to incorporate these changes to prevent the bolts that attach the lower fitting of the MLG to the nacelle from becoming threadbound, which could result in structural failure of the MLG with consequent loss of control of the airplane during takeoff, taxi, or landing operations.

The Supplemental NPRM

Since replacing the attachment bolts and nuts of the lower fitting of the MLG, adjusting the torque values of these bolts, and adding the Model BN–2T–4R airplanes to the Applicability of the NPRM proposes actions that go beyond the scope of what was already proposed, the FAA is reopening the comment period to allow the public additional time to comment on this proposed action.

Cost Impact

The FAA estimates that 80 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $10 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,200.

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 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 a new airworthiness directive (AD) to read as follows:

Pilatus Britten-Norman Ltd: Docket No. 97–CE–112–AD. Applicability: Models BN–2, BN–2A, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–2, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, and BN–2T–4R airplanes (all serial numbers), 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 within the next 50 landings after the effective date of this AD, unless already accomplished.

Note 2: The compliance time of this AD is presented in landings instead of hours time-in-service (TIS). If the number of landings is unknown, hours TIS may be used by multiplying the number of hours TIS by 1.5.

To prevent the bolts that attach the lower fitting of the main landing gear (MLG) to the nacelle from becoming threadbound, which could result in structural failure of the MLG with consequent loss of control of the airplane during takeoff, taxi, or landing operations, accomplish the following:

(a) Replace the attachment bolts, nuts, and washers of the lower fitting of the MLG, in accordance with Pilatus Britten-Norman Service Bulletin No. BN–2/SB.231, Issue 2, dated October 1, 1997.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Pilatus Britten-Norman Service Bulletin BN–2/SB.231, Issue 2, dated October

1, 1997, should be directed to Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: 44–1983 872511; facsimile: 44–1983 873246. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in British AD No. 008–10–96, dated January 31, 1997.

Issued in Kansas City, Missouri, on May 21, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14081 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–27]

Proposed Establishment of Class E Airspace; Waupun, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Waupun, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 102° helicopter point in space approach, has been developed for Waupun Memorial Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace with a radius of 6.0 miles for the point in space serving Waupun Memorial Hospital Heliport.

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–27, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–27.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Waupun, WI, to accommodate aircraft executing the proposed GPS SIAP, 102° helicopter point in space approach, for Waupun Memorial Hospital Heliport by creating controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed 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 proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 WI E5 Waupun, WI [New]

Waupun Memorial Hospital Heliport, WI
Point in Space Coordinates
(Lat. 43°38′00″ N., long. 89°45′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving Wautpun Memorial Hospital Heliport excluding that airspace within the Oshkosh, WI, Juneau, WI, and Beaver Dam, WI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on May 6, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–14175 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–30]

Proposed Establishment of Class E Airspace; Richland Center, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Richland Center, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 168° helicopter point in space approach, has been developed for Richland Center Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace with a radius of 6.0 miles for the point in space serving Richland Center Hospital Heliport.

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–30, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–30.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Richland Center, WI, to accommodate aircraft executing the proposed GPS SIAP, 168° helicopter point in space approach, for Richland Center Hospital Heliport by creating controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 FAA has determined that this proposal regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed 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 proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend 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 WI E5 Richland Center, WI [New]

Richland Center Hospital Heliport, WI
Point in Space Coordinates
(Lat. 43°21′18″N., long 90°23′14″W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving Richland Center Hospital Heliport excluding that airspace within the Lone Rock, WI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on May 6, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–14171 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–01]

Proposed Revision of Class E Airspace; Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would provide additional controlled airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the Pueblo Memorial Airport. This new SIAP requires airspace extending upward from 700 feet above the surface in order to contain an associated holding procedure.

DATES: Comments must be received on or before July 13, 1998.

ADDRESSES: Send comments on the proposal in triplicate: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 98–ANM–01, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–01, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ANM–01.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to revise Class E airspace at Pueblo, CO. This amendment would provide additional airspace necessary to fully encompass the GPS Runway 8L and the GPS Runway 26L SIAPs to the Pueblo Memorial Airport, Pueblo, CO. This amendment proposes to add a small 1200-foot Class E area extension to the east in order to accommodate a holding pattern for the SIAPs. The holding pattern is required to meet necessary airspace criteria for aircraft transitioning between the terminal and en route environments. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Pueblo Memorial Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9E 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 FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant

rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 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.

* * * * *

ANM CO E5 Pueblo, CO [Revised]

Pueblo Memorial Airport, CO
(Lat. 38°17′21″, long. 104°29′48″)

That airspace extending upward from 700 feet above the surface within a 21.8-mile radius of the Pueblo Memorial Airport, and within the 28.8-mile radius of Pueblo Memorial Airport clockwise between the 070° and 133° bearing from the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 38°30′00″N, on the east by V–169, on the south by V–210, on the west by a line from lat. 37°38″00″N, long. 105°00′02″W; to lat. 38°16′00″N, long. 105°10′02″W; to lat. 38°30′00″N, long. 105°09′02″W; that airspace extending upward from 13,700 feet MSL bounded by a line beginning at lat. 38°16′00″N, long. 105°10′02″W; to lat. 37°38′00″N, long. 105°00′02″W; to lat. 37°34′00″N, long. 105°12′02″W; to lat. 38°10′00″N, long. 105°33′02″W; thence to point of beginning; that airspace extending upward from 11,700 feet MSL bounded by a line beginning at lat. 38°16′00″N, long. 105°10′02″W; to lat. 38°10′00″N, long. 105°33′02″W; to lat. 38°30′00″N, long. 105°33′02″W; to lat. 38°30′00″N, long. 105°09′02″W; thence to point of beginning, excluding that airspace within Federal airways and the Colorado Springs, CO Class E area.

* * * * *

Issued in Seattle, Washington, on April 29, 1998.

Joe E. Gingles,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–14168 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–29]

Proposed Establishment of Class E Airspace; Beaver Dam, WI

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Beaver Dam, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 266° helicopter point in space approach, has been developed for Hillside Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace with a radius of 6.0 miles for the point in space serving Hillside Hospital Heliport.

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–29, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–29.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Beaver Dam, WI, to accommodate aircraft executing the proposed GPS SIAP, 266° helicopter point in space approach, for Hillside Hospital Heliport by creating controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed 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 proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 WI E5 Beaver Dam, WI [New]

Hillside Hospital Heliport, WI
Point in Space Coordinates
(lat. 43°26′45″N., long. 88°48′36″W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving Hillside Hospital Heliport excluding that airspace within the Juneau, WI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on May 6, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–14170 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–28]

Proposed Modification of Class E Airspace; New Lisbon, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace New Lisbon, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 179° helicopter point in space approach, has been developed for Mile Bluff Medical Center Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for New Libson, WI, to the southeast, by adding controlled airspace for the point in space approach serving Mile Bluff Medical Center Heliport.

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–28, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–250, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 66018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–28.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at New Lisbon, WI, to accommodate aircraft executing the proposed GPS SIAP, 179° helicopter point in space approach, for Mile Bluff Medical Center Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed 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 proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 POINT

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 WI E5 New Lisbon, WI [Revised]

Mauston-New Lisbon Union Airport, WI
(lat. 43°50′17″N., long. 90°08′13″W.)
Mile Bluff Medical Center Heliport, WI
Point in Space Coordinates
(lat. 43°48′09″N., long. 90°04′34″W.)

That airspace extending upward from 700 feet above the surface within a 8.8-mile radius of Mauston-New Lisbon Union Airport, and within a 6.0-mile radius of the Point of Space serving Mile Bluff Medical Center Heliport excluding that airspace within the Necedah, WI, Class E airspace area, and excluding that airspace within the Camp Douglas, WI, Class D and Class E airspace areas, during the specific dates and times Class D airspace is effective.

* * * * *

Issued in Des Plains, Illinois on May 6, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–14172 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–33]

Proposed Modification of Class E Airspace; Marshall, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Marshall, NM. Amendment 7 to the VHF Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Run way (. Rwy) 12 has been developed for Marshall Municipal-Ryan Field Airport, MN. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled for this airport.

DATES: Comments must be received on or before July 7, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–33, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–33.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be

considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Marshall, MN, to accommodate aircraft executing the proposed VOR Rwy 12, Amendment 7, SIAP, at Marshall Municipal-Ryan Field Airport, MN, by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed 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 proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 MI E5 Marshall, MN [Revised]

Marshall Municipal-Ryan Field Airport, MN
(lat. 44°27′00″ N., long. 95°49′20″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Marshall Municipal-Ryan Field Airport.

* * * * *

Issued in Des Plaines, Illinois on May 7, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–14173 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–32]

Proposed Modification of Class E Airspace; Prairie Du Chien, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace Prairie Du Chien, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 29 has been developed for Prairie Du Chien 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 would increase the radius of the existing controlled airspace for Prairie Du Chien Municipal Airport.

DATES: Comments must be received on or before July 7, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–32, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related

aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–32.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Prairie Du Chien, WI, to accommodate aircraft executing the proposed GPS Rwy 29 Prairie Du Chien Municipal Airport by increasing the radius of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be defected on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed 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 proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 WI E5 Prairie Du Chien, WI [Revised]

Prairie Du Chien Municipal Airport, WI
(lat. 43° 01′ 49″N, long. 91° 32′ 14″W)
Waukon VORTAC
(lat. 43° 16′ 49″N, long. 91° 32′ 14″W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Prairie Du Chien Municipal Airport, and within 3.9 miles each side of the 130° radial of the Waukon VORTAC extending from the 9.3-mile radius to 16.1 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on May 7, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–14174 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–7541; S7–14–98]

RIN 3235–AH35

Revision of Rule 504 of Regulation D, the ''Seed Capital'' Exemption

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: Rule 504 of Regulation D provides an exemption from Securities Act registration when non-reporting issuers make securities offerings that do not exceed an aggregate annual amount of $1 million. These offerings are not reviewed by the Commission. Instead, state securities regulation plays an important role in the oversight of these transactions. Securities sold under Rule 504 are generally freely tradable except by affiliates. Based on recent reports from the Commission's examination and enforcement programs, it appears that the freely tradable nature of these securities may have facilitated some later fraudulent secondary transactions in the over-the-counter markets for securities of ''microcap'' companies. In light of this use, Rule 504 may need to be strengthened. Therefore, we are publishing for comment proposed amendments to eliminate the freely tradable nature of securities issued under Rule 504.

DATES: Comments should be received on or before July 27, 1998.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically to the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–14–98; this file number should be included on the subject line if e-mail is used. Anyone can inspect and copy the comment letters in our public reference room at 450 Fifth

Street, N.W., Washington, D.C. 20549. We will post comment letters submitted electronically on our Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Barbara C. Jacobs, Office of Small Business, Division of Corporation Finance, at (202) 942–2950.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Over the years, Congress has passed significant legislation to aid small businesses in raising capital in the private and public securities markets. The Small Business Investment Incentive Act of 1980, for example, was designed to reduce the regulatory restraints on small business capital formation.[1] In response to that Act, the Commission adopted Regulation D[2] under the Securities Act of 1933 (''Securities Act'')[3] in 1982.[4] Rule 504 of Regulation D is the limited offering exemption designed to aid small businesses raising ''seed capital.'' Currently, it allows a non-reporting issuer[5] to offer and sell securities to an unlimited number of persons. The exemption is not conditioned on the sophistication or experience of the investors or on delivery of any specific information to them. General solicitation and general advertising are permitted for all Rule 504 offerings. However, the offering price for a Rule 504 offering, aggregated with certain other offerings, may not exceed $1 million within a 12-month period.[6] Securities sold under the exemption may be resold freely by non-affiliates of the issuer.[7]

Issuers using Regulation D must find exemptions or register in every state in which they offer the securities. The vast majority of states require registration of Rule 504 offerings.[8] In enacting Rule 504, the Commission tacitly deferred primary regulatory responsibility to state securities administrators because the size and local nature of these small offerings did not appear to warrant the imposition of extensive federal regulation.[9] These offerings continue, however, to be subject to federal antifraud and other civil liability provisions.

Despite the protective limitations built into the exemption by the Commission, it appears that securities issued under Rule 504 have been used to facilitate a number of fraudulent secondary transactions through the OTC Bulletin Board operated by the National Association of Securities Dealers, Inc. (''NASD'') or the ''pink sheets'' published by the National Quotation Bureau, Inc.[10] These offerings have generally involved the securities of ''microcap'' companies, *i.e.*, those characterized by thin capitalization, low share prices, and little or no analyst coverage. While we believe that the scope of abuse is small in relation to the actual usage of the exemption,[11] we also believe that a regulatory response may be necessary.[12] Therefore, we are proposing to implement the same resale restrictions on securities issued in a Rule 504 transaction as apply to transactions under the other Regulation D exemptions.[13] In this way, we believe that unscrupulous stock promoters will be less likely to use Rule 504 as the source of the freely tradable securities they need to facilitate their fraudulent activities in the secondary markets.

While this change also will have some impact upon small businesses trying to raise ''seed capital'' in bona fide transactions, we believe that effect is justified in light of the circumstances. Without action to hinder the use of securities issued under Rule 504 for fraudulent purposes, small businesses could be unfairly impacted by the taint that might attach to Rule 504 offerings. Moreover, to minimize the impact, we would continue to allow public solicitation and unrestricted use of public advertising to aid small businesses in their search for investors.

II. Background of Rule 504

Before the 1992 amendments, Rule 504 provided a different exemptive scheme than the current rule does. Former Rule 504 exempted public offerings if sales did not exceed $1 million[14] in a 12-month period and if the offering was registered with one or more states that required the preparation and delivery of a disclosure document to investors before sale.[15]

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[1] Pub. L. No. 96–477, 94 Stat. 2275. That Act amended the Securities Act by adding Section 4(6) [15 U.S.C. 77(d)(6)] which, among other matters, exempts from registration offers or sales of securities in the aggregate amount of $5 million or less if solely made to ''accredited investors.''

[2] 17 CFR 230.501 *et seq.* Regulation D provides three separate securities offering exemptions from Securities Act registration: Rules 504, 505 and 506. Rule 505 is a limited offering exemption for non-public offerings of up to $5 million. It is designed to help small businesses because it permits sales to a small number of nonaccredited, unsophisticated investors. It also was created to coordinate with the North American Securities Administrators Association, Inc. (''NASAA'') Uniform Limited Offering Exemption (''ULOE''). Rule 506 is the Commission's safe harbor rule promulgated under the ''non-public'' offering exemption of Section 4(2) [15 U.S.C. 77d(2)]. It permits private sales only to accredited investors and a limited number of sophisticated investors.

[3] 15 U.S.C. 77a *et seq.*

[4] See Release No. 33–6389 (March 8, 1982) [47 FR 11251].

[5] A non-reporting issuer is an issuer that is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*]. Other issuers that are ineligible to use Rule 504 include investment companies and development stage companies that either have no specific business plan or purpose or have indicated that the business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person. See Rule 504(a) of Regulation D.

[6] Rule 504 offerings are aggregated for this purpose with all other offerings exempt pursuant to Section 3(b) (*e.g.*, Rule 504 or 505 offerings) and all offerings made in violation of Section 5(a) of the Securities Act [15 U.S.C. 77e(a)].

[7] See interpretive letter to Mr. E.H. Hawkins (June 26, 1997), setting forth the views of the Division of Corporation Finance that affiliates who receive securities in a Rule 504 offering are subject to resale restrictions.

[8] Rule 504 is not a part of ULOE. Connecticut, Delaware and Oklahoma have exemptions that directly coordinate with Rule 504. See J.W. Hicks, 7A *Exempted Transactions under the Securities Act of 1933,* Section 7.09[3](1997).

[9] As with all Regulation D offerings, a Form D is required to be filed with the Commission no later than 15 days after the first sale in the Rule 504 offering. See Rule 503 [17 CFR 230.503]. Filing a Form D is not, however, a condition to the exemption.

[10] See, e.g., Schroeder, ''Penny Stock Fraud is Again on a Resurgence, Bolstered by Loopholes and New Technology,'' Wall St. J., September 4, 1997, at 12.

[11] The Commission's records indicate that approximately 1500 Forms D have been filed under Rule 504 in each of the past several years. NASD officials believe that between 300 to 500 applications for OTC Bulletin Board quotations were based upon the Rule 504 exemption in each of those years.

[12] These proposals are part of the our comprehensive agenda to deter registration and trading abuses, particularly by ''microcap'' issuers. The Commission has developed a four-pronged approach to minimize ''microcap fraud': enforcement, investor education, compliance examinations, and regulation.

The Commission issued three releases on February 17, 1998 to address this abuse. See Securities Act Release No. 7505, adopting amendments to Regulation S [17 CFR 230.901 *et seq.*]; Securities Act Release No. 7506, proposing amendments to restrict the use of Form S–8 for sales to consultants and advisors; and Exchange Act Release No. 39670, proposing amendments to Exchange Act Rule 15c2–11 [17 CFR 240.15c2–11] to require all broker-dealers to obtain and review enhanced information about certain issuers when they first publish (or resume publishing) a quotation for a security.

[13] Securities issued in a Rule 504 transaction would be defined as ''restricted securities'' as the term is defined in Rule 144(a)(3) [17 CFR 230.144(a)(3)]. The Commission has not observed the same level of fraudulent secondary trading in securities issued pursuant to Rules 505 and 506, which are restricted. This observation suggests that restricting resale may deter abuse. The Commission requests data and analysis from commenters on whether these rules are being abused.

[14] As originally adopted in 1982, the exemption was subject to a $500,000 limitation. In 1988, the ceiling for public offerings was increased to $1 million. *See* Release No. 33–6758 (March 3, 1988) [53 FR 7866].

[15] Form U–7 (also referenced as ULOR, uniform limited offering registration, or SCOR, small corporate offering registration), which was developed by NASAA and the American Bar Association, is a special registration format for

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Private offerings, in which general solicitation and general advertising were prohibited, were exempted if sales did not exceed $500,000. State registration was not a condition to the exemption in the private context.

In July 1992, the Commission adopted revisions to its rules and forms to further facilitate capital raising by small businesses.[16] The amendments eliminated all restrictions on the manner of offering and on resales under Rule 504. As a result, a non-reporting company could offer up to $1 million of securities in a 12-month period and be subject only to the antifraud and other civil liability provisions of the federal securities laws. General solicitation and general advertising were permitted for all Rule 504 offerings. Further, securities sold under Rule 504 were not deemed ''restricted securities'' and thus were available for immediate resale by non-affiliates of the issuer, as long as the non-affiliates were not ''underwriters'' [17] of the offering.[18]

In revising the exemption in 1992, the Commission sought to balance the needs of investors and the needs of small business. In the years that have elapsed since Rule 504 was revised, the capital markets have experienced unprecedented growth.[19] The strong markets have given rise to more widespread trading of securities in non-reporting companies in interdealer quotation systems such as the OTC Bulletin Board. Moreover, since 1992, market innovations and technological changes—most notably, the Internet—have created the possibility of nationwide markets for these exempt securities that were once thought to be sold only locally. The combination of these factors, the lack of widely-distributed public information about companies making Rule 504 offerings and the freely tradable nature of Rule 504 securities may have exacerbated the opportunities for microcap fraud.

There have been a significant number of recent Commission examinations of broker/dealers and enforcement investigations with allegations of fraud involving microcap companies.[20] Some of these matters involve transactions where a company sold securities in reliance upon Rule 504 to certain persons who then manipulated the price of the securities to defraud unknowing investors. While the initial Rule 504 sales have not necessarily been fraudulent, the Commission is concerned that the current Rule's flexibility, which permits general solicitation of investors, contains no disclosure requirements, and allows free transferability of issued securities, is being abused by perpetrators of microcap fraud.

In some cases, those who prey on investors through fraudulent schemes make prearranged ''sales'' of securities under Rule 504 to nominees in states that do not have registration or prospectus delivery requirements. As a part of this arrangement, these securities are subsequently placed with broker-dealers who use cold-calling techniques to sell the securities at ever-escalating prices to unsuspecting investors. When their inventory of shares has been exhausted, these firms permit the artificial market demand they have created to collapse, causing investors to lose much, if not all, of their investment.[21]

While Rule 504 is not essential to such a microcap fraud, its limited compliance requirements provide an attractive device for stock manipulators to generate a large pool of securities for use in manipulation schemes. If the microcap market, or offerings under Rule 504, become stigmatized as unsavory, legitimate small businesses may become less able to raise money as investors lose confidence in the market and in the integrity of those making such offerings. To prevent that from happening, the Commission is reevaluating the Rule and the revisions to it adopted in 1992.

III. Proposed Revisions

In order to discourage abuse of those provisions of the Rule 504 exemption that unscrupulous stock promoters apparently find attractive and yet preserve the usefulness of the exemption for small business, the Commission proposes to impose resale restrictions on securities issued pursuant to the provision. Under the proposal, all securities issued under Rule 504 would constitute ''restricted securities'' as the term is used in Rule 144. Consequently, these securities could only be resold: (1) After the one-year holding period imposed by Rule 144, (2) through registration, or (3) through another exemption (such as Regulation A[22]), if available.

This approach would be consistent with the other Regulation D exemptions and other types of offerings not registered with us. While it typically prevents investors from reselling the securities in less than a year, it also discourages the use of the securities as a part of a fraud or manipulation during the same period. It encourages longer term investment and may provide the necessary time for the market to learn more about the small issuer, which are beneficial factors for the investor and the issuer as well.

The Commission requests comments on the effect of this proposal upon the abuses we have described in the microcap market. If commenters believe that the proposal will not have the desired prophylactic impact, they should explain the bases for their views and indicate their views of the problem, the appropriate manner of rectifying it and data supporting their views.

In developing our recommendations, we always try to determine whether the proposed regulatory actions will unduly burden legitimate small businesses. We keep in regular contact with small business representatives. Based upon our ongoing dialogue, we believe that today's proposals are sufficiently measured so that the most useful aspects of Rule 504 would be preserved. We have found that small business representatives share our concern about the harmful presence of those who would taint the microcap market and therefore raise the cost of raising capital for legitimate small businesses. We specifically seek the views of the small business community on the proposals.[23]

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companies registering securities under state securities laws when relying upon Rule 504. *See* Harris, Keller, Stakias & Liles, Financing the ''American Dream,'' 43 Business Lawyer 757 (1988). As of October 1997, Form U–7 has been either formally adopted or recognized and accepted by 40 states.

[16] See Release No. 33–6949 (July 30, 1992) [57 FR 36442]. On April 28, l993, the Commission adopted additional revisions to facilitate still further financings by small business issuers. See Release No. 33–6996 (April 28, 1993) [58 FR 26509].

[17] Section 2(a)(11) of the Securities Act [15 U.S.C. 77b(a)(11)].

[18] Regulation D exemptions are available only to the issuer of the securities. None of these exemptions can be used by any other person. Preliminary Note 4 to Regulation D.

[19] In 1992, the Dow Jones Industrial Average, a price-weighted average of 30 actively-traded stocks listed on the New York Stock Exchange, was at 3000; it recently passed the 9000 mark. Other indicators similarly demonstrate the overall growth of the securities markets. For example, during the same period, the Russell 2000 small stock index, a measure of the stock performance of small company stocks, moved from 200 to a recent close of over 490.

[20] The National Association of Securities Dealers, Inc. (NASD) also has recently proposed a series of measures to address microcap fraud. See, e.g., OTC Bulletin Board Quotations Rule Amendments (NASD Notice to Members 98–14) (Rule 6530 and Rule 6540).

[21] This technique is sometimes colloquially referred to as ''pump and dump.''

[22] 17 CFR 230.251 *et seq.*

[23] The Commission hosts town hall meetings across the country from time to time for small business to discuss issues like the Commission's capital formation rules. These meetings are instructive about the current concerns and problems facing small businesses in raising capital

IV. Other Possible Approaches to Rule 504 Reform

The Commission seeks comments on whether it should adopt other amendments to Rule 504, in addition to or in lieu of those discussed in this release, to discourage its abuse while preserving its utility for small businesses.

The Commission is particularly interested in hearing from commenters about whether general solicitation and advertising should continue to be permitted in Rule 504 offerings, and whether the lack of restrictions in this area have been a source of abuse, particularly in finding investors or generating market interest in issuer securities. If general solicitation and general advertising is thought to be connected to abusive situations, commenters should recommend how these abuses might be deterred. For example, should the Commission reintroduce the requirement that general solicitation and general advertising of securities offered under Rule 504 be conditioned in some way? Under one model, public offerings under the Rule 504 exemption might be limited to where the issuer complies with state registration processes that require the preparation and delivery of a disclosure document to investors prior to sale of the securities. Should general solicitation and general advertising be contingent upon state registration and prospectus delivery to all investors before sale? Would adding these requirements further discourage fraudulent secondary market activity as well as fraudulent offerings under Rule 504? If so, would the cost to small businesses of restricting the solicitation methods permitted by Rule 504 be outweighed by the benefits from avoiding a taint to Rule 504? How should offerings made pursuant to certain state exemptions, such as the one recently developed for sales to ''accredited investors,'' [24] be treated? Under this model (which was the rule before 1992), private offerings would continue to be permitted without compliance with this particular type of state registration procedure. Should all provisions of the previous version of the rule be reinstituted, *i.e.*, should publicly offered securities issued under the exemption be unrestricted?

The Commission also is particularly interested in hearing from commenters about the absence of specific disclosure requirements under Rule 504, as contrasted to offerings under Rules 505 and 506, which must satisfy the information requirements of Rule 502(b) of Regulation D.[25] Should the Commission require that a disclosure document satisfying those information requirements be delivered to non-accredited investors before sale in Rule 504 offerings? To ensure easy access for all investors, should disclosure documents and other sales materials be required to be provided as an exhibit to the Form D? Since Forms D are not currently filed electronically with the Commission, should a change be made requiring electronic filing? Should these documents be provided to the Commission for its information only? What issues would this type of procedure raise under the Freedom of Information Act [26]? Should a confidential treatment process be developed to protect some of the information contained in these documents?

V. Solicitation of Comment—Other Rule 504 Improvements

The Commission seeks comment with respect to each of the other facets of the current Rule 504 regulatory compliance scheme. Specifically, does the current Rule serve investors' interests? If not, how could this Rule be further strengthened? Should a lower aggregate dollar amount, such as $500,000, be implemented with different requirements in order to provide a more effective compliance system? Should the current 12-month measuring period be lengthened to 2 years, with or without a change in the aggregate dollar limitation?

Should the types of issuers eligible to use the exemption be changed? For example, should particular types of ''penny stock'' issues be excluded, *e.g.*, offerings for less than $1 per share? Should issuers with total assets or market capitalization below a minimum amount be precluded from using the rule, *e.g.*, $1 million? Would such a limit be consistent with a stated purpose of the exemption: for raising ''seed capital''?

Does the current rule serve issuers' needs? At the same time we are proposing to tighten the rule, are there other areas of the Rule that we can modify to provide small businesses with flexibility without compromising investor protection? For example, should the measuring period for determining the scope of an offering be shortened to six months? Should the dollar limitation in the Rule be increased to $5 million or some higher dollar amount if accompanied with additional compliance requirements such as specified disclosure requirements or state registration requirements? [27]

Do differences in state registration schemes affect the utility of Rule 504? Do those differences affect the incidence of fraudulent secondary trading? If so, how? Has reliance on state regulation achieved the goals set out by the Commission when it amended Rule 504 in 1992? [28] Although improving, has the lack of uniformity of state securities regulation in this area had any impact on Rule 504 offerings? Should Rule 504 be revised to impose greater uniformity nationwide in disclosures provided to investors under Rule 504? Should public offerings under Rule 504 be limited to only those offerings registered in and made in states participating in NASAA's regional review program? [29]

Should the Commission take a more active role in monitoring Rule 504 transactions to ensure compliance with the antifraud requirements of the federal securities laws? Should additional information be mandated in Form D?

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in the securities markets, and permit us to design programs that will meet their needs consistent with the protection of investors. In future sessions, we intend to discuss our proposals with attendees and encourage them to submit their views as a part of this rulemaking proceeding. In addition, the University of Southern California recently sponsored a forum at which a number of issues important to small business, including alleged abuses that are the basis for our proposal, were discussed and considered by a group of small business representatives and Commission staff.

[24] State exemptions of this nature include those based upon the ''Model Accredited Investor Exemption,'' which was adopted by NASAA in 1997. CCH NASAA Reporter Paragraph 361. Generally, the rule exempts offers and sales of securities from state registration requirements, if among other matters, the securities are sold only to persons who are, or are reasonably believed to be, ''accredited investors'' as defined in Rule 501(a) of Regulation D. Written solicitations under that provision are generally limited to a type of ''tombstone'' ad. To date, 11 states have adopted the exemption.

[25] 17 CFR 230.502(b).

[26] 5 U.S.C. 552.

[27] See NASAA's Report of the Task Force on the Future of Shared State and Federal Securities Regulation (October 1997). The Task Force, among other matters, recommended that the Commission raise the offering amount in Rule 504 offerings to $10 million pursuant to its new authority under Section 28 of the Securities Act [15 U.S.C. 77z–3]. It also recommended that offerings made in an amount over $1 million be required to be registered in the states where the offering is made.

[28] See note 16 above.

[29] NASAA and a number of states have developed regional review procedures that permit an issuer to file in each state, but to indicate with the filing that regional review is requested. Under those circumstances, the issuer will receive only one set of comments, and the filing can become effective simultaneously in all states in the region in which filings have been made. To date, the regional system has been set up in the following areas: Western States (Alaska, Arizona, California, Colorado, Idaho, Oregon, Utah and Washington); New England States (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont); and Midwestern States (Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, and Wisconsin).

For example, should Form D be required to indicate the state(s) where the offering was made? Or, should Form D filers be required to amend their filings periodically (whether quarterly, annually or some other increment of time) to disclose: (1) Whether they have prepared or provided information to facilitate trading such as the NASD's Form 211, which is required prior to inclusion on the OTC Bulletin Board; and (2) whether they have provided other information to potential or existing market makers for their securities?

Before the adoption of Rule 701,[30] the Rule 504 exemption was used by a number of foreign private issuers in order to compensate their U.S. employees by issuing them company securities. Many of these issuers had substantial market capitalizations and were listed on foreign exchanges. Comment is requested concerning the impact of the proposed revisions upon these companies. Specifically, is the Rule 504 exemption still being used by these issuers? If so, for what purposes is Rule 504 used? If these foreign private issuers still use the exemption, should the Commission treat their Rule 504 issuances differently, *i.e.*, not as ''restricted securities'' if they are not microcap companies, and file periodic public reports in their home or other countries?

VI. General Request for Comment

Any interested persons wishing to submit written comment on any of the issues set forth in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–14–98; this file number should be included on the subject line if e-mail is used. Comments received will be available for public inspection and copying in the Commission's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov). Comments on this proposal will be considered by us in complying with our responsibilities under Section 19(a) of the Securities Act.[31] We further request comment on any competitive burdens that may result from adoption of the proposals. Comments are solicited from the point of view of, among others, issuers, underwriters, broker/dealers and the investing public.

VII. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with the Regulatory Flexibility Act[32] regarding the proposed amendments.

The analysis notes that the amendments to Rule 504 are a result of our view—and that of representatives of other regulators—that the current configuration of the exemption may be leading to abuse. The purpose of the proposals is to reduce the potential for abuse and yet maintain the utility of the exemption for small businesses. We believe that the proposed amendments will enhance the protection of the investing public.

In calendar year 1997, 1,505 Forms D were filed by 1,397 companies with the Commission claiming the Rule 504 exemption. Rule 504 only affects non-reporting companies. The Commission has sought to minimize the reporting burden on small businesses. However, we do not collect data to determine how many of the non-reporting companies filing Form D are small businesses. Therefore, we are unable to determine exactly how many small businesses will be affected by the proposed amendments.

While it is not possible to know with certainty, it is believed that most Rule 504 offerings were done by small businesses. The rule changes would restrict the resale of all securities issued pursuant to Rule 504. Officials at the NASD estimate that between 300 and 500 applications for quotation on the OTC Bulletin Board annually have been based on the Rule 504 exemption. We presume, therefore, that the proposal would affect at least some of the small businesses currently using Rule 504. The proposal, if adopted, could cause these issuers to offer higher discounts in the sales of their securities, which may increase their overall cost for capital. The Commission has insufficient data to reliably quantify the impact on small entities offering such a discount, and requests comment, supported by data and analysis regarding the nature and size of any discount.

As discussed more fully in the IRFA, several possible significant alternatives to the proposals were considered. These included: establishing different compliance or reporting requirements for small entities, clarifying, consolidating or simplifying the compliance and reporting requirements for small entities, using performance rather than design standards, exempting small entities from all or part of the proposed requirements, or requiring them to provide more disclosure, such as the same disclosure required for the other Regulation D exemptions. The IRFA also indicates that there are no current federal rules that duplicate, overlap, or conflict with the proposed amendments.

We encourage written comments on any aspect of the IRFA. In particular, we seek comment on: (i) the number of small entities that would be affected by the proposed amendments; and (ii) whether the proposed amendments would affect the reporting, recordkeeping and other compliance requirements for small entities and, if so, how. If you believe the proposals will significantly impact a substantial number of small entities, please describe the nature of the impact and estimate the extent of the impact with specific data.

For purposes of making determinations required by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[33] we also are requesting data regarding the potential impact of the proposed amendments on the economy on an annual basis. Your comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the Initial Regulatory Flexibility Act Analysis may be obtained from Twanna M. Young, Office of Small Business, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VIII. Cost-Benefit Analysis

The current version of Rule 504 was adopted in 1992. At that time it was believed to contain adequate compliance standards, including: the limits on the amount of money permitted to be raised and the types of issuers eligible to use the exemption; the filing of the Form D notification with the Commission to aid in its monitoring of the exemption; the federal antifraud provisions; and, perhaps most importantly, state regulation of these transactions. Since that time, however, securities issued pursuant to Rule 504 have been used in fraudulent secondary trading.

[30] 17 CFR 230.701.

[31] 15 U.S.C. 77s(a).

[32] 5 U.S.C. 603.

[33] Pub. L. 104–121, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

The proposed amendments would address these problems by restricting the resale of securities; generally this change would require investors to hold them for at least one year following purchase. The Commission believes these proposed amendments, if adopted, would benefit issuers and investors by curbing some of the abuses in the secondary market, safeguarding investors, and preserving the utility of the exemption for legitimate transactions.

In calendar year 1997, 1,505 Forms D were filed by 1,397 companies with the Commission claiming a Rule 504 exemption. Officials at the NASD estimate that between 300 and 500 applications for quotation on the OTC Bulletin Board annually have been based on the Rule 504 exemption. The Commission cannot estimate the costs of the proposed amendments with certainty. Some issuers may be required to offer discounts or other incentives to sell their securities in order to compensate for the restriction on resale. However, because the exemption is designed to raise ''seed'' capital, most of the issuers and the type of transaction the rule is designed to reach are in the early stages of their development. These issuers are interested in attracting patient investors who are committed to remaining with the business for some period of time. As such, it seems reasonable that these investors and the companies would expect the securities to be held for some period of time; certainly for at least one year. Our experience shows that many of the active trading markets that develop shortly after securities are issued under Rule 504 are artificial. While liquidity is an important feature with any securities investment, whether it is sufficiently significant in connection with a ''seed'' capital offering to require a substantial discount in the offering price is debatable. Nonetheless the Commission is seeking specific comments on this issue and empirical data. While the amendments will probably impact mostly small entities, the changes are necessary to curb fraud in the market for the securities of small issuers. The Commission does not have sufficient data to reliably estimate this cost and requests data and analysis from commenters.

As an aid in the evaluation of the costs and benefits of these proposals, we request the views and other supporting information of the public. It appears to us that the proposed amendments, if adopted, would continue to provide the significant cost savings originally envisioned for small issuers making offerings under Rule 504 without compromising investor protection.

We request your comment on whether the proposed amendments would be a ''major rule'' for purposes of the SBREFA. We request comments on whether the proposed amendments are likely to have an annual effect on the economy of $100 million or more. Your comments should provide empirical data to support your views.

Section 2(b) of the Securities Act requires the Commission, when engaged in rulemaking that requires a public interest finding, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.[34] The Commission's preliminary view is that the proposed amendments would not have any effect on competition. Moreover, the proposed amendments are designed to curb fraud in the market for the securities of small issuers, and therefore are likely overall to improve efficiency and capital formation for legitimate small businesses. The Commission is aware, however, that restricting the resale of securities may have some impact on the cost of capital formation. The Commission requests data and analysis on what effect the proposed changes may have on efficiency, competition and capital formation.

IX. Paperwork Reduction Act

Our staff has submitted the proposals for review to the Office of Management and Budget (''OMB'') in accordance with the Paperwork Reduction Act of 1995 (''the Act''). [35] The title to the affected information collection is: ''Form D.'' The specific information that must be included in Form D is explained in the form itself, and relates to the issuer, its principals and the amount of money proposed to be raised along with proposed applications of the proceeds. The information is needed for monitoring use of the exemption as well as evaluating its usefulness to issuers.

The collection of information in Form D will continue to be required in order for companies to use the rule for sales of their securities. The likely respondents to the rule are those companies that have previously used the rule and other small entities. While we cannot estimate the number of respondents that may use revised Rule 504, there were 1,505 Form D filings by 1,397 companies under Rule 504 during calendar year 1997. We expect that approximately 1500 companies each year will be relying on the exemption. If the revisions to Rule 504 are adopted, the estimated burden for responding to the collection of information in Form D would not increase for most companies because the information required has not been changed. The number of eligible transactions, however, may decrease. We estimate that the average burden hours per filing will be 16. Therefore, we estimate an aggregate of 24,000 burden hours per year. The Commission does not know how many issuers may be affected by this proposal, whether they will decide to rely on another exemption, or how much, if any, the information collection burden would be.

The information collection requirements imposed by Form D are mandatory to the extent that a company elects to use the Rule 504 exemption. The information is disclosed to the public. 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 control number.

In accordance with the Act,[36] we solicit comment on: (1) whether the collection of information is necessary; (2) the accuracy of our estimate of the burden of the collection of information; (3) the quality, utility and clarity of the information to be collected; and (4) whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirement should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–14 –98. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

X. Statutory Basis for the Proposals

The amendments are proposed pursuant to Sections 2, 3(b), 6, 7, 8, 10, 19(a), 19(c) and 28 of the Securities Act.

[34] 15 U.S.C. 77b(b).

[35] 44 U.S.C. 3501 *et seq.*

[36] 44 U.S.C. 3506(c)(2)(B).

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Proposals

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.502 [Amended]

2. By amending the introductory text of paragraph (d) of § 230.502 by revising the words ''Except as provided in § 230.504(b)(1), securities'' to read ''Securities''.

3. By revising § 230.504(b)(1) to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

* * * * *

(b) *Conditions to be met.*—(1) *General conditions.* To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502(a) and (d).

* * * * *

Dated: May 21, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14024 Filed 5–27–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 809 and 864

[Docket No. 97N–0135]

Medical Devices; Hematology and Pathology Devices; Reclassification; Restricted Devices; OTC Test Sample Collection Systems for Drugs of Abuse Testing; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public hearing on proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing on a proposed rule to reclassify over-the-counter (OTC) test sample collection systems for drugs of abuse testing. The purpose of the public hearing is to solicit input on the proposed rule in addition to comments being submitted to the docket. The information obtained at the hearing will assist FDA in its preparation of a final rule.

DATES: The public hearing will be held on June 19, 1998, from 9 a.m. to 5 p.m. Written notices of participation should be filed by June 8, 1998. Submit written comments by July 5, 1998.

ADDRESSES: The public hearing will be held at the Food and Drug Administration, 5600 Fishers Lane, conference rooms D and E, Rockville, MD 20857. Submit written notices of participation and 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: Steven I. Gutman, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 5, 1998 (63 FR 10792), FDA published a proposed rule to reclassify OTC test sample collection systems for drugs of abuse testing. FDA has determined that a public hearing on the proposed rule is warranted. The hearing will be directed by William B. Schultz, Deputy Commissioner for Policy, FDA. To the extent possible, oral testimony should address the issues identified in the proposed rule (63 FR 10792). The procedures governing the hearing are those applicable to a public hearing before the Commissioner of Food and Drugs under 21 CFR part 15.

Interested persons who wish to participate may, on or before June 8, 1998, submit a notice of participation to the Dockets Management Branch (address above). All notices submitted should be identified with the docket number found in brackets in the heading of this document and should contain the name, address, telephone number, business affiliation of the person requesting to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation.

Individuals or groups having similar interests are requested to consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who properly file a notice of appearance.

After reviewing the notice of participation and accompanying information, FDA will schedule each appearance and notify each participant by mail or telephone of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. FDA may require joint presentations by persons with common interests. The schedule of the public hearing will be available at the hearing and it will be placed on file in the Dockets Management Branch following the hearing.

The administrative record of the proposed regulation will be open for 15 days after the hearing to allow comments on matters raised at the hearing. Persons who wish to provide additional materials for consideration are to file these materials with the Dockets Management Branch (address above) during that period.

The hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officers and panel members may question any person during or at the conclusion of their presentation.

Dated: May 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14048 Filed 5–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–022–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the ''Oklahoma program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information pertain to normal

husbandry practices and non-augmentative reclamation activities. The amendment is intended to revise the Oklahoma program to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., c.d.t., June 12, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

FOR FURTHER INFORMATION CONTACT:

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT:

Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Discussion of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning the Oklahoma program can be found at 30 CFR 936.15 and 936.16.

II. Discussion of the Proposed Amendment

By letter dated July 3, 1997 (Administrative Record No. OK–978), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment at its own initiative. Oklahoma proposed to amend the Oklahoma Administrative Code (OAC) for surface mining operations at OAC 460:20–43–46(c)(4) and underground mining operations at OAC 460:20–45–46(c)(4) by adding criteria for normal husbandry practices and non-augmentative reclamation activities within the State.

OSM announced receipt of the proposed amendment in the August 8, 1997, **Federal Register** (62 FR 42715) and invited public comment on its adequacy. The public comment period ended September 8, 1997.

During its review of the amendment, OSM identified concerns in OAC 460:20–43–46(c)(4) and 460:20–45–46(c)(4) relating to the requirement that OSM approve normal husbandry practices used in the State; OAC 460:20–43–46(c)(4)(D) and 460:20–45–46(c)(4)(D) relating to a discrepancy between the proposed language and Appendix R of Oklahoma's Bond Release Guidelines on the repair of rills and gullies; and OAC 460:20–43–46(c)(4)(E) and 460:20–45–46(c)(4)(E) relating to the non-augmentative reclamation activities proposed for temporary structures. OSM notified Oklahoma of the concerns by letters dated November 19, 1997, and March 23, 1998, and via telephone conferences on February 10, 1998 and March 19, 1998 (Administrative Record Nos. OK–978.05, OK–978.10, OK–978.06, and OK–978.09, respectively). Oklahoma responded in letters dated March 4, 1998, April 22, 1998, April 30, 1998, and May 13, 1998 (Administrative Record Nos. OK–978.08, OK–978.13, OK–978.14, and OK–978.11, respectively), by submitting a revised amendment and additional explanatory information.

Oklahoma is proposing (1) normal husbandry practices for reseeding, fertilizing, liming, weed and pest control, mulching, irrigation, pruning, transplanting and replanting trees and shrubs, and repair of rills and gullies and (2) non-augmentative reclamation activity practices for removal and reclamation of temporary structures. Summarized below by regulation numbers is a discussion of the revisions and additional explanatory information submitted by Oklahoma.

1. Oklahoma revised the first sentence of OAC 460:20–43–46(c)(4) and 460:20–45–46(c)(4) by adding the language ''and non-augmentative reclamation activities.'' The revised sentence reads as follows:

> The Department and the Office of Surface Mining have approved selective husbandry practices and non-augmentative reclamation activities that, when accomplished in accordance with (A) through (G) below, do not extend the period of responsibility for revegetation success and bond liability.

In its letter dated April 22, 1998, Oklahoma stated that it understands that any normal husbandry practice(s) not included in its March 4, 1998, revised amendment will be submitted to OSM for approval in accordance with 30 CFR 732.17. In order to support its proposed regulations at OAC 460:20–43–46(c)(4) and 460:20–45–46(c)(4), Oklahoma submitted several guidelines published by the Oklahoma State University and the Natural Resources Conservation Service on the types of agricultural practices that will not be considered augmentative.

2. Oklahoma revised the third sentence of OAC 460:20–43–46(c)(4)(A), pertaining to surface mining operations, by adding the language ''identified at subsection 460:20–43–46(c)(4)(E).'' The revised sentence reads as follows:

> Removal and reclamation of temporary structures identified at subsection 460:20–43–46(c)(4)(E) would not be considered augmentation.

3. Oklahoma revised the third sentence of OAC 460:20–45–46(c)(4)(A), pertaining to underground mining operations, by adding the language ''identified at subsection 460:20–45–46(c)(4)(E).'' The revised sentence reads as follows:

> Removal and reclamation of temporary structures identified at subsection 460:20–45–46(c)(4)(E) would not be considered augmentation.

4. Oklahoma revised OAC 460:20–43–46(c)(4)(D) and 460:20–45–46(c)(4)(D) by removing the language ''during the initial establishment'' from the third and fifth sentence and replacing the sixth and seventh sentence with the following language:

> After initial vegetation establishment, ODOM defines the treatment of rills and gullies requiring permanent reseeding of more than 10 acres in a contiguous block or 10% of a permit area initially seeded during a single year to be an augmentative practice because of the potential for delayed seeding of large areas to reduce the probability of revegetation success.

Oklahoma submitted copies of the Natural Resources Conservation Service (NRCS) guidelines for repair of rills and gullies entitled ''State Standard and Specifications for Critical Area Treatment'' and ''Critical Area Planting'' to support its proposed regulations at OAC 460:20–43–46(c)(4)(D) and 460:20–45–46(c)(4)(D).

5. Oklahoma revised OAC 460:20–43–46(c)(4)(E) and 460:20–45–46(c)(4)(E), by changing the word ''haulroads'' to ''roads'' and adding the language ''remaining after a Phase I Bond Release approval'' to its previously proposed

provision. The revised regulations read as follows:

Liming, fertilization, mulching, seeding or stocking following the reclamation of any temporary roads remaining after a Phase I Bond Release approval, temporary sediment or hydraulic control structures, areas disturbed by the installation or removal of oil and gas wells or utility lines, and areas where the vegetation was disturbed by vehicular traffic not under the control of the permittee will not be considered augmentation.

In its letter of April 22, 1998, Oklahoma clarified that its proposed regulations at OAC 460:20–43–46(c)(4)(E) and 460:20–45–46(c)(4)(E) do not approve the reclamation of temporary haul roads after Phase I approval as a non-augmentative practice.

6. Oklahoma is proposing to delete Appendix R and to revise Appendix A of its Bond Release Guidelines. Appendix R contains Oklahoma's currently approved guidelines for the repair of rills and gullies, and it is being replaced by Oklahoma's proposed regulations at OAC 460:20–43–46(c)(4)(D) and 460:20–45–46(c)(4)(D). The definition for ''Augmentation'' in Appendix A is being revised by replacing the reference to Appendix R with a reference to OAC 460:20–43–46(c)(4) and 460:20–45–46(c)(4). The definition of ''Initial Establishment of Permanent Vegetative Cover'' is being deleted from Appendix A.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decision on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 20, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–14055 Filed 5–27–98; 8:45 am]

BILLING CODE 4310–05–M

Notices

Federal Register
Vol. 63, No. 102
Thursday, May 28, 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

Forest Service

Extension of Currently Approved Information Collection for Locatable Minerals

AGENCY: Forest Service, USDA.

ACTION: Notice: request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to extend the existing information collection found in 36 CFR Part 228, Subpart A, for locatable minerals. The current information collection will expire July 31, 1998.

DATES: Comments must be received in writing on or before July 27, 1998.

ADDRESSES: Send written comments to Director, Minerals and Geology Management, mail stop 1126, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

The public may inspect comments in the Office of the Director. To facilitate entrance into the building, visitors are encouraged to call ahead (202) 205–1042.

FOR FURTHER INFORMATION CONTACT: Sam Hotchkiss, Minerals and Geology Management, telephone: (202) 205–1535.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Locatable Minerals.

OMB Number: 0596–0022.

Expiration Date of Approval: July 31, 1998.

Type of Request: Extension of an existing information collection.

Abstract: Locatable mineral operators must conduct their operations in accordance with the mineral regulations at 36 CFR Part 228, Subpart A, to ensure that the environmental impacts are minimized to the extent practicable.

When submitting a notice of intent, a plan of operations, or a notice of cessation of operations, the operator may use any format to submit the required information. To facilitate this process, the Forest Service has developed a plan of operations form to collect the information required in the locatable mineral regulations. Although use of the form is optional by the operator, it was used about 1,000 times last year. The Forest Service uses the information to review and evaluate a mining proposal. Without an established procedure for joint Forest Service and operator planning, adverse impacts such as a significant soil loss, water pollution, and adverse impacts to plants and animals will likely occur. The types of activities that will cause severe impacts to surface resources include an improperly located access road, unplanned disposal of waste rock and mill tailings, inadequate water drainage controls in disturbed areas, and a failure to reclaim disturbed areas after operations are complete. Public safety would also be a major concern if operators were allowed to leave shafts, cuts, and adits uncovered, unfenced, and unmarked.

Estimate of Burden: 2 hours.

Type of Respondents: Locatable mineral operators.

Estimated Number of Respondents: 1000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2000.

Comment Is Invited

The agency invites comments on the following: (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 respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: May 21, 1998.

Darrel L. Kenops,

Acting Deputy Chief, National Forest Systems.

[FR Doc. 98–14131 Filed 5–27–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Diamond Lake Drawdown, Umpqua National Forest, Douglas, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On February 2, 1998, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Diamond Lake Drawdown on the Diamond Lake Ranger District of the Umpqua National Forest was published in the **Federal Register** (63 FR 5350). The February 2 NOI is being withdrawn because the Forest Service is no longer the lead agency for the EIS. The Forest Service NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Jim Leoni, Interdisciplinary Team Leader, Umpqua National Forest, P.O. Box 1008, Roseburg, Oregon 97470, phone 541–957–3391.

Dated: May 18, 1998.

Don Ostby,

Forest Supervisor.

[FR Doc. 98–14082 Filed 5–27–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1999 New York City Housing and Vacancy Survey.

Form Number(s): H–100, –105, –108, –100(L).

Agency Approval Number: 0607–0757.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 11,200 hours.

Number of Respondents: 17,200.

Avg Hours Per Response: 35 minutes.

Needs and Uses: The Census Bureau plans to conduct the 1999 New York City Housing and Vacancy Survey (NYCHVS) under contract for the City of New York. The purpose of the survey is to measure the supply, condition, and vacancy rate of housing in the City. Vacancy rate is the primary factor in determining the continuation of rent control regulations. Other survey information is used by city and state agencies for planning purposes as well as the private sector for business decisions. The laws of New York require such a survey to be conducted every three years.

Census Bureau interviewers will conduct personal visit interviews at a sample of housing units in the city, the vast majority of which are apartments in apartment buildings. Basic demographic information will be collected from residents along with information about living conditions (rent, facilities, maintenance, neighborhood, etc.). This information will be collected from rental agents or other knowledgeable persons in the case of vacant units. A small number of reinterviews with agents or landlords will be conducted for quality assurance purposes. We will also determine, by observation only, if a sample of units known to have been lost from the housing inventory have been reconverted for residential use.

Affected Public: Individuals or households, businesses or other for-profit.

Frequency: Every 3 years.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 8.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 21, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–14030 Filed 5–27–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Census 2000 Dress Rehearsal: Integrated Coverage Measurement and Post Enumeration Survey Activities (Person Follow-up Interview and Evaluation Interview) and Initial Phase Evaluation Activities (Administrative Record Coverage and Multiple Response).

Form Number(s): DX–1301, DX–1301.EI, DX–1301.PSA, and DX–1301(P).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 6,173 hours.

Number of Respondents: 20,190.

Avg Hours Per Response: 18 and a half minutes.

Needs and Uses: In the Census 2000 Dress Rehearsal, the Census Bureau will conduct a dress rehearsal of both its Integrated Coverage Measurement (ICM) and Post Enumeration Survey (PES) methodologies that can be used alternatively to measure coverage of the census for housing units and people. During Person Follow-up, we reconcile differences between ICM/PES person interview phase and the census initial enumeration. The result will be the information needed to produce the final estimates of the coverage for the Census 2000 Dress Rehearsal. The evaluation activities include analyzing the effectiveness of the ICM/PES data collection process and the potential coverage improvement from utilizing alternate response options and administrative records in census operations.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Section 141.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 21, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–14031 Filed 5–27–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 25–98]

Foreign-Trade Zone 124—LaPlace, Louisiana, Foreign-Trade Subzone 124B—North American Shipbuilding, Inc.; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, requesting authority to expand Subzone 124B, which currently covers the main shipyard facility of North American Shipbuilding, Inc. (NASI) located in LaFourche Parish, Louisiana, adjacent to the Gramercy Customs port of entry, to include two new sites located in Terrebonne and Lafourche Parishes. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 19, 1998.

Subzone 124B was approved on October 29, 1991 (Board Order 539, 56 F.R. 56627, 11/6/91). The subzone currently consists of one site (14 acres) located at 800 Industrial Park Road and Highway 308, Lafourche Parish, one mile north of Larose, Louisiana.

The applicant is now requesting authority to expand the subzone to include two additional sites: proposed *Site 2* (27 acres)—North American Fabricators, LLC, 208 North American Court, Houma (Terrebonne Parish); and, proposed *Site 3* (26 acres)—C-Port, LLC, 106 9th Street, Port Fourchon (Lafourche Parish).

The NASI facility is used for the construction and repair of commercial, military and research vessels under zone procedures within Subzone 124B.

This proposal does not request any new authority under FTZ procedures in terms of products or components, but it does involve a potential increase in the facility's level of production under FTZ procedures. NASI will operate the proposed sites as an integral part of Subzone 124B.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 27, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 11, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 110 North Airline Avenue, Gramercy, LA 70052

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: May 20, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–14153 Filed 5–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 981]

Expansion of Foreign-Trade Zone 33; Pittsburgh, PA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of Foreign-Trade Zone 33, for authority to expand FTZ 33-Site 1 and Site 2 and to include two new sites in Pittsburgh and Leetsdale, Pennsylvania, within the Pittsburgh Customs port of entry area, was filed by the Board on November 17, 1997 (FTZ Docket 79–97, 62 FR 63315, 11/28/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 33 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 14th day of May 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–14152 Filed 5–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–823]

Cut-to-Length Carbon Steel Plate From Canada; Initiation of Anticircumvention Inquiry on Antidumping Duty Order

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

ACTION: Notice of initiation of anticircumvention inquiry; cut-to-length carbon steel plate from Canada.

SUMMARY: In response to a request from Kentucky Electric Steel Company (Kentucky Steel), the Department of Commerce (the Department) is initiating an anticircumvention inquiry to determine whether imports of boron-added grader blade and draft key steel, falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order on cut-to-length carbon steel plate from Canada (58 FR 44162, August 19, 1993).

EFFECTIVE DATE: May 28, 1998.

FOR FURTHER INFORMATION CONTACT: Gideon Katz, Eric Scheier, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise stated, all citations to the Department's regulations are references to the regulations as codified at 62 FR 27296 (May 19, 1997).

Background

On March 14, 1997, the Department initiated a scope inquiry to determine whether certain cut-to-length carbon steel plate used to make grader blades and draft keys (''grader blade'' and ''draft key'' steel) that contain small amounts of boron (approximately 0.0016 percent by weight) fall within the scope of the order on certain cut-to-length carbon steel plate from Canada. The Department gave interested parties the opportunity to provide comments pursuant to 19 CFR § 353.29(i) and 19 CFR 353.29(g).

On January 16, 1998, the Department issued a ruling, based on 19 CFR § 353.29(i), that boron-added grader blade and draft key steel falls outside the scope of the order. The Department concluded that, because the petition relied on the HTS definition of carbon steel, which excluded other-alloy steel (i.e. steel containing more than 0.0008 percent boron), and because the petition equated the term 'carbon steel' with the HTS term 'non-alloy steel', variants of grader blade and draft key steel which contain at least 0.0008 percent boron by weight fell outside the scope of the order. Specifically, the HTSUS defines the term ''steel'' as certain ''ferrous materials * * * usually malleable and which contain by weight two percent or less of carbon. * * *'' and defines the term ''non-alloy'' steel as steel *other than* A) ''stainless steel'', *i.e.* alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium or B) ''other alloy steel, *i.e.* steel * * * containing by weight 0.3 percent or more of aluminum or 0.0008 percent or more of boron. *See* HTSUS, Chapter 72, Note 1(d) and (f).

The Department also solicited comments from interested parties concerning the possible applicability of the ''minor alterations'' provision pursuant to 19 CFR 353.29(g) (now codified as § 351.225(i), *see* 62 FR 27296, 27404 (May 19, 1997)).

On January 30, 1998, Kentucky Steel requested that the Department conduct an anticircumvention inquiry pursuant to section 781(c) of the Tariff Act to determine whether imports of certain cut-to-length steel plate used to make grader blades and draft keys (''grader blade'' and ''draft key'' steel) that contain small amounts of boron (approximately 0.0016 percent by weight) and fall within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order on certain cut-to-length carbon steel plate from Canada.

Scope

The scope language contained in the final determination and antidumping duty order describes the covered merchandise as follows:

> Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive * * *.
>
> *Certain Cut-to-Length Carbon Steel Plate*
>
> These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.000, 7208.32.000, 7208.33.1000, 7208.33.5000, 7208.41.000, 7208.42.000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.0000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in these investigations are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')-for example, products which have been beveled or rounded at the edges. Excluded from these investigations is grade X–70 plate.

Final Determination; Certain Cold-Rolled Carbon Steel Flat Products From Argentina, 58 FR 37063 (July 9, 1993), Appendix I

See also Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada, 58 FR 44162 (August 19, 1993).

Kentucky Steel now alleges that since publication of the antidumping duty order, exporters of certain cut-to-length carbon steel plate from Canada have been circumventing the order by exporting carbon steel plate with small amounts of boron added. According to Kentucky Steel, the ''inclusion of 0.0016 percent boron by weight to high carbon grader blade and draft key steel constitutes a minor alteration'' and is thus within the meaning of the provisions detailed in section 781(c) of the Tariff Act. *See* Anticircumvention Application, January 30, 1998 at 4.

Kentucky Steel describes the merchandise that is the subject of this anticircumvention inquiry as cut-to-length plate made of high-carbon steel to which boron has been added. Kentucky Steel defines ''high carbon'' steel to be steel of AISI or SAE grades 1050, 1152, or 1552, or higher, i.e. carbon steels that may contain 0.55% or more carbon by weight.

Initiation of Anticircumvention Proceeding

Section 781(c) of the Tariff Act states that the Department may find circumvention of an order when products which are of the class or kind of merchandise subject to an antidumping duty order have been ''altered in form or appearance in minor respects * * * whether or not included in the same tariff classification.'' The applicant asserts that, while the statute is silent as to what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates that there are certain factors which should be considered before reaching an anticircumvention determination.

The applicant cites to the Senate Finance Committee report on the Omnibus Trade and Competitiveness Act of 1988 (which amended the Tariff Act of 1930 to include the anticircumvention provisions contained in section 781), which states:

> [I]n applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products. S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987).

The applicant has presented evidence with respect to each of the criteria listed in the Senate report. Each of these criteria is addressed below.

Overall Physical Characteristics

The cut-to-length plate for grader blades and draft keys at issue in this proceeding have small amounts, usually about 0.0016 percent by weight, of boron added to high carbon steel (high carbon being defined by the applicant as steel containing at least 0.55 percent carbon by weight). The applicant claims that while boron, like carbon, is added to steel to improve ''hardenability,'' when the level of carbon is already at 0.60 percent by weight or above, the added boron's effect on the final product is negligible. The applicant asserts that grader blade and draft key steel products are composed of upwards of 0.70 percent carbon, sufficiently high levels to render the addition of boron immaterial to the performance characteristics of the final product. The applicant also claims that practice in the industry is not to add boron to higher carbon steels, like AISI grades 1070 and 1084, which are used to make grader blades and draft keys.

Expectations of the Ultimate Users

The applicant maintains that carbon steel plate users are purchasing imported plate with the expectation that the product be hard and durable, and that these characteristics are imparted by the presence of sufficient levels of carbon. The applicant states that consumers of this product are fully aware that carbon steel of the sort at issue here does not rely on or benefit from the presence of boron, and thus ''do not expect, seek, or desire'' its presence. The applicant notes that its own marketing officials have been advised that many consumers of the product do not know that it contains boron, and that there is no significant price difference between plain carbon and boron-added versions of the product imported from Canada.

Use of the Merchandise

The applicant maintains that, with or without boron, high carbon grader blade and draft key steel have the same uses: making blades on grading equipment and locking devices on railroad couplings. The applicant states that knowledgeable purchasers would be aware that there are no uses of higher carbon steel plate containing 0.0016 percent boron that cannot fully be met without boron, and that the addition of boron neither responds to a new need in

the market, nor improves the way existing technical needs are met.

Channels of Marketing

The applicant states that steel producers, with few exceptions, sell directly to manufacturers of grader blades and draft keys through company sales forces. The applicant claims that, because carbon grader blade and draft key steels are used for precisely the same products as are the boron-added versions of the products, boron-added grader blade and draft key carbon steel from Canada is sold in precisely the same sales channels as plain grader blade and draft key carbon steel from Canada.

Cost of Modification

The applicant alleges that, by adding about 0.0016 percent boron to high carbon steels, Canadian producers have been able to avoid dumping duties ranging from 1.47 percent to 68.7 percent, and that the cost of avoiding these duties, relative to the total value of the product itself, is negligible. The applicant estimates that Canadian producers can realize a value of 1.25 percent to 68.5 percent by avoiding the duties under the order in this case by adding 0.0016 percent boron to their product.

Other interested parties, Co-Steel Lasco, Caterpillar Inc., and Algoma Steel Inc., submitted comments arguing that the Department cannot initiate a ''minor alterations'' anticircumvention inquiry on a type of merchandise which the Department has previously determined to be outside the scope of the order. These interested parties base their argument on the decision of the Court of International Trade (CIT) in *Hylsa, S.A.* v. *United States,* Slip Op. 98–10 (February 3, 1998), which upheld the earlier decision of the CIT in *Wheatland Tube Co.* v. *United States,* 973 F. Supp. 149 (CIT 1997). As the Department disagrees with the decision in *Hylsa,* and as it is appealing this decision to the Federal Circuit, the Department is not bound to apply it to the determination of whether to initiate the requested inquiry.

Based on our evaluation of the application, we determine that a formal inquiry is warranted. Accordingly, we are initiating a circumvention inquiry concerning the antidumping duty order on cut-to-length carbon steel plate from Canada, pursuant to section 781(c) of the Tariff Act. In accordance with 19 CFR 351.225(l)(2), we will not instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties on the merchandise which is the subject of this inquiry unless and until we issue an affirmative preliminary determination.

The Department will, following consultation with the interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with section 781(c) of the Tariff Act (19 U.S.C. 1677j(c)) and 19 CFR 351.225.

Dated: May 20, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–14150 Filed 5–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051898B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its enforcement oversight committee in June, 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on June 16, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held in Saugus, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agenda

Tuesday, June 16, 1998, 9:30 a.m.—Enforcement Committee.

Meeting

Location: Council Office, 5 Broadway, Saugus, MA 01906; telephone (781) 231–0422.

The committee will discuss the effectiveness of current management measures, especially of trip limits, and review the penalty schedule used by General Counsel Northeast.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 21, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–14127 Filed 5–27–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052198B]

Marine Mammals

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 Moana Productions, Inc., 311 Portlock Road, Honolulu, HI 96825, has requested an amendment to Photography Permit No. 867–1388.

DATES: Written or telefaxed comments must be received on or before June 29, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, NMFS, 709 W. 9th Street,

Federal Building, Room 461, P.O. Box 21668, Juneau, Alaska 99802 (907/586–7012); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (562/980–4001).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13822, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at 301/713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 867–1388, issued on July 25, 1997, (62 FR 50906) 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).

Permit No. 867–1388 authorizes the permit holder to take by Level B harassment several species of small delphinid cetaceans in Hawaii and North Carolina waters for purposes of commercial photography. The permit holder now requests authorization to film the following marine mammals in Alaska waters: killer whales (*Orcinus orca*), Dall's porpoises (*Phocoenoides dalli*), Pacific white-sided dolphins (*Lagenorhynchus obscurus*), harbor porpoises (*Phocoena phocoena*), and minke whales (*Balaenoptera acutorostrata*).

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 amendment request to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 21, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–14126 Filed 5–27–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; Public Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the ground level hearing room at the Commission's Washington, DC headquarters located at 1155 21st Street, N.W., Washington, DC 20581, on June 11, 1998, beginning at 1:00 p.m. and lasting until 4:30 p.m.

The agenda will consist of:

Agenda

1. Introductory Remarks by Chairperson Brooksley Born.
2. Discussion by members of the Advisory Committee of the following topics:
   A. Use of notional funds by commodity trading advisors.
   B. Placement of foreign exchange terminals in the United States.
   C. Year 2000 preparations of the futures industry.
3. New developments.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 15, 1997 Charter of the Advisory Committee.

The meeting is open to the public. The Chairperson of the Advisory Committee, CFTC Chairperson Brooksley Born, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Ms. Josiane Branch, 1155 21st Street, N.W., Washington, DC 20581, before the meeting.

Issued by the Commission in Washington, D.C., on May 22, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–14188 Filed 5–27–98; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Availability of Guidance Document on Hazardous Liquid Chemicals in Children's Products

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of availability of guidance document on hazardous liquid chemicals in children's products.

SUMMARY: The Commission announces that it has approved a statement that provides guidance for manufacturers, importers, distributors, and retailers of liquid-filled consumer products that may contain harmful liquids. To protect children and other persons from the toxic effects of exposure to these chemicals, the Commission recommends that manufacturers of such products refrain from filling the products with hazardous liquids. Further, the Commission recommends that, before purchasing such products for resale, importers, distributors, and retailers obtain assurances from manufacturers that liquid-filled children's products do not contain hazardous liquid chemicals.

FOR FURTHER INFORMATION CONTACT: Frank Krivda, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0400, ext. 1372.

SUPPLEMENTARY INFORMATION: The text of the guidance document is as follows:

U.S. Consumer Product Safety Commission, Washington, DC 20207

Guidance for Hazardous Liquid Chemicals in Children's Products

SUMMARY: The U.S. Consumer Product Safety Commission issues this guidance to manufacturers, importers, distributors, and retailers to protect children from exposure to hazardous chemicals found in liquid-filled children's products, such as rolling balls, bubble watches, necklaces, pens, paperweights, keychains, liquid timers,

and mazes.[1] The Commission identifies the major factors that it considers when evaluating liquid-filled children's products that contain hazardous chemicals, and informs the public of its experience with exposure to these hazardous chemicals to children. To reduce the risk of exposure to hazardous chemicals, such as mercury, ethylene glycol, diethylene glycol, methanol, methylene chloride, petroleum distillates, toluene, xylene, and related chemicals, the Commission requests manufacturers to eliminate the use of such chemicals in children's products. The Commission also recommends that, before purchasing products for resale, importers, distributors, and retailers obtain assurances from manufacturers that liquid-filled children's products do not contain hazardous liquid chemicals.

Hazard: During reasonably foreseeable handling or use of liquid-filled children's products, hazardous chemicals may become accessible to young children in a manner that places children at risk. Young children are exposed to the chemicals from directly mouthing them or from handling such objects and subsequent hand-to-mouth or hand-to-eye activity. The specific type and frequency of behavior that a child exposed to a product will exhibit depends on the age of the child and the characteristics and pattern of use of the product. The adverse health effects of these chemicals to children include chemical poisoning from ingestion of the chemicals, pneumonia from aspiration of the chemicals into the lungs, and skin and eye irritation from exposure to the chemicals. The chemicals may also be combustible.

Guidance: Under the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(f)(1), chemical products that are toxic or irritants and that may cause substantial injury or illness under reasonably foreseeable conditions of handling or use, including reasonably foreseeable ingestion by children, are ''hazardous substances.'' A product that is not intended for children, but that creates such a risk of injury because it contains hazardous chemicals, requires precautionary labeling under the Act. 15 U.S.C. 1261(p). A toy or other article intended for use by children that contains an accessible and harmful amount of a hazardous chemical is banned. 15 U.S.C. 1261(q)(1)(A). In evaluating the potential hazard associated with children's products that contain hazardous chemicals, the Commission's staff considers certain factors on a case-by-case basis, including: the total amount of the hazardous chemical in a product, the accessibility of the hazardous chemicals to children, the risk presented by that accessibility, the age and foreseeable behavior of the children exposed to the product, and the marketing, patterns of use, and life cycle of the product.

The Commission staff has identified a number of liquid-filled children's products, such as rolling balls, bubble watches, necklaces, pens, paperweights, maze toys, liquid timers, and keychains, that contain hazardous chemicals. In several of these cases, the staff determined that these products violated the FHSA because they presented a risk of chemical poisoning and/or chemical pneumonia from aspiration. This determination resulted in recalls or in the replacement of those products with substitutes, as well as in agreements with the manufacturers to discontinue the use of hazardous chemicals in liquid-filled children's products in future production. The Commission believes that these hazardous substances pose a risk to young children and, consequently, manufacturers should not have included them in the product design or manufacturing process.

Therefore, the Commission considers the use of hazardous chemicals in children's products such as those described above to be ill-advised and encourages manufacturers to avoid using them in such products. Further, the Commission recommends that, before, purchasing such products for resale, importers, distributors, and retailers obtain assurances from manufacturers that liquid-filled children's products do not contain hazardous liquid chemicals.

Dated: May 21, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–14134 Filed 5–27–98; 8:45 am]

BILLING CODE 6355–01–P

[1] This guidance is not a rule. It is intended to highlight certain obligations under the Federal Hazardous Substances Act. Companies should read that Act and the accompanying regulations at 16 CFR Part 1500 for more detailed information.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–40]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–40, with attached transmittal, policy justification and sensitivity of technology.

Dated: May 21, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

12 MAY 1998
In reply refer to:
I-66111/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-40, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and services estimated to cost $19 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. Diehl McKalip
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-40

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 18 million
Other	$ 1 million
TOTAL	$ 19 million

(iii) Description of Articles or Services Offered:
Five hundred TOW 2A missiles, eight lot acceptance missiles, spare and repair parts, support and test equipment, technical support, publications and technical documentation, and other related elements of logistics and program support.

(iv) Military Department: Army (YSQ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached

(vii) Date Report Delivered to Congress: 12 MAY 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea - TOW 2A Missiles

The Republic of Korea has requested a possible sale of 500 TOW 2A missiles, eight lot acceptance missiles, spare and repair parts, support and test equipment, technical support, publications and technical documentation, and other related elements of logistics and program support. The estimated cost is $19 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Pacific region.

The Republic of Korea will use these TOW 2A missiles to augment their current TOW missile inventory as well as use them with the COBRA helicopter thereby developing an air-to-surface anti-armor defense capability. The Republic of Korea will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Hughes Aircraft Company, Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-40

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The TOW 2 weapon system including the TOW 2A missiles and documentation are Unclassified. Sensitive technology is contained within the missile system software programs. Some performance characteristics and system capabilities which could be derived from the use of the equipment are classified Secret.

2. The hardware is also considered sensitive and knowledge of the modulation frequency and infrared wavelengths could be useful in developing countermeasures. The highest level of classified material which could be disclosed through reverse engineering or testing of the TOW missile is Secret.

3. If a technologically capable adversary were to obtain knowledge of this highly sensitive equipment, the technology could be easily absorbed, thereby permitting development of countermeasures which could reduce overall weapon system effectiveness.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98–14012 Filed 5–27–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0020]

Proposed Collection; Comment Request Entitled Qualification Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0020).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Qualification Requirements. The clearance currently expires on September 30, 1998.

COMMENTS: Comments may be submitted on or before July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503 and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

10 U.S.C. 2319 and 41 U.S.C. 253c prescribe policies and procedures which are to be followed by Federal agencies before they may establish any prequalification requirement with which a prospective contractor must comply before his offer will even be

considered by the agency for a contract award. Three basic requirements are prescribed.

First, the agency must examine the need for establishing the prequalification requirement, given its adverse impact on free and open competition. Having established that a need for a prequalification requirement exists, the agency must prepare a written justification which explains that need.

Second, the agency must specify the standards which a prospective contractor, or its product or service, must satisfy in order to be qualified. The agency is directed to limit such standards to those essential to ''meet the purposes necessitating the establishment of the prequalification requirement.''

Third, the executive agency imposing the prequalification requirement must promptly provide a prospective contractor with the opportunity to demonstrate its ability to meet the standards the agency has specified for qualification.

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1, Qualification Requirements, is included in the solicitation. The offeror must identify the offeror, manufacturer, source, product or service, as appropriate, that has been prequalified and test number as evidence that the qualification requirement has been met. Alternatively, an offeror not meeting the qualification requirement may be considered for award upon the submission of evidence that the qualification requirement has been satisfied.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.17* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The annual reporting burden is estimated as follows: Respondents, *2,700*; responses per respondent, *10;* total annual responses, *27,000*; preparation hours per response, *.17*; and total response burden hours, *4,590.*

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0020, Qualification Requirements, in all correspondence.

Dated: May 21, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–14117 Filed 5–27–98; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary proposes to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration consists of adding three routine uses to DGC 18, entitled 'DoD Roster of Mediators' to enable the release of information outside of the Department of Defense.

DATES: This proposed action will be effective without further notice on June 23, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 14, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 21, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DGC 18

SYSTEM NAME:

DoD Roster of Mediators *(August 25, 1995, 60 FR 44324).*

CHANGES

* * * * *

SYSTEM NAME:

Delete entry and replace with 'DoD Roster of Neutrals.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'DoD employees who have agreed to serve as neutrals as described in 5 U.S.C. 573. These individuals are trained and experienced in Alternative Dispute Resolution (ADR) and may serve as a conciliator, facilitator, mediator, or in other neutral roles in the dispute resolution process.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Background information including experiences and training of persons who wish to be and/or are registered in the DoD Roster of Neutrals. Information includes Alternate Dispute Resolution education or certification status and notes or any other information pertaining to a neutral, including recertification, removal, and investigatory or disciplinary actions taken against an individual. The investigator's files that may be used to determine those actions are not contained in this system of records.

Files of neutrals assigned to Alternate Dispute Resolution proceedings generally contain evaluations contributed by the parties to the dispute commenting on the effectiveness of the neutral.

Other records consist of ADR case files, which include requests for, and agreements to engage in, an ADR proceeding, settlement agreements and other correspondence relating to a case; case file logs; and case file databases.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'The primary purpose of the system is to maintain the Roster of Neutrals for use by parties in dispute to review training, experience and other qualifications information about neutrals. Secondary purposes are to manage application, investigative, certification,

decertification, recertification, and disciplinary information about neutrals and apply this to their status on The Roster; and to manage ADR case files and supporting ADR administrative logs and databases.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the second paragraph and add three new paragraphs 'To parties to a dispute and/or their personal representatives when these individuals are not affiliated with the Department of Defense for review of training, experience and other qualification information contained in the DoD Roster of Neutrals in connection with the appointment of a specific neutral.

To administrative personnel who are not affiliated with the Department of Defense who use information in the system to arrange or manage ADR proceedings.

To non-DoD persons who use information in the system in connection with investigations or disciplinary actions concerning a neutral, including, but not limited to, violations of ethical standards of conduct and/or breaches of state, Federal or local laws or regulations.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Files of active neutrals: Retain until neutral separates from Roster. Cutoff file on separation and destroy 1 year later.

Rejected neutral applications, correspondence, biographical data including education, training and experience. Cutoff file and destroy 2 years later.

Files of active neutrals who are decertified or removed: Cutoff from active file upon notification of decertification or removal. Destroy 3 years later.

Files of active neutrals who become unavailable due to retirement or death: Cutoff from active file upon notification of retirement or death. Destroy 1 year later.

Alternative Dispute Resolution Case files: Destroy when 10 years old.

Logs and databases tracking ADR cases: Destroy when no longer needed.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Neutral qualification and experience information; information provided for certification purposes; evaluations by parties to a dispute of the effectiveness of relevant ADR efforts; ADR case files; and logs and databases of ADR proceedings.'

* * * * *

DGC 18

SYSTEM NAME:

DoD Roster of Neutrals.

SYSTEM LOCATION:

Office of Alternative Dispute Resolution, Defense Legal Services Agency, Defense Office of Hearings and Appeals, 4015 Wilson Boulevard, Suite 300, Ballston Tower III, Arlington, VA 22203–1995.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD employees who have agreed to serve as neutrals as described in 5 U.S.C. 573. These individuals are trained and experienced in Alternative Dispute Resolution (ADR) and may serve as a conciliator, facilitator, mediator, or in other neutral roles in the dispute resolution process.

CATEGORIES OF RECORDS IN THE SYSTEM:

Background information including experiences and training of persons who wish to be and/or are registered in the DoD Roster of Neutrals. Information includes Alternative Dispute Resolution education or certification status and notes or any other information pertaining to a neutral, including recertification, removal, and investigatory or disciplinary actions taken against an individual. The investigator's files that may be used to determine those actions are not contained in this system of records.

Files of neutrals assigned to Alternative Dispute Resolution proceedings generally contain evaluations contributed by the parties to the dispute commenting on the effectiveness of the neutral.

Other records consist of Alternative Dispute Resolution case files, which include requests for and agreements to engage in an ADR proceeding, settlement agreements and other correspondence relating to a case; case file logs; and case file databases.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 573, Neutrals; 10 U.S.C. 140, General Counsel of the Department of Defense; and DoD Directive 5145, Alternative Dispute Resolution (ADR).

PURPOSE(S):

The primary purpose of the system is to maintain the Roster of Neutrals for use by parties in dispute to review training, experience and other qualifications information about neutrals. Secondary purposes are to manage application, investigative, certification, decertification, recertification, and disciplinary information about neutrals and apply this to their status on The Roster; and to manage ADR case files and supporting ADR administrative logs and databases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To parties to a dispute and/or their personal representatives when these individuals are not affiliated with the Department of Defense for review of training, experience and other qualification information contained in the DoD Roster of Neutrals in connection with the appointment of a specific neutral.

To administrative personnel who are not affiliated with the Department of Defense who use information in the system to arrange or manage ADR proceedings.

To non-DoD persons who use information in the system in connection with investigations or disciplinary actions concerning a neutral, including, but not limited to, violations of ethical standards of conduct and/or breaches of state, Federal or local laws or regulations.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files are maintained in file cabinets and computer files on magnetic or optical media. All are stored in a secure area.

RETRIEVABILITY:

Files are retrieved by the last name of the neutral, by geographic availability of a neutral, and by experience and type of subject matter expertise of a neutral. Case files for Alternative Dispute Resolution proceedings are retrieved by case file number and not by any personal identifier.

SAFEGUARDS:

Files are maintained in a secure area under the direct control of Office of Alternative Dispute Resolution

personnel during duty hours. Office is locked and building employs Security guards during non-duty hours. Access is restricted to those personnel maintaining the files and to potential users of the information. Access to the electronic portion of the system is controlled by user passwords that are periodically changed.

RETENTION AND DISPOSAL:

Delete entry and replace with 'Files of active neutrals are retained until neutral separates from Roster: Cutoff file on separation and destroy 1 year later.

Rejected neutral applications, correspondence, biographical data including education, training and experience: Cutoff file and destroy 2 years later.

Files of active neutrals who are decertified or removed: Cutoff from active file upon notification of decertification or removal. Destroy 3 years later.

Files of active neutrals who become unavailable due to retirement or death: Cutoff from active file upon notification of retirement or death. Destroy 1 year later.

Alternative Dispute Resolution Case files: Destroy when 10 years old.

Logs and databases tracking ADR cases: Destroy when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Alternative Dispute Resolution, Defense Legal Services Agency, Defense Office of Hearings and Appeals, Post Office Box 3656, Arlington, VA 22203–1995.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves as neutrals is contained in this system should address written inquiries to Office of Alternative Dispute Resolution, Defense Legal Services Agency, Defense Office of Hearings and Appeals, Post Office Box 3656, Arlington, VA 22203–1995.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves as neutrals in this system should address written inquiries to: Office of Alternative Dispute Resolution, Defense Legal Services Agency, Defense Office of Hearings and Appeals, Post Office Box 3656, Arlington, VA 22203–1995.

CONTESTING RECORDS AND PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Neutral qualification and experience information; information provided for certification purposes; evaluations by parties to a dispute of the effectiveness of relevant ADR efforts; ADR case files; and logs and databases of ADR proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–14009 Filed 5–27–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 2–3 June 1998.

Time of Meeting: 0800–1600, Jun 98; 0800–1400, 3 Jun 98.

Place: Pentagon—Arlington, VA.

Agenda: The Army Science Board's (ASB) Issue Group panel on ''De-militarization of the Multiple Launch Rocket System (MLRS) Rockets'' will receive fact finding briefings from industry and government representatives. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–14029 Filed 5–27–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 3 June 1998.

Time of Meeting: 0800–1600.

Place: Arlington, VA.

Agenda: The Army Science Board's (ASB) Issue Group panel on ''Impacts of Precision Guided Munitions on Future Tank and Howitzer Capabilities'' will visit the Presidential Tower in Arlington, VA for a meeting on the study subject. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist Army Science Board.

[FR Doc. 98–14032 Filed 5–27–98; 8:45 am]

BILLING CODE 3710–18–M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133A and 84.133B]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Notice Reinviting Applications and Pre-application Meetings for New Awards for a Dissemination and Utilization Project and a Rehabilitation Research and Training Center for Fiscal Year (FY) 1998

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On April 15, 1998 a notice reinviting applications and pre-application meetings for new awards for a Dissemination and Utilization Project and a Rehabilitation Research and Training Center for FY 1998 was published in the **Federal Register** (63 FR 18390). This notice eliminates all of the requirements for strict page limits that apply to this competition and which appeared on November 13, 1997 in the **Federal Register** in the Instructions for Application Narrative (62 FR 60945).

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, Room 3423, Switzer Building, 600 Maryland Avenue, SW, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: Donna __ Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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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 this document is the document published in the **Federal Register**.

Authority: 29 U.S.C. 760–76.

Dated: May 21, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–14034 Filed 5–27–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 93–123–NG, et al.]

Tenaska Gas Co. and Tenaska Washington Partners II, L.P., et al; Orders Granting, Amending and Vacating Authorizations to Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending and vacating various natural gas import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on May 20, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import and Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING, AMENDING AND VACATING IMPORT/EXPORT AUTHORIZATION

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
909–B	04/03/98	Tenaska Gas Co. and Tenaska Washington Partners II, L.P., 93–132–NG.			Authority vacated
912–B	04/03/98	Tenaska Washington Partners II, L.P., 93–131–NG.			Authority vacated
735–B	04/16/98	Tenaska Gas Co., Tenaska Washington Partners L.P., 91–59–NG, 91–102–NG, 92–43–NG.			Authority vacated
1374	04/16/98	Mexican De Cobre, S.A. de C.V., 98–26–NG.		17.52 Bcf	Export to Mexico beginning on the date of first delivery
1375	04/16/98	Texaco Natural Gas Inc., 98–27–NG.	120 Bcf		Import from Mexico beginning May 3, 1998, through May 2, 2000
1376	04/21/98	Aluminum Company of America, 98–28–NG.	12.2 Bcf		Import from Canada beginning May 1, 1998, through April 30, 2000
1377	04/23/98	St. Clair Pipelines (1996) LTD., 98–25–NG.	200 Bcf		Import and export up to a combined total from and to Canada beginning April 23, 1998, through April 22, 2000
1378	04/24/98	Amoco Energy Trading Corporation, 98–29–NG.	300 Bcf		Import from Mexico beginning on the date of first delivery after May 3.

[FR Doc. 98–14108 Filed 5–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 98–20–NG]

TransCanada Gas Services Inc.; Order Granting Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting TransCanada Gas Services Inc. (TGC Inc.) long-term authorization to import up to 11 billion cubic feet (Bcf) of natural gas per year, and up to 110 Bcf over a 10-year term commencing November 1, 1998, through October 31, 2008, or for 10 years after the commencement of deliveries if deliveries begin after November 1, 1998,

in accordance with the terms of the Purchase/Sale Agreement signed by TCG Inc. and TransCanada Gas Services, A Division of TransCanada Energy Ltd., on February 1, 1998. This gas may be imported from Canada at the interconnection of TransCanada PipeLines Limited and Portland Natural Gas Transmission System near Pittsburg, New Hampshire, and East Hereford, Quebec, on the United States/Canada border.

This order may be found on the FE website at http://www.fe.doe.gov., or on our electronic bulletin board at (202) 586–7853. It also is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities docket room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 18, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–14107 Filed 5–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–547–000]

ANR Pipeline Company; Notice of Application

May 21, 1998.

Take notice that on May 13, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–547–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act (NGA) seeking permission and approval to abandon the operation of certain natural gas storage facilities no longer needed for customer or system requirements, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, ANR seeks authority to (1) abandon the operation of three storage fields currently leased from Mid Michigan Gas Storage Company (Mid Michigan), the North Hamilton, Norwich and Orient Storage Fields; (2) abandon by sale to Mid Michigan all facilities, including base gas, owned by ANR in the three storage fields leased by ANR from Mid Michigan; and (3) abandon by sale to Mid Michigan two storage fields currently owned and operated by ANR, the Coldwater and Croton Storage Fields.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before June 11, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14060 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–43–019]

ANR Pipeline Company; Notice of Refund Report

May 21, 1998.

Take notice that on May 15, 1998, ANR Pipeline Company (ANR) tendered for filing a report of refunds made to customers as a result of the settlement approved in Docket No. RP94–43–000. Article XI of the Stipulation & Agreement (S&A) provides that ANR will make refunds within 30 days, of the Effective Date. The Effective Date was March 16, 1998, as a result of the Commission's order accepting and approving, in part, the settlement. ANR Pipeline Company, 82 FERC (CCH) ¶ 61,145 (1998). On April 15, 1998, ANR complied with the S&A and the Commission's order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 28, 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. 98–14068 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–234–002]

ANR Pipeline Company; Notice of refund report

May 21, 1998.

Take notice that on May 15, 1998, ANR Pipeline Company (ANR) tendered for filing a report of refunds paid to customers.

ANR states that the refunds relate to ANR's Account No. 858 expenses for the period November 1, 1993 through April 30, 1994. The Commission ruled that ANR did not have tariff authority to track these expenses, and ANR recently withdrew its court appeal of the Commission's order. Accordingly, on April 15, 1998, ANR refunded to eligible customers $4,181,224, consisting of principal amounts totaling $3,446,417 and interest of $734,807.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 28, 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. 98–14069 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–546–000]

Columbia Gas Transmission Corporation; Notice of Application

May 21, 1998.

Take notice that on May 13, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030 filed, in Docket No. CP98–546–000, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of Derricks Creek Storage Field, Kanawha County, West Virginia, and a certificate of public convenience and necessity to construct and operate storage pipeline, storage wells, and appurtenant facilities in Ripley Storage Field, Jackson County, West Virginia, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Columbia requests authorization for the following:

- Abandonment of the Derricks Creek Storage Field in its entirety consisting of 13.1 miles of various size pipeline and 20 active storage wells located in Kanawha County, West Virginia.
- Replacement of working gas capacity and deliverability at the Ripley Storage Field by construction of approximately 3.5 miles of various size storage pipeline, drilling six new storage wells, and improving the deliverability of nine existing wells located in Jackson County, West Virginia.
- Abandonment by sale of up to 5.4 Bcf of base gas within the two storage fields. (4.4 Bcf at Derricks Creek and 1.0 Bcf at Ripley.)

Columbia proposes to invest $7.3 million at the Ripley Storage Field in lieu of the work which would otherwise be required to maintain storage performance at Derricks Creek, which Columbia estimates would have been a minimum of $10 million. Columbia estimates the cost of retiring Derricks Creek to be $700,000. Columbia asserts that the reduction in working gas capacity and deliverability resulting from the abandonment of one storage field will be offset by the replacement activities proposed in an adjacent field. Columbia says there will be no new or expanded services or any net expansion of its storage capabilities.

Columbia says the disposition of proceeds from the proposed sale of the Derricks Creek and Ripley base gas will be made pursuant to Section C, Article IV, of Stipulation II of the Settlement in Docket No. RP95–408 (79 FERC ¶ 61,044 (1997). Columbia states it will comply with the annual reporting requirements provided for in Section D of Article IV.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 11, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonments and a grant of the certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or to be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14059 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–220–000]

Enron Energy Services, Inc. Enron Capital & Trade Resources Corp.; Notice of Petition For Limited Waiver

May 21, 1998.

Take notice that on May 15, 1998, Enron Energy Services, Inc. (EES) and Enron Capital & Trade Resources Corp. (ECT) (collectively Petitioners) tendered for filing a petition for limited waiver of Section 284.243 of the Commission's regulations and related Commission policy pursuant to Rule 101(e) and 207 of the Commission's Rules of Practice and Procedure.

Petitioners seek a limited waiver of the Commission's regulations regarding the assignment of capacity and the Commission's general policy that a shipper of natural gas on an interstate pipeline must have title to the gas being shipped from the point of receipt to the point of delivery. Petitioners request that the waiver apply only to their transfers of title in transit to Petitioners' sales customers in New York State served by any of five interstate pipelines, CNG Transmission Corporation (CNG), Columbia Gas Transmission Corporation (Columbia), National Fuel Gas Supply Corporation (NFG), Tennessee Gas Pipeline Company (Tennessee), and Transcontinental Gas Pipe Line Corporation (Transco).

Due to the adverse competitive situation created in New York State as a result of our competitors' interpretation of the ''shippers must have title'' policy and the Commission's capacity release regulations, Petitioners request expedited Commission action on this request in order to permit Petitoners to utilize the same marketing mechanisms being used by their competitors.

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 on or before May 28, 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. 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. 98–14074 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–222–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1998.

Take notice that on May 18, 1998, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, a number of tariff sheets to become effective January 1, 1997, June 1, 1997, October 1, 1997, or July 1, 1998, as specified in Appendix A of the filing.

Kern River states that the purpose of this filing is to make several minor revisions to Kern River's tariff. Kern River proposes (1) to relocate certain Gas Industry Standards Board (GISB) standards in its tariff and on pending tariff sheets filed in Kern River's Docket No. RP97–342–004 pooling proposal, to increase ease of reference and to eliminate duplication; (2) to correct the stated Gas Research Institute (GRI) surcharge; and (3) to make other general ''housekeeping'' changes.

Kern River states that a copy of this filing has been served upon its 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 Street, 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. 98–14076 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–556–000]

Koch Gateway Pipeline Company; Notice of Application

May 21, 1998.

Take notice that on May 15, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–556–000 on abbreviated application pursuant to Section 7(b) of the Natural Gas Act for authorization and approval to abandon an obsolete natural gas transportation service for SCM Corporation (SCM) performed under its Rate Schedule X–169 which was authorized in Docket No. CP85–465, all as more fully set forth in the application on file with the Commission and open to public inspection.

Koch Gateway states that abandonment is being proposed because there has not been any service provided under the agreement for a number of years and that the parties have mutually agreed to termination. No imbalances exist. No facilities are proposed to be abandoned and that service obligations to its remaining customers will not be

impaired after abandonment authorization. This service is no longer required by SCM.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 11, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch Gateway to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14056 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–550–000]

Koch Gateway Pipeline Company; Notice of Application

May 21, 1998.

Take notice that on May 14, 1998, Koch Gateway Pipeline Company (Koch Gateway), 600 Travis Street, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–550–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an obsolete transportation service formerly provided to Union Texas Petroleum (UTP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon an obsolete transportation service formerly provided to UTP pursuant to Koch Gateway's Rate Schedule X–38. Koch Gateway states that UTP concurs with the proposed abandonment and that no facilities are proposed to be abandoned. Koch Gateway declares that the abandonment of the obsolete services will relieve them of the associated certificate obligations and will have no impact on the operation of Koch Gateway's system.

Any person desiring to be heard or to make any protest with reference to said Application should on or before June 11, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14061 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–6–001]

Natural Gas Pipeline Company of America; Notice of Filing

May 21, 1998.

Take notice that on May 18, 1998, Natural Gas Pipeline Company of America (Natural) filed a revised compliance plan and revised standards of conduct in response to the Commission's April 21, 1998 Order. 83 FERC ¶ 61,046 (1998).

Natural states that it has served copies of the filing upon all of its customers, all interested state Commissions and all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 5, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14062 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT98–9–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

May 21, 1998.

Take notice that on May 18, 1998, Natural Gas Pipeline Company of

America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Third Revised Sheet No. 360, to be effective March 19, 1998.

Natural states that the purpose of this filing is to revise its plan for compliance with 18 CFR 161.3(e), (f), (g), (k), and 18 CFR 250.16(b)(1). On February 17, 1998, Natural tendered tariff sheets to modify Section 35.1 of the General Terms and Conditions of its tariff to comply with the separation of personnel and facilities required by the Commission's Order Following Staff Audit Report and Notice of Proposed Civil Penalties issued January 16, 1998 in Docket Nos. RP97–232–000, et. al. This revised sheet is being submitted to implement changes to that compliance plan required by the Order on Standards of Conduct and Compliance Plan issued April 21, 1998, in Docket No. MG98–6–000.

Natural requested any waivers which may be required to permit the tendered tariff sheet to become effective March 19, 1998, consistent with the effective date requested in the original filing herein on February 17, 1998.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. MT98–9–000.

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. 98–14063 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–542–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

May 21, 1998.

Take notice that on May 13, 1998, NorAm Gas Transmission Company (NGT), 1111 Louisiana, Houston, Texas 77002 filed in Docket NO. CP98–542–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain facilities in Oklahoma, under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT specifically proposes to abandon Line 9–7, a segment of Line 9 and five rural taps, all located in Caddo County, Oklahoma. Both lines serve ARKLA, a division of NorAm Energy Corp. (ARKLA). ARKLA and its customers have consented in writing to the abandonment.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14057 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–221–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1998.

Take notice that on May 18, 1998, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective June 15, 1998:

Second Revised Sheet Number 127
Second Revised Sheet Number 138
Second Revised Sheet Number 163
First Revised Sheet Number 164
Second Revised Sheet Number 200
Second Revised Sheet Number 211
Second Revised Sheet Number 213A
Second Revised Sheet Number 215
Second Revised Sheet Number 218
Second Revised Sheet Number 249
Second Revised Sheet Number 261
Third Revised Sheet Number 262
First Revised Sheet Number 262A
First Revised Sheet Number 263
First Revised Sheet Number 264
First Revised Sheet Number 268D
First Revised Sheet Number 268E
Third Revised Sheet Number 300
Second Revised Sheet Number 449

On January 16, 1998, Northern Border filed a request to purchase the line pack gas used in the operation of its system. In the Commission's Order Issuing Certificate dated May 13, 1998, the Commission authorized Northern Border to acquire its line pack gas as described in the application in Docket No. CP98–189–000. These tariff sheets are being filed in compliance with the Commission May 13, 1998 order.

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, N.E, 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. 98–14075 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–39–005]

Northern Natural Gas Company; Notice of Distribution of Refunds Paid

May 21, 1998.

Take notice that on May 18, 1998, Northern Natural Gas Company (Northern) submitted worksheets reflecting the distribution of refunds paid to jurisdictional sales customers on January 29, 1998 and April 8, 1998. Northern states that these refunds are being made pursuant to the Commission's Order in Public Service Company of Colorado, *et al.*, Docket Nos. RP97–369–000 *et al.*

Commission ordered that ''any first seller that collected revenues in excess of the applicable maximum lawful price established by the NGPA a a result of the reimbursement of the Kansas *ad valorem* taxes for sales based upon a tax bill rendered on or after October 3, 1983, shall refund any such excess revenues to the purchaser.'' The interstate pipelines were then required to make lump-sum cash payments of the Kansas ad valorem tax refunds to the customers who were overcharged. Included with Northern's payments is interest on any amounts received from producers held longer than 30 days by Northern, covering the period from the date Northern received the refund from the producer until the date that refunds were paid out to its customers.

Northern states that a copy of this report is being mailed to each of Northern's affect jurisdictional sales customers.

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 May 28, 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. 98–14071 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–219–000]

Northwest Alaskan Pipeline Company; Notice of Tariff Changes

May 21, 1998.

Take notice that on May 15, 1998, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Forty-Second Revised Sheet No. 5, with an effective date of July 1, 1998.

Northwest Alaskan states that it is submitting Forty-Second Revised Sheet No. 5 reflecting a decrease in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. (Pan-Alberta) and resold to Pan-Alberta Gas (U.S.), Inc. (PAG–US) under Rate Schedules X–1, X–2, and X–3, and a decrease in total demand charges for Canadian gas purchased from Pan-Alberta and resold to Pacific Interstate Transmission Company (PIT) under Rate Schedule X–4.

Northwest Alaskan states that it is submitting Forty-Second Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and PAG–US and PIT, and pursuant to Rate Schedules X–1, X–2, X–3, and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1998 through December 31, 1998) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's 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 Street, 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. 98–14073 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–301–003]

Overthrust Pipeline Company; Notice of Refund Report

May 21, 1998.

Take notice that on May 18, 1998, Overthrust Pipeline Company (Overthrust) tendered for filing and acceptance of a refund report to comply with the Commission's April 1, 1998, Order Accepting Contested Settlement, As Modified, in Docket No. RP97–301 and 18 CFR 154.501 of the Commission's regulations.

Overthrust states that on April 17, 1998, it made refunds of $2,108,280.87 to its firm transportation customers in accordance with paragraph III B (1) of the settlement dated October 1, 1997, and in compliance with the Commission's April 1, 1998 order accepting the October 1, 1997 settlement.

Overthrust further states that a copy of this filing has been served upon its effected firm customers and the Public Service Commission of Wyoming.

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 May 28, 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. 98–14070 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–13–000]

The Peoples Gas Light and Coke Company; Notice of Petition for Rate Approval

May 21, 1998.

Take notice on May 7, 1998, The Peoples Gas Light and Coke Company (Peoples Gas) filed a petition for rate approval, pursuant to Section 284.123(b)(2) of the Commission's regulations, requesting that the Commission approve as fair and equitable rates for firm and interruptible storage and parking and loaning services to be effective June 1, 1998. Peoples Gas has filed, as Exhibit B to its petition for rate approval, a revised Operating Statement that incorporates revisions needed to offer firm and interruptible storage services, limited parking and loaning service and title tracking service. At this time, Peoples Gas is not proposing to charge for the title transfer tracking service.

Peoples Gas states that it is an intrastate gas distribution company serving retail customers in the City of Chicago, Illinois. Peoples Gas states that it is a public utility under the Public Utilities Act of Illinois and is subject to the jurisdiction of the Illinois Commerce Commission. Peoples Gas states that it is authorized to provide interstate services in accordance with Section 284.224 of the Commission's regulations.

Peoples Gas proposes for firm storage service, maximum monthly reservation rate of $1.6069 per MMBTu of maximum daily withdrawal quantity; a maximum monthly capacity charge of $0.0643 per MMBtu of maximum storage quantity; and a $0.0485 commodity charge per MMBtu of gas injected into the shipper's storage account. The minimum charge is based on the variable costs associated with the service and would be $0.0002 per MMBtu of gas injected into the shipper's storage account. For the interruptible storage service, Peoples Gas proposes a maximum commodity charge, based on a 100% load factor derivation of the firm storage rate, of $0.0551 per MMBtu of inventory on any day and a minimum charge of $0.0002 per MMBtu of daily inventory. For the parking and loaning service, which includes embedded transportation, the maximum rate, based on storage and transportation costs, would be $0.1231 per MMBtu of inventory any day and the minimum rate would be $0.0002 per MMBtu of inventory on any day. These proposed maximum rates would be subject to discounting.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to be heard or to protest said filing should file motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First, 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 on or before June 5, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14067 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 637]

Public Utility District No. 1 of Chelan County, Washington; Notice of Public Utility District No. 1 of Chelan County's Request to Use Alternative Procedures in Filing a License Application

May 21, 1998.

By letter dated May 1, 1998, Public Utility District No. 1 of Chelan County (Chelan PUD) asked to use an alternative procedure in filing an application for a new major license for its Lake Chelan Project No. 637.[1] Chelan PUD has demonstrated that they made a reasonable effort to contact the resource agencies, Indian tribes, non-governmental organizations (NGOs), and others who may be affected by their proposal, and have submitted a communication protocol governing how participants in the proposed process may communicate with each other. Chelan PUD has also submitted several letters of support for their proposal, and it appears that a consensus exists that the use of an alternative procedure is appropriate in this case.

The purpose of this notice is to invite any additional comments on Chelan PUD's request to use the alternative procedure, as required under the final rule for Regulations for the Licensing of Hydroelectric Projects.[2] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here combines the prefiling consultation process with the environmental review process, allowing the applicant to file an Applicant-Prepared Environmental Assessment (APEA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedure is intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants. The alternative procedure can be tailored to the particular project under consideration.

APEA Process and the Lake Chelan Project Schedule

Chelan PUD has begun working collaboratively with the various interested entities to identify issues that will need to be addressed and studies that will need to be conducted in relicensing the project. Several meetings are scheduled for May and June of this year with initial studies to be conducted during the 1998 summer season. Public scoping meetings are tentatively planned for November 1998. Notice of the scoping meetings will be published at least 30 days prior to the meetings.

Additional studies may be conducted during the summers of 1999 and 2000. Opportunities for requesting additional

[1] The 48-megawatt project consists of a 40-foot high dam on the Chelan River at the lower end of Lake Chelan, a 2-mile long steel and concrete tunnel, and a powerhouse located near the confluence of the Chelan and Columbia Rivers.

[2] 81 FERC 61,103 (1997).

studies will be noticed at least 30 days prior to any study request deadline. A draft license application with preliminary APEA would be distributed for comment in January 2001. The final license application and APEA must be filed with the Commission on March 31, 2004, two years before the expiration date on the existing license. A more detailed schedule and project description may be found at Chelan PUD's web site, located at hhtp://www.chelanpud.org/relicense/.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Chelan PUD's proposal to use the alternative procedures to file an application for the Lake Chelan Hydroelectric Project.

Filing Requirements

Any comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedure,'' and include the project name and number (Lake Chelan Hydroelectric Project, No. 637). For further information, please contact Vince Yearick at (202) 219–2844 or e-mail at vince.yearick@ferc.fed.us.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14064 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–540–000]

Transcontinental Gas Pipe Line Corporations; Notice of Application

May 21, 1998.

Take notice that on May 13, 1998 Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in the above docket an abbreviated application pursuant to Section 7(c) of the Natural Gas Act and the Regulations of the Federal Energy Regulatory Commission (Commission) for authorization to construct and operate certain pipeline facilities to create additional firm transportation capacity of 700,000 dekatherms per day (dth/d) to serve increased market demand in the Mid-Atlantic and South Atlantic regions of the United States by a proposed in-service date of no later than November 1, 2000 (MarketLink Project).

Transco states that the MarketLink Project will provide a link in the transportation of Canadian and Midwestern natural gas supplies, from expansion projects currently under development and proposed, to markets in New York, New Jersey, Pennsylvania and upstream markets along the Atlantic Seaboard which are accessible through backhaul arrangements on Transco's system. Transco also states that the MarketLink Project provides shipper access to diverse gas supplies at the developing market hub at Leidy, Pennsylvania, including gas supplies sources on any of the six interstate natural gas pipelines that interconnect with Transco at Leidy (including the pipeline system proposed by Independence Pipeline Company) or gas supplies delivered from storage at the Leidy hub.

Transco proposes to provide firm transportation service on an open access, non-discriminatory basis for the following shippers:

Shipper	Maximum daily quantity (Dth/d)	Term (yrs.)
AEC Marketing (USA) Inc	15,000	10
Coral Energy Resources, L.P	50,000	10
Eastern Energy Marketing, Inc	90,000	10
Engage Energy (U.S.), LP	210,000	10
Enron Capital & Trade Resources Corp	30,000	10
LFG Energy, LLC	5,000	15
Natural Gas Clearinghouse	30,000	5
Renaissance Energy (U.S.) Inc	23,000	10
Williams Energy Services Company	210,000	10
Total	663,000	

Transco states that precedent agreements have been executed with shippers for a substantial amount (approximately 95%) of the firm transportation capacity to be created by the MarketLink Project. Transco states that it is in the process of negotiating with other potential shippers that have expressed an interest in the remaining capacity of the project and will file copies of precedent agreements with additional shippers as they are finalized.

Transco states that the firm transportation service under the MarketLink Project will be provided under Rate Schedule FT of Transco's FERC Gas Tariff, Volume No. 1, and Transco's blanket certificate under Part 284(G) of the Commission's regulations. Transco states that the MarketLink shippers were provided the option of paying a cost based recourse rate or an individually negotiated rate plus fuel and all appliable surcharges under Rate Schedule FT. Transco states that the proposed recourse rate is based on a straight fixed-variable rate design methodology and an incremental cost of service. Transco states that prior to the commencement MarketLink service it will file numbered tariff sheets stating the name of any MarketLink shipper paying a negotiated rate, the negotiated rate, the applicable receipt and delivery points, and the volume to be transported.

Transco states that in order to create the additional 7000,000 Mcf/d of firm capacity, Transco proposes to construct and operate the following facilities:

1. The Haneyville Loop; 24.19 miles of 42-inch diameter pipeline loop between milepost 161.29 in Lycoming County and milepost 142.74 in Lycoming County, Pennsylvania and milepost 185.48 in Clinton County, Pennsylvania,

2. The Williamsport Loop; 13.23 miles of 42-inch diameter pipeline loop between milepost 129.51 in Lycoming County, Pennsylvania and 1.79 miles of 36-inch diameter pipeline loop between milepost 142.74 in Lycoming County and milepost 144.53 in Lycoming County, Pennsylvania,

3. The Benton Loop; 17.73 miles of 42-inch diameter pipeline loop between milepost 28.56 in Luzerne County, Pennsylvania and milepost 115.18 in Columbia, County Pennsylvania,

4. The Allentown Loop; 6.27 miles of 42-inch diameter pipeline loop between milepost 30.29 in Northampton County, Pennsylvania and milepost 36.56 in Northampton County, Pennsylvania,

5. The Clinton Loop; 29.23 miles of 42-inch diameter pipeline loop between milepost 0.14 in Somerset County, New Jersey and milepost 29.37 in Warren County, New Jersey,

6. The Stirling Loop; 23.88 miles of 42-inch diameter pipeline loop between milepost 1789.53 in Somerset County, New Jersey and milepost 1812.36 in Morris County, New Jersey,

7. The Roseland Loop; 18.81 miles of 36-inch diameter pipeline loop between milepost 1820.66 in Essex County, New Jersey and milepost 1839.47 in Bergen County, New Jersey,

8. The Woodbridge Loop; 5.46 miles of 42-inch diameter pipeline loop between milepost 1802.73 in Middlesex

County, New Jersey and milepost 1808.19 in Union County, New Jersey,

9. The Bordentown Loop; 7.10 miles of 36-inch diameter pipeline loop between milepost 18.96 in Burlington County, New Jersey and milepost 26.06 in Burlington County, New Jersey,

10. The Raritan River Loop; 0.30 miles of 42-inch diameter pipeline loop crossing the Raritan River between milepost 1794.70 in Middlesex County, New Jersey and milepost 1795.00 in Middlesex County, New Jersey,

11. The Mt. Laurel Replacement; The replacement of an existing 6.3 miles of 12-inch diameter pipeline loop between milepost 30.53 in Burlington County, New Jersey and milepost 36.83 in Burlington County, New Jersey, with a 36-inch diameter pipeline loop. The 12-inch pipeline segment will be removed and the 36-inch replacement pipeline will be installed in the same trench,

12. Impeller replacement on two (2) existing 12,600 horsepower, turbine-driven compressor units at Transco's existing Compressor Station 520, located at milepost 157.52, in Lycoming County, Pennsylvania,

13. The installation of two (2) new 15,000 horsepower, turbine-driven compressor units, rewheeling of one (1) existing 12,600 horsepower, turbine-driven compressor unit and impeller replacement on two (2) existing 5,500 horsepower, turbine-driven compressor units at Transco's existing Compressor Station 517, located at milepost 115.80, in Columbia County, Pennsylvania,

14. The installation of one (1) 15,000 horsepower, turbine-driven compressor unit, the rewheeling and uprating of an existing 12,600 horsepower, turbine-driven compressor unit to 15,000 horsepower at Transco's existing Compressor Station 515 located at milepost 68.95, in Luzerne County, Pennsylvania,

15. The installation of one (1) 15,000 horsepower, electric motor-driven compressor unit and impeller replacement on two (2) existing 7,000 horsepower, electric motor-driven compressor units at Transco's existing Compressor Station 205 located at milepost 1773.30 in Mercer County, New Jersey,

16. The installation of a 36-inch diameter interconnecting pipeline from the proposed meter building outlet of Independence Pipeline Company, (as proposed in Docket No. CP97–315) to Transco's existing 23-inch Leidy Line ''A'', 24-inch Leidy Line ''B'', and 30-inch Leidy Line ''C'' at milepost 194.06 in Clinton County, Pennsylvania,

17. Modifications to reduce pressure in Transco's 42-inch Mainline C from 1,200 psig to 800 psig at Transco's existing Centerville Regulator Station located at milepost 0.11 in Somerset County, New Jersey,

18. Modifications to reduce pressure in Transco's 36-inch Mainline D from 800 psig to 638 psig at Transco's existing Roseland Regulator Station, located at milepost 1820.66 in Essex County, New Jersey,

19. Modifications to reduce pressure in Transco's 42-inch Mainline E from 800 psig to 638 psig at Transco's existing Linden Regulator Station, located at milepost 1808.19 in Union County, New Jersey, and

20. Modification of inlet/outlet headers at existing Compressor Station 200 at milepost 1722.24 in Chester County, Pennsylvania to provide flow control under certain operating conditions on Transco's Trenton Woodbury Lateral.

Transco states that the proposed facilities, for the most part, will be installed either entirely within or immediately adjacent to existing pipeline or utility rights-of-way and Transco's existing compressor station yards. Transco states that the proposed facilities will cost an estimated $528,767,973.

Transco requests that the Commission issue a preliminary determination on the non-environmental aspects of its proposal by November 1, 1998, and a final order granting the authorizations requested herein by May 1, 1999.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before June 11, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14124 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–004]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

May 21, 1998.

Take notice that on May 18, 1998, William Gas Pipelines Central, Inc. (Williams), tendered for filing its refund report of Kansas *ad valorem* taxes.

Williams states that this filing is being made in compliance with Commission order issued September 10, 1997 in Docket Nos. RP97–369–000, *et al.* The September 10 order requires first sellers to make refunds for the period October 3, 1983 through June 28, 1988. The Commission also directed that pipelines file a report concerning their activities to collect and flow through refunds of the taxes at issue.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

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 May 28, 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. 98–14072 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–544–000]

Williston Basin Interstate Pipeline Company; Notice of Application

May 21, 1998.

Take notice that on May 13, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), filed in Docket No. CP98–544–000 a request pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to construct a replacement of the Yellowstone River pipeline crossing in Dawson County, Montana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin requests authority to construct a replacement of the Yellowstone River pipeline crossing located on its line section 5, between the Cabin Creek compressor plant and the Morgan Creek compressor plant, in Dawson County, Montana. Williston Basin states that the crossing will be constructed under the Yellowstone River through a directional bore and will consist of approximately 1,931 feet of 16-inch pipeline, and that approximately 50 feet of 16-inch pipeline will be trenched in at both the bore entry and exist locations to connect the crossing to Williston Basin's existing line section 5. Williston Basin states that the installation of the new pipeline crossing will allow it to maintain the original capacity, integrity, operational flexibility, and reliability of line section 5 on Williston Basin's pipeline system. Williston Basin estimates the cost to replace the Yellowstone River pipeline crossing to be $463,301.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before June 11, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commissions final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14058 Filed 5–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6559–014]

H. Bruce Cox; Notice of Availability of Draft Environmental Assessment

May 21, 1998.

A draft environmental assessment (DEA) is available for public review.

The DEA is for the proposed revocation of the exemption from licensing for the Cox Lake Dam Project. The DEA finds that the proposed revocation would not constitute a major federal action significantly affecting the quality of the human environment. The Cox Lake Dam Project is located on the Deep River, in Randolph County, North Carolina, near the town of Cedar Falls.

The DEA was written by staff in the Office of Hydropower Licensing Federal Energy Regulatory Commission. Copies of the DEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Please submit any comments on the DEA within 40 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation. Comments should be addressed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426. Please affix Project No. 6559–014 to all comments.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14123 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

May 21, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Approval of Minimum Flows to Ensure Protection of Fishery and Wildlife Resources, Maintenance of Water Quality, and Accommodation of Downstream Recreational Activities.

b. *Project Nos:* 2692–018, 2686–018, & 2698–016.

c. *Date Filed:* April 1, 1998.

d. *Applicant:* Nantahala Power and Light Company.

e. *Names of Projects:* Nantahala, West Fork, & East Fork Hydroelectric Projects.

f. *Location:* Clay and Jackson Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard Conley, Nantahala Power and Light Company, 301 NP&L Loop, Franklin, NC 28734, (704) 369–4513.

i. *FERC Contact:* Jean Potvin, (202) 219–0022.

j. *Comment Date:* July 2, 1998.

k. *Description of Project:* The licensee has filed for approval of the ''Nantahala & Tuckasegee Projects Settlement Agreement.'' This agreement proposes a minimum instantaneous flow into the East and West Forks of the Tuckasegee River and would require the licensee to provide money to the United States Department of Agriculture Forest Service for rehabilitation of outlet works as mitigation for the Wolf Creek bypass. The licensee would install and maintain calibrated staff gages on the West and East Forks of the Tuckasegee River. The settlement agreement proposes stopping diversions from Dicks Creek. The licensee would release from the White Oak pipeline into Dicks Creek from July to November. Finally, the agreement proposes the minimum flows for recreation, fishery and wildlife resources, and water quality downstream of the Nantahala Project.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14065 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File an Application for a New License

May 21, 1998.

a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 5044.

c. *Date filed:* April 28, 1998.

d. *Submitted By:* Avondale Mills, Inc., current licensee.

e. *Name of Project:* Sibley Mill Project.

f. *Location:* On the Augusta Canal of the Savannah River, in the City of Augusta, Richmond County, Georgia.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* April 1, 1953.

i. *Expiration date of current license:* March 31, 2003.

j. *The project consists of:* (1) intake works, including four steel diversion gates and a 280-foot-long headrace; (2) three generating units with a total installed capacity of 2,475 kW located inside the Sibley Mill structure; (3) a 350-foot-long, 30-foot-wide, 38-foot-deep open tailrace; and (4) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Avondale Mills, Engineering Department, 2 Hickman Street, Graniteville, SC 29829, (803) 663–2334.

l. FERC contact: Tom Dean (202) 219–2778.

m. Pursuant to CFR 16.9 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 2001.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14066 Filed 5–27–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6103–5]

RIN 2040–AC20

Effluent Guidelines Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed effluent guidelines plan.

SUMMARY: Today's document announces the Agency's proposed plans for developing new and revised effluent guidelines, which regulate industrial discharges to surface waters and to publicly owned treatment works. The document also describes EPA's revisions to its regulation development process, based on recommendations of the Effluent Guidelines Task Force. Section 304(m) of the Clean Water Act requires EPA to publish a biennial Effluent Guidelines Plan. The Agency requests comment on the proposal and will publish a final plan following the close of the comment period.

DATES: Comments must be received on or before July 27, 1998.

ADDRESSES: Submit comments in writing to: Water Docket Clerk (4101), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The public record for this notice is available for review in the EPA Water Docket, East Tower Basement, 401 M Street, S.W., Washington, D.C. For access to Docket materials, call (202) 260–3027 between 9 a.m. and 3 p.m. for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, EPA Engineering and Analysis Division, telephone 202–260–7150.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities
II. Legal Authority
III. Introduction
A. Purpose of Today's Document
B. Overview of Today's Document
IV. Effluent Guidelines Program Background
A. Statutory Framework
B. Components of an Effluent Guideline Regulation
C. Traditional Approach to Development of Effluent Guideline Regulations
D. Recent Revisions to the Effluent Guidelines Planning Process and Recommendations of the Effluent Guidelines Task Force
E. NRDC Litigation and Consent Decree
V. Today's Proposed Effluent Guidelines Plan
A. Effluent Guidelines Currently Under Development
1. Schedule for Ongoing Rulemaking
2. Rulemaking Projects Started in 1997
a. Oil and Gas Extraction
b. Coal Mining c. Feedlots (Swine and Poultry Subcategories)
B. Process for Selection of New Effluent Guideline Regulations
1. New Rulemaking Activities a. Feedlots (Beef and Dairy Cattle Subcategories) b. Other Rules
2. Candidates for Effluent Guidelines Rulemaking Projects
a. Preliminary Studies
b. Previously-Noticed Studies
c. Photographic Processing
d. Chemical Formulating, Packaging and Repackaging
e. Urban Storm Water
f. Airport Deicing
g. Fish Hatcheries and Farms
3. Future Studies
C. Other Rulemaking Actions
1. Pulp, Paper and Paperboard, Phases 2 & 3
2. Ore Mining and Dressing
VI. Request for Comments
VII. Economic Impact Assessment; Executive Order 12866
Appendix A—Promulgated Effluent Guidelines
Appendix B—Current and Future Rulemaking Projects
Appendix C—Preliminary Studies

I. Regulated Entities

Today's proposed plan does not contain regulatory requirements and does not provide specific definitions for each industrial category. Entities potentially affected by decisions regarding the final plan are listed below.

Category of entity	Examples of potentially affected entities
Industry/Commercial	Pulp, Paper and Paperboard; Oil and Gas Extraction; Centralized Waste Treatment; Pharmaceutical Manufacturing; Metal Products and Machinery (including electroplating, metal finishing); Landfills; Industrial Waste Combustors (Incinerators); Industrial Laundries; Transportation Equipment Cleaning (truck tanks, railroad tank cars, barge tanks); Iron and Steel Manufacturing; Coal Mining; Petroleum Refining; Textile Mills; Inorganic Chemicals; Steam Electric Power Generating; Photographic Processing; Chemical Formulating, Packaging and Repackaging; Airports.
Agriculture	Feedlots (swine, poultry, dairy and beef cattle); Fish Hatcheries and Farms (Aquaculture).
Federal Government	Metal Products and Machinery (including electroplating, metal finishing); Landfills; Airports.
State Government	Metal Products and Machinery (including electroplating, metal finishing); Municipal Separate Storm Sewer Systems (Urban Storm Water); Landfills; Airports.
Local Government	Metal Products and Machinery (including electroplating, metal finishing); Municipal Separate Storm Sewer Systems (Urban Storm Water); Landfills; Airports.

To determine whether your facility would be regulated, you should carefully examine the applicability criteria in the appropriate proposed rule (previously published or forthcoming). Not all of the categories listed in the above table have been selected for rulemaking. Citations for previously published proposed rules and schedules for forthcoming proposed rules are provided in Appendices A and B of today's document.

II. Legal Authority

Today's document is published under the authority of section 304(m) of the Clean Water Act, 33 U.S.C. 1314(m), which requires EPA to publish a biennial Effluent Guidelines Plan, which sets a schedule for review and revision of existing regulations and identifies categories of dischargers to be covered by new regulations.

III. Introduction

A. Purpose of Today's Document

Today's document announces the Agency's proposed biennial plan pursuant to section 304(m). EPA invites the public to comment on the proposed plan, and following the close of the comment period the Agency will publish a final plan.

B. Overview of Today's Document

The Agency proposes to develop effluent limitation guidelines and standards (''effluent guidelines'') as follows:

1. Continue development of nine rules listed in the 1996 Effluent Guidelines Plan (61 FR 52582, October 7, 1996) and the 1997 Update (62 FR 8726, February 26, 1997). The categories are: Pulp, Paper and Paperboard, Phases 2 and 3; Centralized Waste Treatment; Pharmaceutical Manufacturing; Metal Products and Machinery; Landfills; Industrial Waste Combustors (Incinerators); Industrial Laundries;

Transportation Equipment Cleaning; and Iron and Steel Manufacturing.

2. Continue development of 3 rules started by the Agency in 1997: Oil and Gas Extraction (Synthetic-Based Drilling Fluids); Coal Mining (Remining and Western subcategories); and Feedlots (Poultry and Swine subcategories).

3. Begin development of revised effluent guidelines for the Feedlots category (Beef and Dairy Cattle subcategories) and two additional categories (new or revised), by December 1998.

4. Complete preliminary studies on Feedlots, Urban Storm Water, and Airport Deicing.

5. Plan for development of two additional effluent guidelines, either new or revised. EPA's current plan is to begin development of two rules by December 1999.

IV. Effluent Guidelines Program Background

A. Statutory Framework

The Federal Water Pollution Control Act (FWPCA) of 1972 (Pub. L. 92–500, Oct. 18, 1972) (the ''Act'') established a program to restore and maintain the integrity of the nation's waters. To implement the Act, Congress directed EPA to issue effluent limitation guidelines, pretreatment standards, and new source performance standards for industrial dischargers. These regulations were to be based principally on the degree of effluent reduction attainable through the application of control technologies.

The 1977 amendments to the FWPCA, known as the Clean Water Act Amendments (Pub. L. 95–217, Dec. 27, 1977) (CWA), added an additional level of control for conventional pollutants such as biochemical oxygen demand (BOD) and total suspended solids (TSS), and stressed additional control of 65 toxic compounds or classes of compounds (from which EPA later developed a list of 126 specific ''priority pollutants''). To further strengthen the toxics control program, section 304(e), added by the 1977 amendments, authorized the Administrator to establish management practices to control toxic and hazardous pollutants in plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

The effluent guidelines promulgated by EPA reflect the several levels of regulatory stringency specified in the Act, and they also focus on different types of pollutants. Section 301(b)(1)(A) directs the achievement of effluent limitations requiring application of best practicable control technology currently available (BPT). In general, effluent limitations based on BPT represent the average of the best treatment technology performance for an industrial category. For conventional pollutants listed under section 304(a)(4), section 301(b)(2)(E) directs the achievement of effluent limitations based on the performance of best conventional pollutant control technology (BCT). The Act requires that BCT limitations be established in light of a two-part ''cost-reasonableness'' test. The test, which assesses the relative costs of conventional pollutant removals, is described in detail in the **Federal Register** notice promulgating the final BCT rule on July 9, 1986 (51 FR 24974).

Both BPT and BCT regulations apply only to direct dischargers, i.e., those facilities that discharge directly into waters of the United States. In general, regulations are not developed to control conventional pollutants discharged by indirect dischargers because the POTWs receiving those wastes normally provide adequate treatment of these types of pollutants or they can be adequately controlled through local pretreatment limits.

For the toxic pollutants listed in section 307(a), and for nonconventional pollutants, sections 301(b)(2)(A), (C), (D) and (F) direct the achievement of effluent limitations requiring application of best available technology economically achievable (BAT). Effluent limitations based on BAT are to represent at a minimum the best control technology performance in the industrial category that is technologically and economically achievable.

In addition to limitations for existing direct dischargers, EPA also establishes new source performance standards (NSPS) under section 306 of the Act, based on the best available demonstrated control technology, processes operating methods, or other alternatives. NSPS apply to new direct dischargers. Generally the NSPS limitations are to be as stringent as, or more stringent than, BAT limitations for existing sources within the category or subcategory.

Although the limitations are based on the performance capability of particular control technologies, including in some cases in-process controls, dischargers may meet their requirements using whatever combination of control methods they choose, such as manufacturing process or equipment changes, product substitution, and water re-use and recycling. The limitations and standards are implemented in permits issued through the National Pollutant Discharge Elimination System (NPDES) pursuant to section 402 of the Act for point sources discharging directly to the waters of the United States.

Section 402 of the CWA provides for the issuance of permits to direct dischargers under NPDES. These permits, which are required by section 301, are issued either by EPA or by a State agency approved to administer the NPDES program. Individual NPDES permits must incorporate applicable technology-based limitations contained in guidelines and standards for the industrial category in question. Where EPA has not promulgated applicable technology-based effluent guidelines for a category, section 402(a)(1)(B) provides that the permit must incorporate such conditions as the Administrator determines are necessary to carry out the provisions of the Act. In other words, the permit writer uses best professional judgment (BPJ) to establish technology-based limitations for the dischargers.

Indirect dischargers are regulated by the general pretreatment regulations (40 CFR part 403), local discharge limits developed pursuant to part 403, and categorical pretreatment standards for new and existing sources (PSNS and PSES) covering specific industrial categories. These categorical standards under sections 307(b) and (c) apply to the discharge of pollutants from non-domestic sources which interfere with or pass through publicly owned treatment works (POTWs), and are enforced by POTWs or by State or Federal authorities. The categorical pretreatment standards for existing sources covering specific industries are generally analogous to the BAT limitations imposed on direct dischargers. The standards for new sources are generally analogous to NSPS.

To ensure that effluent guidelines remain current with the state of the industry and with available control technologies, section 304(b) of the Act provides that EPA shall revise the effluent guidelines at least annually if appropriate. In addition, section 301(d) provides that EPA shall review and if appropriate, revise any effluent limitation required by section 301(b)(2).

B. Components of an Effluent Guideline Regulation

The principal components of most effluent guideline regulations are numerical wastewater discharge limitations controlling specified pollutants for a given category. These are typically concentration-based limits (specified in units such as milligrams of pollutant per liter of water) or

production-based mass limits (specified in units such as milligrams of pollutant per unit of production). Numerical limits also cover parameters such as pH and temperature.

A guideline is often subcategorized based on differences in raw materials, manufacturing processes, characteristics of the wastewaters, or type of product manufactured; in some cases, non-water quality environmental impacts or other appropriate factors that justify the imposition of specialized requirements on the subcategorized facilities are used as a basis. EPA develops a set of effluent limitations for each category or subcategory at each level of control (BPT, BAT, etc.) that is addressed in the guideline.

A guideline also may prescribe Best Management Practices (''BMPs'') in addition to or in lieu of numerical limits. BMPs may include, for example, requirements addressing the minimization or prevention of storm water runoff, plant maintenance schedules and requirements addressing the training of plant personnel. The recently promulgated Pulp, Paper and Paperboard rule requires mills to implement BMPs to prevent or otherwise contain leaks and spills of spent pulping liquor, soap, and turpentine and to control intentional diversions of those materials (40 CFR 430.03, 63 FR 18641, April 15, 1998).

C. Traditional Approach to Development of Effluent Guideline Regulations

EPA has accumulated substantial experience and expertise in the course of preparing 51 effluent guidelines. This section of the notice summarizes the various tasks which the Agency typically undertakes in an effluent guideline rulemaking.

Traditionally, EPA begins work on an effluent guideline rulemaking project by tentatively defining the scope and dimensions of the discharger category. The Agency determines the size of the category as it has been defined, using all available sources of information. Given the diversity of regulatory categories, no single source suffices to establish size. At various times, EPA has used one or more of the following sources: Standard published sources, information available through trade associations, data purchased from the Dun and Bradstreet, Inc. data base, other publicly available data bases, U.S. Census Bureau data, other U.S. Government information, and any available EPA data base. If a category is very large and/or diverse, the Agency will determine whether it can be broken down into appropriate categories or subcategories. If more than one subcategory can be identified, the Agency may need to establish priorities for regulation.

EPA works with interested stakeholders early in the regulation development process. State and local regulatory officials familiar with the category are consulted, and business associations and citizen groups are also invited to share information.

Regulatory information about discharger categories has often been obtained by EPA through survey questionnaires, site visits and wastewater sampling. Survey questionnaires solicit detailed information necessary to assess the statutory rulemaking factors (particularly technological and economic achievability of available controls), water use, production processes, and wastewater treatment and disposal practices. A portion of the Agency's questionnaires also seek information necessary to assess the economic achievability of a prospective regulation.

Generally, the Agency uses on-site wastewater sampling and detailed monitoring data to characterize the pollutants found in discharges. Site visits are also used to assess manufacturing processes, wastewater generation, pollutant control technologies, pollution prevention opportunities (e.g., process changes), and potential non-water quality impacts of effluent guidelines (e.g., air emissions, sludge generation, energy usage).

In developing a list of pollutants of concern for a category, EPA initially will study wastewater samples for a broad range of pollutants that can be measured by recognized analytical methods. Currently over 457 pollutants or analytes can be measured by these methods. This includes the subset of 126 pollutants known as ''priority'' pollutants developed pursuant to CWA section 307(a). EPA will develop new analytical methods to cover additional pollutants as necessary. For example, the Agency has developed new methods for use in the Pesticides, Pulp and Paper, Pharmaceuticals, and Offshore Oil and Gas effluent guidelines. (EPA generally proposes any new methods for public comment concurrently with the proposed rule.)

Most of the effluent sampling and analysis that has been conducted specifically to support effluent guideline regulations promulgated to date has been conducted by EPA. On occasion, however, these activities have been pursued on a cooperative basis with discharging facilities. For example, EPA and numerous pulp and paper manufacturers participated in cooperative efforts to sample and analyze effluent, wastewater treatment sludge, and pulp from domestic mills that bleach chemical pulp in their production processes.

EPA conducts engineering and statistical analyses of the technical data to develop control and treatment options for the pollutants of concern, and the projected costs for these options. The Agency considers the costing information and economic data gathered from the survey and other sources in its economic impact analysis, and then selects one or more of the options as the basis for a rulemaking proposal. It also develops assessments of the environmental impact of the category's discharges, and may conduct a benefit-cost analysis as well.

The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title III of Pub. L. 104–121, March 29, 1996), requires that EPA conduct regulatory flexibility analyses for rules which have a significant economic impact on a substantial number of small entities. These analyses are to assess the impact of the rule on small entities and consider alternative ways of reducing those impacts. Section 344 of SBREFA also requires EPA to organize a ''small business advocacy review panel'' for each rule where a regulatory flexibility analysis is required.

Prior to publishing a proposed rule, EPA usually conducts a public meeting to discuss the Agency's findings and describe the general outlines of the rule. Following publication, a hearing is conducted during the public comment period, and supplemental notices of new data may be published, if appropriate.

D. Recent Revisions to the Effluent Guidelines Planning Process and Recommendations of the Effluent Guidelines Task Force

EPA has recently revised the Effluent Guidelines planning process based on its discussions with the Effluent Guidelines Task Force, an advisory committee. The Task Force was established by EPA in 1992 to recommend improvements to the effluent guidelines program. The committee consists of members appointed by the Agency from industry, citizen groups, state and local government, the academic and scientific communities, and EPA's Office of Research and Development. The Task Force was created to offer advice to the EPA Administrator on the long-term strategy for the effluent guidelines

program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. It is chartered as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator, pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II, sec. 9(c)).

The Task Force has been focusing on alternative regulatory processes that would allow EPA to promulgate effluent guidelines more rapidly and at lower cost to the government. Several key aspects of the rulemaking process have been discussed, including determination of regulatory scope and data collection.

The Task Force has suggested that EPA consider making decisions on the scope of a regulation early in the rulemaking process. Task Force members generally believe that by focusing on the segment of an industry that is of greatest concern, EPA can reduce its data collection and analysis costs while achieving the majority of benefits that would be achieved by the more exhaustive examination currently given to industrial sectors. Several Task Force members have suggested that additional savings could be realized by limiting the examination of potential control technologies to one or two well-demonstrated technologies, rather than pursuing data on a larger range of technologies employed by good performers in the industry. Similarly, several Task Force members have suggested that by focusing on the known pollutants of greatest concern rather than conducting independent testing of over 400 pollutant parameters, both time and money could be saved. These approaches could lead to more focused regulations that are developed based on early presumptions regarding the most effective control technologies and key pollutant parameters to be controlled.

Key to the success of these approaches is the early involvement of a variety of stakeholders with knowledge of the industry, control technologies, and environmental impacts. Potential drawbacks include a reduced ability to identify pollution prevention opportunities for all or segments of the industry, and a reduced ability to quantify (and monetize) the full range of benefits that will result from the regulation. The Task Force acknowledged that decision-makers would be expected to accept greater risk and make decisions on less comprehensive data if the time and cost savings are to be realized.

The Task Force also suggested that the Agency could reduce both the time and costs for data collection by relying more on existing data sources and less on specially-designed questionnaires.

With respect to technical process and wastewater control data, the Agency could rely on assessments of the current baseline by industry, states, and local municipalities, and supplement those assessments with independent site and sampling episodes.

With respect to performance data, EPA could conduct fewer site visits and sampling episodes compared to previous rules and rely more on existing performance data that meets the Agency's quality control criteria. Since most existing data would be on conventional pollutants, with less data on a limited set of nonconventional and toxic pollutants, this shift to existing data is also linked with the concept of focusing on a limited number of pollutant parameters. Additional sampling for the effluent guideline could also be performed by stakeholders to supplement the Agency's independent efforts. For example, EPA worked with the Association of Metropolitan Sewerage Agencies (AMSA) to develop a sampling protocol which was used by the Hampton Roads Sanitary District, Virginia Beach, VA., to independently sample a facility that falls within the scope of the Metal Products and Machinery regulation. Other associations have expressed interest in conducting their own sampling episodes based on this protocol to further supplement the regulatory record.

With respect to financial and economic information, there is a subset of data that is publicly available for many of the larger, publicly-held entities. Economic impacts on smaller and privately-held entities that may be affected may be more difficult to assess. This difficulty may be offset by a focus on larger sources in the original scoping of the regulatory project.

Each of the three new effluent guideline projects started in late 1997 respond to the Task Force recommendations in one or more ways.

- EPA is developing a focused rule that will establish limitations for the use of synthetic-based drilling fluids (SBFs) in the Oil and Gas Extraction category (40 CFR part 435). Because of the extensive information collected in the previous two rulemakings covering the offshore and coastal subcategories, a limited amount of data collection activities are necessary. The Agency has already acquired data on the characteristics of SBFs and is developing other data in cooperation with the industry and the Departments of Energy and Interior which will be useful in supporting an accelerated regulation development approach. Identifying appropriate toxicity tests, consisting of both aqueous and sediment phase test methods, analytical methods for use with synthetic rather than water-based drilling fluids and technologies for cleaning drill cuttings are in progress and are expected to give results that will be used in developing the proposed rule.
- EPA is developing a focused rule addressing coal remining operations, which are not covered by the existing Coal Mining Category (40 CFR part 434), and alkaline mining operations in the west, for which existing regulations based on sedimentation ponds may not be environmentally effective. Since promulgation in 1985, sediment control technologies have reportedly advanced in both number and sophistication. For this regulation, EPA is implementing a number of the Task Force recommendations. First, EPA is focusing on two segments for which controls have been identified that would result in environmental improvements. Second, the Agency has enlisted the support of the U.S. Office of Surface Mining and the Interstate Mining Compact Commission to assemble and analyze existing information. This information includes information on the current state of the industry that will allow EPA to assess the baseline and economic status. It also includes performance data on pollutant controls that will allow us to assess the effectiveness of technologies and management practices. Pollutants of concern will be determined from among those pollutants for which performance data exist.
- The revisions to the Feedlots category (40 CFR part 412) will also rely on the Task Force recommendations. First, the regulation will focus on specific industry segments, beginning with pork and poultry operations, and then looking at beef and dairy cattle operations. Second, EPA will rely, in part, on stakeholders for background information. For example, the Agency is working with the U.S. Department of Agriculture (USDA) and the major trade associations to develop models (both technical and economic) to depict the current baseline activities, and to assess costs and impacts of alternative controls. EPA has received a ''framework'' document from the Pork Producers Council which identifies their recommendations for controls of wastes generated at their member facilities. The poultry industry is embarking on a similar effort. The

environmental community has offered to provide their recommendations for regulatory controls for the feedlot industry as a whole. EPA expects to use each of these as well as expertise and research from USDA to evaluate control options.

These new projects are discussed further in section V.A.2 of today's document.

E. NRDC Litigation and Consent Decree

EPA has developed today's proposed Effluent Guidelines Plan pursuant to a consent decree in *NRDC et al* v. *Browner* (D.D.C. Civ. No. 89–2980, January 31, 1992, as modified). The Decree commits EPA to schedules for proposing and taking final action on effluent guidelines, and also for conducting preliminary studies. Some of the categories to be regulated are specified in the Decree. For the remaining required rulemakings, EPA retains the discretion to select guidelines for development based on Agency priorities.

EPA will use the results of the preliminary studies and other information (such as public comments and recommendations from state and local governments) to select industries for future regulation. The Decree requires the Agency to study eleven industries.

The Decree also required EPA to establish the Effluent Guidelines Task Force to formulate recommendations for improvements to the effluent guidelines program. The Task Force has held several public meetings and has submitted recommendations to the EPA Administrator.

Since 1992, EPA and NRDC have agreed to several modifications of the Decree consisting of deadline extensions for certain rules.

V. Today's Proposed Effluent Guidelines Plan

A. Effluent Guidelines Currently Under Development

1. Schedule for Ongoing Rulemaking

The Agency is currently in the process of developing new or revised effluent guidelines for 12 categories. The categories and actual or Consent Decree dates for proposal and final action are set forth in Table 1.

TABLE 1.—EFFLUENT GUIDELINES CURRENTLY UNDER DEVELOPMENT

Category	Proposal	Final action
	Consent decree or publication date	Consent decree
Pulp, Paper and Paperboard, Phases 2 & 3	[1] 12/17/93	[1] 2000–2002
Centralized Waste Treatment	1/27/95	[3] 8/15/99
Pharmaceutical Manufacturing	5/2/95	7/98
Metal Products and Machinery	[2] 5/30/95 10/00	12/02
Industrial Laundries	2/17/97	6/99
Landfills	2/6/98	11/99
Industrial Waste Combustors (Incinerators)	2/6/98	11/99
Transportation Equipment Cleaning	5/15/98	6/15/00
Oil and Gas Extraction (Synthetic Drilling Fluids)	12/98	12/00
Iron and Steel Manufacturing	[3] 12/98	[3] 12/00
Coal Mining	12/99	12/01
Feedlots (Poultry and Swine Subcategories)	12/99	12/01

[1] The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992 consent decree and dates reflect projected dates for final promulgation of the 2 phases.
[2] 5/30/95 proposal covered Phase 1 MP&M facilities only. Proposal in 10/00 will cover Phase 1 and 2 facilities combined.
[3] EPA is discussing extensions to consent decree dates with NRDC.

2. Rulemaking Projects Started in 1997

In 1997 EPA began to develop revised or new standards for portions of three categories: Oil and Gas Extraction, Coal Mining, and Feedlots. The rationale for selection and the tentative scope of rulemaking coverage are described below.

a. Oil and Gas Extraction. Oil and Gas Extraction is covered by existing effluent guidelines at 40 CFR part 435. The most recent amendments were promulgated for the Offshore Category (58 FR 12454, March 4, 1993) and the Coastal Subcategory (61 FR 66086, December 16, 1996). This regulatory development project will establish limitations for the use and discharge of synthetic-based drilling fluids (SBFs) where discharge of drilling fluids is permitted. SBFs are used in lieu of oil-based drilling fluids in certain high performance drilling operations. SBFs are not adequately addressed by current effluent limitations for discharge of drilling fluids which were developed based on the use of oil and water-based fluids. Current information suggests that improvements in synthetic-based drilling fluids in recent years have reduced their aquatic toxicity, increased their biodegradability, and reduced the volume of drilling fluids and cuttings wastes generated. Use of synthetic-based drilling fluids instead of water-based drilling fluids in the geographic areas where discharge is allowed will provide additional environmental protection by reducing aquatic toxicity of discharges and reducing the amount of cuttings on the ocean floor.

EPA intends to issue a proposed rule by December 1998 and take final action by December 2000.

b. Coal Mining. Coal Mining activities are covered by existing effluent guidelines at 40 CFR part 434. The existing regulations, however, do not address remining operations, which improve effluent quality and quantity from abandoned mine lands while reclaiming them, and prevent disturbance of previously undisturbed lands. This regulatory project focuses, in part, on remining operations nationwide which will expedite permitting and provide a national standard of environmental performance for these activities.

The existing regulations do not differentiate between alkaline mining operations in the west and the acidic mining operations in other geographic regions. Advances in treatment technologies and Best Management Practices pertinent to alkaline coal

mines in the west show promise of being more protective of water quality than existing standards. Given concerns over the ability of existing regulations to achieve water quality standards established by Native American tribes, EPA intends to explore the development of a new subcategory for alkaline mining operations in the west.

EPA intends to issue a proposed rule by December 1999 and take final action by December 2001.

c. Feedlots (Swine and Poultry Subcategories). Feedlot operations are covered by existing effluent guidelines at 40 CFR part 412. These regulations, which require the largest confined animal feeding operations to achieve zero discharge of wastes to surface waters except under extreme storm events, have not been sufficient to resolve water quality impairment from feedlot operations. Waste spills and leaks from storage lagoons, runoff of wastes from land application, and the combined effect of allowable waste discharges from smaller facilities have led to a range of environmental and health problems ranging from fish kills and accelerated eutrophication of surface waters to contamination of drinking water and shell fish.

This regulatory project focuses on swine and poultry operations which have been identified as substantial contributors of nutrients in surface waters that have severe anoxia (low levels of dissolved oxygen) and problem algae blooms especially in estuarine waters.

EPA intends to issue a proposed rule for the Swine and Poultry Subcategories by December 1999 and take final action by December 2001.

B. Process for Selection of New Effluent Guideline Regulations

Section 304(m) does not specify criteria that the Agency should use to select categories for regulation by effluent guidelines. For the first Effluent Guidelines Plan, published January 2, 1990 (55 FR 80), EPA listed criteria it had used to select categories. The 1992 consent decree, while specifying some of the categories to be regulated, allows the Agency flexibility in selecting future categories for regulation, and does not specify selection criteria. EPA intends to continue to use selection criteria such as those listed in previous Effluent Guidelines Plans. Additionally, in light of recommendations from the Task Force, the Agency has considered the availability of technical data on a category's discharges (both within EPA, at other Federal agencies, and from States, local governments and industry) and the potential for developing a rule on an expedited schedule in determining which projects are good candidates for early implementation of the Effluent Guidelines Task Force recommendations.

1. New Rulemaking Activities

The 1992 consent decree requires that EPA begin two rulemaking projects by December 1998, and begin two additional projects by December 1999. EPA plans to begin development of effluent guidelines for the Beef and Dairy Cattle subcategories of the Feedlots category this year. The Agency will select additional projects at a later date.

a. Feedlots (Beef and Dairy Cattle Subcategories). This regulatory project focuses on dairy and beef cattle operations which represent a large segment of the feedlot industry and have been identified as substantial contributors of nutrients in surface waters that have severe anoxia (low levels of dissolved oxygen) and affect drinking water sources in the western and central regions of the United States.

EPA intends to issue a proposed rule for the Dairy and Beef Cattle Subcategories by December 2000 and take final action by December 2002.

b. Other Rules. EPA has not yet selected additional rulemaking projects. EPA is not proposing specific industrial categories for selection in today's notice. However, based on the data sources listed above, the Agency may choose the next categories from the following list. A brief discussion of candidate categories is provided later in this section.

- Petroleum Refining
- Textile Mills
- Inorganic Chemicals
- Steam Electric Power Generating
- Photographic Processing
- Chemical Formulators and Packagers
- Urban Storm Water
- Airport Deicing
- Fish Hatcheries and Farms
- Other categories identified in public comments on today's proposed plan.

2. Candidates for Effluent Guidelines Rulemaking Projects

Candidate categories for rulemaking include both categories specifically studied by EPA and others about which the Agency has received information on wastewater and storm water discharges and adverse environmental impacts. The public is invited to comment on these categories, as well as recommending other categories for development of new or revised effluent guidelines.

a. Preliminary Studies. The purpose of a Preliminary Study is to describe the nature of pollutant discharges from a category of facilities, and to provide a basis for comparison with other categories for purposes of assigning priorities for regulation. The results of a Preliminary Study for a category are published in a ''Preliminary Data Summary.'' The Preliminary Data Summary presents a synopsis of recent technical and economic information on a category of dischargers. The Preliminary Data Summaries are not used directly as a basis for rulemaking, but are used in the Agency's determination of which categories most require preparation of new or revised effluent guidelines. (They also may be expanded to become guidance documents for NPDES permit writers and POTWs.)

A Preliminary Study typically collects data on the following:

- The products manufactured and/or services provided by a category;
- Number, types and geographic location of facilities;
- Destination of discharges (directly to surface waters, indirectly to POTWs, or both);
- Characterization of the wastewater discharges and identification of pollutants present in the waste streams (e.g., mean concentrations of pollutants, wastewater volumes, mass loadings);
- Sampling and analytical methods employed to ascertain the presence and concentration of pollutants in the wastewater;
- Source reduction, recycling and pollution control technologies in use and potentially applicable to the category;
- Non-water quality environmental impacts associated with wastewater treatment in the category (e.g., air emissions, wastewater treatment sludges, and other wastes including hazardous wastes);
- Cost of control technologies in place and cost estimates for additional controls;
- Cost-effectiveness of reduction of toxic and nonconventional pollutants;
- Estimates of water quality impacts of discharges within the subject category; and
- Economic assessment (current financial condition of facilities, expansion or reduction trends, size characterization of businesses or other organizations, impact of estimated treatment costs on representative facilities).

The type and level of detail of information varies among the Preliminary Data Summaries, depending on the data available to the Agency when each document is prepared and whether the category is covered by an

existing effluent guideline. For example, some of the Summaries have comprehensive, primary data on the number and location of the discharging facilities while others contain estimates drawn from secondary data sources. However, the Summaries represent the Agency's best characterization of industries at the time the summaries are compiled. As additional data are acquired, they are factored into the evaluation process. Consequently, the Preliminary Data Summaries are also subject to revision. The Agency has made the Summaries available to the public and has received comments on some of these studies. Comments are available for review in the record for today's proposed Plan.

b. Previously-Noticed Studies. Six of the completed studies were described in the 1996 Proposed Plan (61 FR 35048): Petroleum Refining; Metal Finishing; Textile Mills; Inorganic Chemicals; Steam Electric Power Generating; and Iron and Steel Manufacturing.

c. Photographic Processing. The Photographic regulations were promulgated in 1976 for BPT (direct dischargers) only, at 40 CFR part 459. Subsequent to promulgation of the BPT rule, EPA collected some additional information to support development of BAT, NSPS and pretreatment standards, but no additional rules were promulgated.

EPA completed a Preliminary Data Summary for the Photographic Processing Industry in 1996. The study found that about 100,000 establishments were listed in 1996 in Dun & Bradstreet data under the term ''commercial photo processing.'' In addition, significant photo processing also occurs as an ancillary activity within the health care profession and at noncommercial facilities such as schools and police departments. Combining all types of facilities, it was estimated that photo processing operations occur at 350,000 to 500,000 locations in the United States. However, virtually none of these photo processing establishments have discharge permits based on the existing effluent guidelines because: (a) Most establishments are indirect dischargers, and no pretreatment standards were established; or (b) those that are direct dischargers do not meet the 1,600 square feet per day processing requirement for applicability under part 459.

The study estimated the water use in 1994 by the commercial sector (approximated to represent 44 percent of total photo processing volume) to be 2,250 million gallons. The major waste stream constituents of concern (with values for the commercial sector) includes sulfates (2.8 million lbs.), ammonia (3 million lbs.), silver (190 thousand lbs.), thiosulfate, and cyanide. Several technologies are available and employed to either treat the wastestreams, or as common in this industry, recover the chemicals and metals in the wastewater for resale or reuse.

Local POTW limits vary from municipality to municipality, but are normally numeric and concentration-based. Frequently, the only pollutant monitored in the indirect discharge permit is silver. Many of the local limits are based on silver nitrate, a highly dissociated and toxic compound. While silver nitrate is used in the production of photographic film and paper, it is not a characteristic pollutant of photo processing wastewaters. Rather, silver in photo processing wastewaters is characteristically in the form of silver thiosulfate complex, which has been shown to be about 20,000 to 40,000 times less toxic, on a concentration basis, to acutely exposed fathead minnows. The local limits may be overly stringent with regard to concentration of silver discharged, while lax on total mass of silver or other pollutants, due to lack of technical expertise and resources available at the local level.

In an effort to provide more technical expertise to photo processing facilities and POTWs, AMSA and the Silver Council, an industry association, have developed a set of recommended silver management practices. They are currently evaluating the effectiveness of the management practices at a variety of sites nationwide.

d. Chemical Formulating, Packaging and Repackaging. EPA completed a Preliminary Data Summary for the Chemical Formulating, Packaging and Repackaging (CFPR) industry in 1996. The summary describes the size and demographics of the industry, CFPR operations and the typical wastewaters generated, as well as the extent to which pollution prevention (P2) techniques are used throughout the industry. In addition, the study compares the operations, P2 techniques and economic viability of the CFPR industry to the Pesticide Formulating, Packaging and Repackaging (PFPR) industry. For the purposes of the study, EPA included the following sectors in the CFPR industry: specialty cleaners, polishes, sanitation preparations, cosmetics, perfumes, personal products, soaps and detergents, adhesives and sealants, paints (non-solvent based), inks (non-solvent based), and water treatment chemicals (non-pesticide).

There are no existing effluent guidelines or categorical standards for the CFPR industry and their discharges are regulated largely through local POTW limitations. The facilities are not subject to general EPA reporting requirements pertaining to their production and wastewater generation and the Agency estimates that there may be as many as 12,800 facilities based on Dun and Bradstreet data. Much of the technical portion of the study discusses anecdotal information collected through contacts with POTWs, regional and state pretreatment coordinators, individual facilities, and trade associations representing several sectors of the CFPR industry. The study also includes information from EPA's Adhesives and Sealants Study (''Summary of Findings: Water and Waste Management for the Adhesives and Sealants Manufacturing Point Source Category,'' EPA Effluent Guidelines Division, draft report August 1984), the databases for the final PFPR effluent guidelines (40 CFR part 455, 61 FR 57518, November 6, 1996), as well as economic information from the U.S. Economic Census and the Census Bureau's Annual Survey of Manufactures.

The volume of a CFPR facility discharge is small—typically 10 million gallons per year— compared to those from chemical manufacturing facilities. CFPR discharges include surfactants and various organic chemicals. Overall, POTWs report having experienced very few treatment system upsets or pollutant pass-through incidents associated with their CFPR users. Some POTWs have reported foaming problems or high-concentration (''slug'') discharges from CFPRs, but these problems have been corrected though a variety of methods available in the general pretreatment program.

e. Urban Storm Water. EPA is conducting a preliminary study of urban storm water discharges to explore how the Effluent Guidelines program can contribute to the Agency's efforts in implementing the national storm water program requirements under section 402(p) of the Clean Water Act. Discharges from municipal separate storm water sewer systems (''MS4'') serving a population of 100,000 or more are subject to NPDES storm water permitting requirements at 40 CFR 122.21 and 122.26. The Agency recently published a proposed rule that would extend NPDES permit requirements to smaller MS4s in urbanized areas (63 FR 1536, January 9, 1998).

EPA is considering whether development of effluent guidelines regulations, or additional technical information and guidance on

characterizing storm water discharges and evaluating the efficacy of controls would be useful to discharging facilities in complying with permit requirements. Because the nature of the dischargers and discharges in urban storm water are somewhat different from the industrial discharges usually regulated by effluent guidelines, the study format will vary somewhat to accommodate other issues and concerns. EPA intends that the study will include a summary of existing storm water resources on best management practices (BMPs), a description of adverse environmental impacts from storm water discharges, a summary of available methods for estimating the relationship between storm event size and bacteriological impacts, descriptions of types of regionally-appropriate storm water BMPs (both structural and non-structural) and how to measure their performance, cost and economic impact considerations, and a description of measurable goals that could be used to evaluate the effectiveness of storm water management controls. The Agency will complete a preliminary data summary by December 1998.

f. Airport Deicing. EPA began the Airport Deicing study formally in January 1998, although some site visits were conducted as early as Summer 1997. Early data-gathering efforts for the study have been initiated. The Agency is conducting a literature search on pollution prevention practices related to aircraft deicing, including alternative and innovative deicing practices at airports in the United States, as well as in other countries. The Agency is reviewing previously-collected data as well as information gathered through contacts with the trade associations representing various segments of the industry, environmental groups, manufacturers of deicing chemicals and vendors of deicing-related equipment and treatment technologies. Also, the Agency is planning to review airport storm water monitoring data that is collected under the Multi-Sector General Permit requirements.

The Agency will be conducting site visits to airports of differing sizes and geographic locations. These visits will include airports that employ pollution prevention, on-site recycling or alternative deicing technologies. Specifically, the purposes of the site visits are:

- To gather basic information on a variety of deicing activities and to determine what factors affect deicing operations;
- To determine and evaluate the level of wastewater treatment for any collected deicing fluids;
- To gather information to characterize the raw, untreated effluent generated from any deicing operations in terms of pollutant concentrations, volumes and environmental impacts; and
- To gather information on new or innovative pollution prevention practices.

EPA will examine the effectiveness of the current storm water permitting system and the comparative effectiveness of an effluent guideline approach for airport deicing activities. The Agency will also evaluate the status and trends of de-icing chemical use at airports, including the costs and cost-minimization opportunities of deicing material management, and the development and use of prevention and treatment technologies will be evaluated. Wastewater characterization sampling visits are expected to be conducted next winter. The Agency will complete a preliminary data summary by December 1999.

g. Fish Hatcheries and Farms. EPA considered developing effluent guidelines for fish hatcheries and farms, also called aquaculture facilities, in 1977. A draft development document recommended issuance of BPT limitations, but regulations were not promulgated. (''Development Document for Recommended Effluent Limitations Guidelines and Standards of Performance for the Fish Hatcheries and Farms Point Source Category,'' EPA Effluent Guidelines Division, draft February 1977.) Aquaculture operations include ponds, tanks, raceways (a series of tanks), netpens, and cages. These operations generate manure, which can adversely affect water quality with BOD, suspended and settleable solids, nutrients, chemical additives (including pesticides), water temperature changes, and pathogens such as streptococcus. Uneaten fish food can also generate nutrient discharges.

Potential problems stemming from aquaculture discharges are described in a recent report by the Environmental Defense Fund (''Murky Waters: Environmental Effects of Aquaculture in the United States,'' Environmental Defense Fund, Washington, DC, 1997). The report provides an overview of the aquaculture industry and a description of water use, pollutants generated, and environmental impacts. Among the report's recommendations is a call for EPA to promulgate effluent guidelines for aquaculture operations.

EPA is also aware that reports developed by the U.S. Department of Agriculture, the Joint Subcommittee on Aquaculture (a Federal interagency advisory group), and other organizations may address waste issues associated with aquaculture. The Agency invites submission of such reports and other data on aquaculture discharges.

3. Future Studies

EPA has nearly completed its Consent Decree requirements for developing eleven preliminary studies. However, the Agency may develop additional studies from time to time, and several study topics have been suggested. Among the categories that EPA may study are:

- Hospitals
- Ore Mining and Dressing (including Placer Mining)
- Glass Manufacturing
- Canmaking
- Organic Chemicals, Plastics and Synthetic Fibers
- Pulp, Paper and Paperboard (topics not addressed in recent or ongoing rule projects)
- Wood Chip Mills
- Metal Molding and Casting (Foundries)
- Generic Effluent Guideline Issues.

EPA invites submission of data and other comments on these categories and topics.

C. Other Rulemaking Actions

1. Pulp, Paper and Paperboard, Phases 2 & 3

In the Pulp and Paper effort, EPA intends to revise existing limitations in 10 of the 12 subcategories in 2 phases. Phase 2 includes: Unbleached Kraft; Semi-Chemical; Mechanical Pulp; Non-Wood Chemical Pulp; Secondary Fiber Deink; Secondary Fiber Non-Deink; Fine and Lightweight Papers from Purchased Pulp; and Tissue, Filter, Non-Woven, and Paperboard from Purchased Pulp. Phase 3 includes: Dissolving Kraft and Dissolving Sulfite. Guidelines and standards for these 10 subcategories were proposed as part of the Pulp and Paper Rule (also known as the ''Cluster Rule'') in December of 1993 but final action was deferred in the Phase I Rule promulgated April 15, 1998, based on public comment. The Agency intends to publish notices of data availability prior to taking final action on both phases.

2. Ore Mining and Dressing

EPA had proposed to exclude a waste stream from previously-promulgated effluent guidelines for the Copper, Lead, Zinc, Gold, Silver and Molybdenum Ores Subcategory of the Ore Mining and Dressing Category (40 CFR part 440, subpart J). The Agency published a proposed rule on February 12, 1996 (61 FR 5364). Dewatered tailings generated by the Alaska-Juneau (A–J) gold mine

project near Juneau, Alaska would have been affected by this proposal.

On January 14, 1997, Echo Bay Mines announced that it would terminate its development plans for the A–J mine project. EPA has concluded, in light of the closure of the A–J mine project and the lack of information about other mine sites exhibiting similarly extreme environmental conditions, that it is unnecessary to continue this rulemaking. The Agency published a document withdrawing the proposal on January 16, 1998 (63 FR 2646).

VI. Request for Comments

EPA invites public comment on its plans for development of effluent guidelines and preliminary studies. Comments will be accepted until July 27, 1998. In particular, the Agency is interested in data that would facilitate comparisons of discharger categories with regard to wastestream characteristics, treatment practices and effects on water quality. In addition to the categories discussed or listed in today's notice, EPA will consider information on other categories in developing Effluent Guidelines Plans.

VII. Economic Impact Assessment; Executive Order 12866

Today's document proposes a plan for the review and revision of existing effluent guidelines and for the selection of priority industries for new regulations. This document is not a ''rule'' subject to 5 U.S.C. 553 and does not establish any requirements; therefore, no economic impact assessment has been prepared. EPA will provide economic impact analyses, regulatory flexibility analyses or regulatory impact assessments, as appropriate, for all of the future effluent guideline rulemakings developed by the Agency.

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

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

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

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

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

It has been determined that this plan is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Dated: May 21, 1998.

Robert Perciasepe,

Assistant Administrator for Water.

Appendix A—Promulgated Effluent Guidelines

''Promulgation'' refers to the date of promulgation of BAT controls unless otherwise noted. Minor amendments or corrections are not shown.

Category	40 CFR part	Promulgation	Revised rule (P: Proposal F: Final Action) or Study Completion (S)
Aluminum Forming	467	10/83	
Asbestos Manufacturing	427	2/74	
Battery Manufacturing	461	3/84	
Builder's Paper and Board Mills [1]	431	12/86 (BCT)	
Carbon Black Manufacturing	458	1/78	
Cement Manufacturing	411	8/79 (BCT)	
Coal Mining	434	10/82	P 12/99; F 12/01.
Coil Coating	465	12/82	
Canmaking Subcategory	.....	11/83	
Copper Forming	468	8/83	
Dairy Products Processing	405	6/86 (BCT)	
Electroplating	413	1/81 (PSES)	P 10/00; F 12/02[2].
Electrical and Electronic Components	469	4/83	
Explosives Manufacturing	457	3/76	
Feedlots	412	2/74	S 1998. P 12/99; F 12/01 (Swine & Poultry). P 12/00; F 12/02 (Dairy & Beef Cattle).
Ferroalloy Manufacturing	424	7/86 (BCT)	
Fertilizer Manufacturing	418	8/79 (BCT)	
Fruits and Vegetables Processing	407	7/86 (BCT)	
Glass Manufacturing	426	7/86 (BCT)	
Grain Mills	406	7/86 (BCT)	
Gum and Wood Chemicals	454	5/76 (BPT)	
Hospitals	460	5/76 (BPT)	S 1989.
Ink Formulating	447	7/75	
Inorganic Chemicals	415	6/82	S 1994.
Iron and Steel Manufacturing	420	5/82	S 1995; P 12/98 [3]; F 12/00 [3].
Leather Tanning and Finishing	425	11/82	
Meat Products	432	7/76 (BCT)	
Metal Finishing	433	7/83	S 1994; P 10/00; F 12/02 [2].
Metal Molding and Casting (Foundries)	464	10/85	
Mineral Mining and Processing	436	7/77 (BPT)	
Nonferrous Metals Forming	471	8/85	
Nonferrous Metals Manufacturing	421	6/84	
Oil and Gas Extraction	435		P 12/98; F 12/00 (Synthetic-Based Fluids).

Category	40 CFR part	Promulgation	Revised rule (P: Proposal F: Final Action) or Study Completion (S)
Offshore Subcategory	.....	3/93	
Coastal Subcategory	.....	12/96	
Other Subcategories	.....	11/79 (BPT)	
Ore Mining and Dressing	440	12/82	
Gold Placer Mining Subcategory	.....	5/88	
Organic Chemicals, Plastics and Synthetic Fibers	414	11/87	
Paint Formulating	446	7/75	S 1989.
Paving and Roofing Materials	443	7/75	
Pesticide Chemicals	455		
Manufacturing	.....	9/93	
Formulating, Packaging, Repackaging	.....	11/96	
Petroleum Refining	419	10/82	S 1993.
Pharmaceutical Manufacturing	439	10/83	P 5/2/95; F 7/98.
Phosphate Manufacturing	422	6/76	
Photographic Processing	459	7/76 (BPT)	S 1996.
Plastics Molding and Forming	463	12/84	
Porcelain Enameling	466	11/82	
Pulp, Paper and Paperboard	430		
Subparts B & E (Phase 1 rule)	.....	4/98	
Other subparts	.....	12/86 (BCT)	P 12/93; F 2000–2002 (Phase 2 & 3 rules).
Rubber Manufacturing	428	2/74	
Seafood Processing	408	7/86 (BCT)	
Soap and Detergent Manufacturing	417	4/74	
Steam Electric Power Generating	423	11/82	S 1995.
Sugar Processing	409	7/86 (BCT)	
Textile Mills	410	9/82	S 1994.
Timber Products Processing	429	1/81	

[1] EPA proposed merging part 431 with part 430 in the proposed Pulp, Paper and Paperboard rule on 12/17/93. Part 431 will be deleted.
[2] The Electroplating and Metal Finishing categories will be modified by the new Metal Products and Machinery rule. See Appendix B for rulemaking dates.
[3] EPA is discussing extensions to Consent Decree dates with NRDC.

Appendix B—Current and Future Rulemaking Projects

Category	Proposed	Final
Pulp, Paper and Paperboard, Phases 2 & 3	12/17/93 [1] (58 FR 66078)	2000–2002 [1]
Centralized Waste Treatment	1/27/95 (60 FR 5464)	8/99
Pharmaceutical Manufacturing	5/2/95 (60 FR 21592)	7/98
Metal Products and Machinery	5/30/95 [2] (60 FR 28209) (Phase 1 only)	
	10/00	12/02
Industrial Laundries	12/17/97 (62 FR 66182)	6/99
Landfills	2/6/98 (63 FR 6425)	11/99
Industrial Waste Combustors (Incinerators)	2/6/98 (63 FR 6391)	11/99
Transportation Equipment Cleaning	5/15/98	6/15/00
Oil and Gas Extraction	12/98	12/00
Iron and Steel Manufacturing	12/98 [3]	12/00 [3]
Coal Mining	12/99	12/01
Feedlots (Poultry & Swine subcategories)	12/99	12/01

[1] The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992 consent decree.
[2] 5/30/95 proposal covered Phase 1 MP&M facilities only. The proposal in 10/00 will cover Phase 1 and 2 facilities combined.
[3] EPA is discussing extensions to Consent Decree dates with NRDC.

Appendix C—Preliminary Studies

Category	Complete
Petroleum Refining	1993
Metal Finishing	1993
Textile Mills	1994
Inorganic Chemicals	1994
Steam Electric Power Generating	1995
Iron and Steel Manufacturing	1995

Category	Complete
Photographic Processing	1996
Chemical Formulators and Packagers	1996
Feedlots	1998
Urban Storm Water	1998
Airport Deicing	1999

[FR Doc. 98–14156 Filed 5–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6103–6]

Notice of Open Meeting of the Environmental Financial Advisory Board on August 3–4, 1998

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in San Francisco, California on August 3–4, 1998. The meeting will be held at the World Trade Center, Ferry Building, in the Coit Tower Room. The Monday, August 3 session will run from 9 a.m. to 5 p.m. and the August 4 session will begin at 8:30 a.m. and end at approximately 12:00 p.m.

EFAB is chartered with providing analysis and advice to the EPA Administrator on environmental finance. The purpose of this meeting is to discuss work products under EFAB's current strategic action agenda and to develop an action agenda to direct the Board's activities through 1999. Environmental financing topics expected to be discussed include: cost effective environmental management, community-based environmental protection, brownfields redevelopment, Drinking Water State Revolving funds, and small business access to capital.

The meeting will be open to the public, but seating is limited. For further information, please contact Alecia Crichlow, U.S. EPA on 202–564–5188, or Joanne Lynch, U.S. EPA on 202–564–4999.

Dated: May 20, 1998.

Michael W.S. Ryan,

Comptroller.

[FR Doc. 98–14155 Filed 5–27–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6103–4]

Amendment to Administrative Order on Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Herriman, Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given of a proposed amendment to a settlement under sections 104(a) and 122(a) of the Comprehensive Environmental Response, and Liability Act, as amended, (CERCLA) concerning the Herriman Residential Soils Removal Action Site in Herriman, Utah (Site). Under the Amended Administrative Order on Consent (Order) Kennecott Utah Copper Corporation has agreed to perform certain response actions related to a removal action to be performed at the Site.

DATES: Comments must be submitted on or before June 29, 1998.

ADDRESSES: The Order is available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado. Comments should be addressed to Paul J. Rogers, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18 Street, Suite 500, Denver, Colorado, 80202–2405, and should reference the Herriman Residential Soils Removal Action Order, EPA Docket No. CERCLA–VIII–97–08.

FOR FURTHER INFORMATION CONTACT: Paul J. Rogers, Enforcement Specialist, at 303/312–6356.

SUPPLEMENTARY INFORMATION: Pursuant to sections 104(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (CERCLA), EPA and Kennecott Utah Copper Corporation (Kennecott) entered into an Administrative Order on Consent (Order) concerning the Herriman Residential Soils Removal Action Site in Herriman, Utah (Site), effective July 9, 1997. This Order has been amended to provide for Kennecott's continued participation in response actions at the Site. The Amended Order requires Kennecott Utah Copper Corporation to provide transportation and disposal of no more than 60,000 cubic yards of lead and arsenic contaminated soils removed by EPA generally from the surface to 18 inches in depth and for Kennecott to provide 45,000 cubic yards of replacement soils as part of the Phase II response action. Upon completion of the action, EPA will convenant not to sue Kennecott for any failure to perform the work agreed to in the Order. EPA also proposes to provide Kennecott with contribution protection for matters addressed in this Order to the extent provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2). Matters addressed are defined in the amended Order as response actions taken or to be taken by the EPA or any other person (as that term is defined by section 101(21) of CERCLA, 42 U.S.C. 9601(21)) and all response costs incurred and to be incurred by the EPA or any other person (as that term is defined by section 101(21) of CERCLA, 42 U.S.C. 9601(21)) at or in connection with Herriman Residential Soils Removal. Section 101(21) of CERCLA, 42 U.S.C. 9601(21) states that the term person means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body. For a period of thirty (30) days from the date of this publication, the public may submit comments to EPA relating to the contribution protection proposed to be conferred in this Order. A copy of the Order may be obtained from the Superfund Records Center, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, 303/312–6473. Additional background information relating to the Order and the Site is also available for review at the Superfund Records Center at the address listed above and at the Riverton Public Library, 1830 West 12600 South, Riverton, UT 84065.

Dated: May 1, 1998.

Sharon Kercher ,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 98–14157 Filed 5–27–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

May 15, 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 July 27, 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 Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0419.

Title: Sections 76.94, 76.95, 76.155, 76.156, 76.157, and 76.159, Syndicated Exclusivity and Network Non-Duplication Rights.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit.

Number of Respondents: 5,392 (1,141 commercial television stations + 4,251 cable television stations).

Estimated Time Per Response: .5 - 2 hours.

Total Annual Burden: 178,640 hours.

Frequency of Response: On Occasion.

Cost to Respondents: $192,132 (operation and maintenance costs for notifications and responses).

Needs and Uses: Sections 76.94(a) and 76.155(a) require television stations and program distributors to notify cable television system operators of non-duplication protection and exclusivity rights being sought. The notification shall include (1) the name and address of the party requesting non-duplication protection/exclusivity rights and the television broadcast station holding the non-duplication right; (2) the name of the program or series for which protection is sought; and (3) the dates on which protection is to begin and end.

Section 76.94(b) requires broadcasters entering into contracts providing for network non-duplication protection to notify cable systems within 60 days of the signing of such a contract. If they are unable to provide notices as provided for in Section 74.94(a), they must provide modified notices that contain the name of the network which has extended non-duplication protection, the time periods by time of day and by network for each day of the week that the broadcaster will be broadcasting programs from that network, and the duration and extent of the protection.

Section 76.94(d) requires broadcasters to provide the following information to cable television systems under the following circumstances: (1) In the event the protection specified in the notices described in paragraphs (a) or (b) of this section has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the cable system in a notice pursuant to paragraph (b) of this section, for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. Notice to be furnished ''as soon as possible'' under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means. (2) In the event the protection specified in the modified notices described in paragraph (b) of this section has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each cable system operator that has previously received notice of all changes from the original notice.

Section 76.155(d) requires that in the event the exclusivity specified in paragraph (a) of this section has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the cable television system operator of the occurrence of the relevant contingency. Notice to be furnished ''as soon as possible'' under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

Sections 76.94(e)(2) and 76.155(c)(2) states that if a cable television system asks a television station for information about its program schedule, the television station shall answer the request.

Sections 76.94(f) and 76.157 require a distributor or broadcaster exercising exclusivity to provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed. Providing copies of relevant portions of the contracts is assumed to be accomplished in the notification process set forth in Sections 76.94 and 76.155.

Section 76.159 (requirements for invocation of protection) requires broadcasters to obtain amended contracts when existing contracts have ambiguous language. We assume all broadcasters that have enforceable syndicated rights in their contracts have by now amended their existing contracts. Any contracts entered into after August 18, 1988, would contain the required language set forth in this section.

Section 76.95(a) states that network non-duplication provisions of Sections 76.92 through 76.94 shall not apply to cable systems serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection against it.

Section 76.156(b) states that the provisions of Sections 76.151 through 76.155 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file

a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

The purpose of the various notification and disclosure requirements accounted for in this collection is to protect broadcasters who purchase the exclusive rights to transmit syndicated programming in their recognized market areas. The Commission's syndicated exclusivity rules permit, but do not require, broadcasters and program distributors to obtain the same enforceable exclusive distribution rights for syndicated programming that all other video programming distributors possess.

OMB Approval Number: 3060–0547.

Title: Section 76.61 Disputes concerning carriage and Section 76.7 Special relief and must-carry procedures.

Form Number: N/A

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit.

Number of Respondents: 600 (include petitioning and opposing parties for Sections 76.61 and 76.7).

Estimated Time Per Response: 5–40 hours.

Total Annual Burden: 18,000 hours.

Frequency of Response: On Occasion.

Cost to Respondents: $198,000 ($192,000 for filing fees at $960 per fee; postage and stationary costs).

Needs and Uses: This information collection accounts for the paperwork burden associated with disputes concerning carriage contained in Section 76.61 as well as must-carry complaints and other petitions for special relief contained in Section 76.7.

Section 76.61 states that whenever a local commercial television or qualified low power television station believes that a cable operator has failed to meet its carriage or channel positioning obligations, such station shall notify the cable operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or position such signal on a particular channel. The cable operator then must respond in writing within 30 days to the notification and either commence to carry the station or state its reasons for believing it is not obligated to carry such signal. The television or low power television station may then file a ''must-carry'' complaint in accordance with procedures set forth in Section 76.7. Qualified local noncommercial educational television stations may also file ''must-carry'' complaints with the Commission in accordance with procedures set forth in Section 76.7. Must-carry complaints shall specifically allege the manner in which the cable operator failed to meet its obligations and the basis for such allegations.

Section 76.7 states that on petition by a cable television system operator, a franchising authority, an applicant, permittee, or licensee of a television broadcast or translator station, or by any other interested person, the Commission may waive any provision of the rules relating to cable television systems, impose additional of different requirements, or issue a ruling on a complaint or disputed question. The petition for special relief or must-carry complaint may be submitted informally, by letter, but shall be accompanied by a certificate of service on any cable television operator, franchising authority, station licensee, permittee, or applicant, or other interested person who may be directly affected if the relief requested is granted. Interested parties may submit comments or oppositions to a petition for special relief or a must-carry complaint within twenty days after the date of public notice of the filing of such petition or complaint. The petitioner or complainant may file a reply to the comments or oppositions within 10 days after their submission.

OMB Approval Number: 3060–0548.

Title: Section 76.302 Required recordkeeping for Must-Carry purposes and Section 76.56 Signal Carriage obligations.

Form Number: N/A

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit.

Number of Respondents: 11,000

Estimated Time Per Response: .5 hours - 1 hour.

Total Annual Burden: 66,000 hours.

Frequency of Response: On Occasion.

Cost to Respondents: $110,000 (postage and stationary).

Needs and Uses: Section 76.302 requires the operator of every cable television system to maintain a public inspection file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to Section 76.56 and the designation and location of its principal headend. Sections 76.302 and 76.56(e) state that upon written request from any person, a cable operator is required to provide the list of must-carried signals in writing within 30 days of receipt of such request. Additionally, Section 76.56(d)(3) states that if a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers. The notice, which may be included in routine billing statements, shall identify the signals that are unavailable without an additional connection, the manner for obtaining such additional connection, and instructions for installation. These notification and recordkeeping requirements ensure that subscribers are aware of which channels cannot be viewed without converter boxes and which channels are defined as must-carry. The records kept by cable television systems are reviewed by Commission staff during field inspections and by local public officials to assess the systems' compliance with applicable rules and regulations.

OMB Approval Number: 3060-0652.

Title: Section 76.309 Customer Service Obligations and Section 76.964 Notice to Subscribers.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit; State, local and tribal governments.

Number of Respondents: 11,365 cable systems, 10 franchise authorities.

Estimated Time Per Response: 10 minutes - 1 hour.

Total Annual Burden: 33,975 hours.

Frequency of Response: On occasion.

Cost To Respondents: $100,000 (postage and stationary costs).

Needs and Uses: Sections 76.309 and 76.964 set forth various customer service obligations and notification requirements for changes in rates, programming services and channel positions.

Section 76.309(a) states that franchise authorities must provide affected cable operators 90 days written notice of its intent to enforce customer services standards set forth in Section 76.309(c).

Section 76.309(c)(3)(i)(A) states that cable operators shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request: (1) Products and services offered; (2) Prices and options for programming services and conditions of subscription to programming and other services; (3) Installation and service maintenance policies; (4) Instructions on how to use the cable service; (5)

Channel positions programming carried on the system; and, (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

Section 76.309(c)(3)(i)(B) states that customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by Section 76.309(c)(3)(i)(A).

Section 76.964 states that in addition to the requirement set forth in Section 76.309(c)(3)(i)(B) regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g. inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Notices to subscribers shall inform them of their right to file complaints about changes in cable programming service tier rates and services, shall state that the subscriber may file the complaint within 90 days of the effective date of the rate change, and shall provide the address and phone number of the local franchising authority.

Section 76.309(c)(3)(ii)(B) states that in case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

Since the last OMB clearance for this collection, it has been revised in two ways. First, the Section 76.309(a) requirement that franchise authorities must provide affected cable operators 90 days written notice of intent to enforce customer services standards was not previously accounted for in this collection. We now seek clearance for it as part of this collection. Second, a revision to Section 76.309(c)(3)(i)(B) no longer requires cable operators to provide notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between operators and their subscribers. We revise this collection accordingly.The Commission requires the various disclosure and notifications contained in this collection as a means of consumer protection to ensure that subscribers and franchising authorities are knowledgeable of cable operators' business practices, current rates, rate changes for programming, service and equipment, and channel line-up changes.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–14092 Filed 5–27–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission, Comments Requested

May 20, 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 July 27, 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 Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0287.

Title: Section 78.69 Station records.

Form No.: N/A

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; State, local and tribal governments.

Number of Respondents: 1,800.

Estimated Time Per Response: 26 hours.

Frequency of Response: On Occasion.

Cost to Respondents: $0.

Total Annual Burden: 46,800 hours.

Needs and Uses: Section 78.69 requires that licensees of cable CARS stations maintain various records, including but not limited to records pertaining to transmissions, unscheduled interruptions to transmissions, maintenance, observations, inspections and repairs. Station records are required to be maintained for a period of not less than two years. The records kept pursuant to Section 78.69 provide for a history of station operations and are reviewed by Commission staff during field investigations to ensure that proper operation of the stations is being conducted.

OMB Approval Number: 3060–0667.

Title: Section 76.630 Compatibility with consumer electronic equipment.

Form No.: N/A

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 11,000.

Estimated Time Per Response: 1 - 3 hours.

Frequency of Response: On Occasion.

Cost To Respondents: $19,300 ($960 filing fee, plus stationery and postage costs).

Total Annual Burden: 11,160 hours.

Needs and Uses: Section 76.630(a) states that cable system operators shall not scramble or otherwise encrypt signals carried on the basic service tier, though operators may file requests for waivers of this prohibition with the Commission. When filing requests for waivers of this prohibition, operators must notify subscribers by mail of waiver requests. Section 76.630(c) states

that cable system operators that use scrambling, encryption or similar techniques shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. This offer of special equipment must be made to new subscribers at the time they subscribe, to all subscribers at least once each year, and to subscribers that make such requests at any time. Section 76.630(d) states that cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing. The information shall be provided to subscribers at the time that they first subscribe and at least once a year thereafter, and may be included in one of the cable system's regular subscriber billings. The Commission has set forth these disclosure requirements for consumer protection purposes, to inform subscribers of compatibility matters, and notify subscribers of cable operators' requests to waive the prohibition on signal encryption.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–14094 Filed 5–27–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

May 21, 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 July 27, 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 Approval No.: 3060–0425.

Title: Section 74.913, Selection procedure for mutually exclusive ITFS applications.

Form No.: n/a.

Type of Review: Extension of currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 150.

Estimated Time Per Response: 53 hours for settlement agreements (3 hours respondent, 30 hours contract attorney, 20 hours consulting engineer) and 1 hour statements of number of students.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $425,000.

Estimated Total Annual Burden: 250 hours.

Needs and Uses: Section 74.913(c) requires qualified ITFS applicants, with the same point accumulation, to submit any agreement to divide the use of the channels within thirty days from the date of Commission decision. If no agreement is reached and submitted to the Commission within thirty days, the selectee will be determined through the tie-breaker mechanism of Section 74.913(d).

Section 74.913(d) requires each applicant tied in a comparative selection proceeding to submit a statement of the number of students at its proposed receive locations who are formally enrolled in classes for credit toward an academic degree or diploma, or a legally required certification or license. This claim of students, who would benefit from the proposed system, must correlate to and be supported by the educational programs proposed in its application. This statement must be served on the other tied competing applicant(s).

Applicants will not be required to submit their agreements or statements unless and until it is determined that they are tied in a comparative selection proceeding.

The data will be used by FCC staff to determine the most qualified applicant to provide ITFS service to the public. The statement served on other tied competing applicant(s) will provide an opportunity for competing applicants to respond to any apsect of the enrollment submissions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–14095 Filed 5–27–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Submitted to OMB for Review and Approval

May 19, 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 collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 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, and utility, 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 information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 29, 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 Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Les Smith at 202–418–0214 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0560.

Title: Section 76.911, Petition for reconsideration of certification.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; State, local and tribal governments.

Number of Respondents: 45 [(20 petitions × 2 parties) + 5 competing operators].

Estimated Time Per Response: 2–10 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure.

Cost to Respondents: $410 (postage and stationery costs).

Total Annual Burden: 410 hours.

Needs and Uses: Section 76.911 states that a cable operator, or other interested party, may challenge a franchising authority's certification by filing a petition for reconsideration. The petition may allege either that the cable operator is not subject to rate regulation because effective competition exists, or that the franchising authority does not meet the Commission's certification standards. The burden associated with the petition process was not previously accounted for in this collection; therefore, this collection has been revised. Section 76.911(b)(2) also states that if evidence establishing effective competition is not otherwise available, then cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days and such responses may be limited to numerical totals. Commission staff use information derived from petitions for reconsideration of certification to resolve disputes concerning the presence or absence of effective competition in franchise areas and to determine whether there are grounds for denying franchising authority certifications to regulate rates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–14096 Filed 5–27–98; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 18, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission.

OMB Control No.: 3060–0717.

Expiration Date: 05/31/2001.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77 (47 CFR Sections 64.703(a), 64.709, 64.710).

Form No.: N/A.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 1500 respondents; 446.10 hours per response (avg.); 699,157 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $198,000.

Frequency of Response: On occasion, annually, third party disclosure.

Description: 1. Section 64.709, OSP Informational Tariff Filing Requirement: In the Second Report and Order and Order on Reconsideration issued in CC Docket No. 92–77 (released January 29, 1998), the Commission codifies the OSP informational tariff filings at 47 CFR 64.709. OSPs currently are required by statute, *i.e.*, 47 U.S.C. § 226(h)(1)to file informational tariffs with the Commission. The new rules governing the filing of such tariffs codify existing FCC requirements. The Commission also amended the rules to increase the usefulness of informational tariffs by requiring that such tariffs include specific rates expressed in dollars and cents as well as applicable per-call aggregator surcharges or other per-call fees, if any, that are collected from consumers. (Number of respondents: 300; annual burden per respondent: 50 hours; total annual burden: 16,500 hours). 2. Section 64.703(a)(4), Disclosures: In the Second Report and Order and Order on Reconsideration, the Commission amends its rules, effective generally July 1, 1998, to require operator services providers (OSPs) to disclose orally to away-from-home callers, at no cost to such callers, how they may obtain all applicable charges for a call placed through an OSP, without the caller having to hang up to dial a separate number. The Commission's decision is intended to make it easier for callers using operator services at pay phones, hotels and other call aggregator locations to obtain immediately the total cost to them of making a call using the carrier selected by the pay phone or premises owner before the call is made. Subsection 64.703(a)(4) is added, which requires each OSP to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges, if the call is to be placed through the carrier selected by the payphone or premises owner. (No. of respondents: 630; annual burden per respondent: 6–8 secs per call; total annual burden: 13,711 hours). 3. Section 64.710, Operator services for prison inmate phones. New Section 64.710 requires providers of interstate operator services to inmates at correctional institutions to identify themselves, audibly and distinctly, to the party to be billed for the call and also disclose immediately thereafter to that party how he or she, without having to hang up to dial a separate number, may obtain the charges for the call, before the carrier may connect, and bill for, a call. (No. of respondents; 570; annual burden per respondent: 4 hours; total annual hour burden: 2280 hours). 4. Section 64.703(a)(1)-(3), Consumer Information, Branding by OSPs. Section 64.703(a)(1)-(3), requires that operator service providers disclose to consumers their identity, and upon request by the consumer, the rates for the call, collection methods for the charges, and complaint procedures. 47 U.S.C. Section 226 required adoption of this rule. Providers of operator services are required to identify itself, audibly and distinctly, to both the calling party and the called party, rather than just one party. This requirement was a response to a widespread failure of operator service providers to disclose information necessary for informed consumer choice in the marketplace. This requirement is currently approved

by OMB under OMB control number 3060–0666 and is not being modified by the Second Report and Order and Order on Reconsideration in CC Docket No. 92–77. It is being consolidated with and is now approved under OMB control number 3060–0717 as suggested by OMB. (No. of respondents: 630; annual burden per respondent: 2 secs per call; total annual burden: 666,666).

The new information disclosure rules will make it easier for callers using operator services provided at call aggregator phones, and prison-inmate phones, to obtain immediately the cost of the call, prior to the call being connected. This should eliminate the surprise that many consumers encounter upon subsequently receiving the bill or bills containing what they believe to be excessive charges or surcharges for such calls. Further, requiring that carriers divulge this information without the consumer having to dial a separate telephone number more readily enables consumers to obtain valuable information necessary in making the decision whether to have that carrier carry the call at the identified rates. OSPs are required under Section 226(h)(1) of the Communications Act to file informational tariffs with the Commission and to update these tariffs regularly. The tariffs are filed to protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls; and to ensure that consumers have the opportunity to make informed choices in making such calls. Obligation to comply: mandatory.

OMB Control No.: 3060–0817.

Expiration Date: 05/31/2001.

Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.

Form No.: N/A.

Respondents: Businesses or other for profit entities.

Estimated Annual Burden: 5 respondents; 2 hours per response (avg.); 20 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; semi-annually.

Description: In the Further Notice of Proposed Rulemaking issued in CC Docket Nos. 95–20 and 98–10, the Commission seeks to eliminate outdated, unnecessary regulations, while continuing to protect against potential anticompetitive behavior by the Bell operating companies (BOCs) in the provision of information services. In fulfillment of this goal, the Commission proposed and OMB approved the following collection of information from BOCs: *Open Network Architecture (ONA) Reporting Requirements:* The Commission sought comment on whether we should modify current ONA reporting requirements by reducing the frequency of semi-annual reporting to annual, whether the current quarterly installation and maintenance reports and accompanying annual affidavits are necessary or effective for the nondiscrimination obligations of *Computer III*, whether the separate subsidiary network information disclosure rules should continue to apply to BOCs with *Computer II* subsidiaries, whether the ''all-carrier rule'' should continue to apply to all carriers, other than incumbent LECs, owning basic transmission facilities, or whether the Commission should eliminate current ONA reporting requirements on the BOCs and GTE. In the FNPRM, the Commission tentatively concludes that the BOCs should be permitted to make one consolidated filing (or posting) for all generic information they currently submit in their semi-annual ONA reports. If adopted, the proposed collections would be used to ensure that BOCs and GTE comply with the *Computer III*, ONA requirements as modified by the FNPRM, and with the Communications Act, as amended, and with Commission policies and regulations. Obligation to respond: mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–14093 Filed 5–27–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

* * * * *

FEDERAL REGISTER NUMBER: 98–13018.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, May 21 1998, 10:00 a.m., meeting open to the public.

The Following Item Was Added to the Agenda: Electronic Filing for Presidential Committees.

* * * * *

DATE & TIME: Tuesday, June 2, 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 & TIME: Thursday, June 4, 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. Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–14223 Filed 5–26–98; 10:37 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applications

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Cargo U.K., Inc., 4790 Aviation Parkway, Atlanta, GA 30349, Officers: Roger H. Botting, President

Southeast Logistics, 122 Agape Street, Williamson, GA 30292, Pat Owen, Sole Proprietor

Ocean's Freight, Inc., 2664 West 70th Place, Hialeah, FL 33016, Officer: Luis Miguel Boscan, President

Dated: May 22, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–14118 Filed 5–27–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 10, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Grant County State Bancshares Inc., ESOP, Swayzee, Indiana; to retain voting shares of Grant County State Bancshares, Inc., Swayzee, Indiana, and thereby indirectly retain voting shares of Grant County State Bank, Swayzee, Indiana.

Board of Governors of the Federal Reserve System, May 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–14052 Filed 5–27–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. The 1855 Bancorp, New Bedford, Massachusetts; to acquire 100 percent of the voting shares of Sandwich Bancorp, Inc., Sandwich, Massachusetts, and thereby indirectly acquire Sandwich Cooperative Bank, Sandwich, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Triangle Bancorp, Inc., Raleigh, North Carolina; to acquire 100 percent of the voting shares of the successor by conversion to United Federal Savings Bank, Rocky Mount, North Carolina.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National Commerce Bancorporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of CBC Bancshares, Inc., Collierville, Tennessee, and thereby indirectly acquire The Citizens Bank, Collierville, Tennessee.

2. Union Planters Corporation, and Union Planters Holding Corporation, both of Memphis, Tennessee; to acquire 100 percent of the voting shares of, and thereby merge with AMBANC Corp., Vincennes, Indiana, and thereby indirectly acquire Ambank Indiana, N.A., Vincennes, Indiana, and Ambank Illinois, N.A., Robinson, Illinois.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Spring Hill Holdings Corporation, Longview, Texas, and Spring Hill (Delaware), Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Spring Hill State Bank, Longview, Texas.

Board of Governors of the Federal Reserve System, May 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–14051 Filed 5–27–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 22, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Whitney Holding Corporation, New Orleans, Louisiana; to merge with The First National Bancorp of Greenville, Inc., Greenville, Alabama, and thereby indirectly acquire First National Bank of Greenville, Greenville, Alabama.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice

President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Ceresco Bancorp., Ceresco, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of CerescoBank, Ceresco, Nebraska.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Arizona Bancshares, Inc., Flagstaff, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Flagstaff, Arizona (in organization).

Board of Governors of the Federal Reserve System, May 22, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–14129 Filed 5–27–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 10, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire Southwest Partners, Inc., San Diego, California, and thereby engage in mortgage lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–14053 Filed 5–27–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Royal Bank of Canada, Montreal, Canada; to acquire New Security First Network Bank, Miami, Florida, and Atlanta, Georgia, through its subsidiaries, RBC Holdings (USA) Inc., and RBC Holdings (Delaware) Inc., and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 22, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–14130 Filed 5–27–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–983]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans, ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance for projects administered by the Administration for Native Americans for Native Hawaiian organizations and groups.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1998 funds in the area of governance and social and economic development for Native Hawaiian entities. Financial assistance provided by ANA in support of such projects is intended to promote.

EFFECTIVE DATE: The closing date for submission of applications under this program announcement: July 1, 1998.

Native Hawaiian applicants who submitted applications for the May 1, 1998 SEDS closing previously announced in the **Federal Register**, Vol. 62, No. 186, September 25, 1997, pp. 50372–50386, have the opportunity to withdraw their application and submit the same proposal or a different proposal for this closing. Eligible Native Hawaiian entities who do not withdraw their application from the May 1, 1998 SEDS closing, will not be eligible to submit another application under this closing. To withdraw an application, notice must be provided to ANA no later than Midnight, June 15, 1998.

Notice to withdraw an application must be in writing and sent to: Jean Luka, Program Specialist, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop: HHH 348F, Washington, D.C. 20447. Telefax or e-mail will be accepted. The telefax number is (202) 690–7441 and the e-mail address is: jluka@acf.dhhs.gov.

All instructions to withdraw an application will be confirmed in writing.

FOR FURTHER INFORMATION CONTACT: Jean Luka, Program Specialist, Department of

Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop HHH 348F, Washington, DC 20447, tel: (202) 690–6324, Fax (202) 690–7441, e-mail: jluka@acf.dhhs.gov.

APPLICATION KIT: Application kits, (Approved by the OMB under control number 0980–0294, which expires August 31, 1999) containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop HHH 348F, Washington, D.C. 20447, Attention: 93612–983, Telephone: (202) 690–7776, Fax: (202) 690–7441.

Copies of this program announcement and many of the required forms may be obtained electronically at the ANA World Wide Web Page: http://www.acf.dhhs.gov/programs/ana/index.html

The printed **Federal Register** notice is the only official program announcement. Although, all reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears role responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

SUPPLEMENTARY INFORMATION

Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1998 funds for Native Hawaiian entities, authorized under the Native American Program Act of 1974 (ACT), as amended, to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders. Funding authorization is provided under sections 803(a), and 803(d) of the Native American Programs Act of 1974, as amended (Pub. L. 96–644. 88 Stat. 2324, 42 U.S.C. 2991b.).

The Administration for Native Americans assists eligible applicants to undertake 12 to 36 months development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency.

The Administration for Native Americans promotes the goal of self-sufficiency in Native American communities primarily through Social and Economic Development Strategies (SEDS) projects.

Eligible applicants may compete for a grant award in each of ANA's competitive areas (published in earlier program announcements). ANA continues its policy that an applicant may only submit one application per competitive funding area.

Part I—ANA Policy and Goals

Provides general information about ANA's policies and goals.

Part II—ANA Competitive Areas

Describes Competitive Area 4: Governance, Social and Economics Development (SEDS) for Native Hawaiian entities under which ANA is requesting applications:

A. Purpose and Availability of Funds;
B. Background;
C. Proposed Projects to be Funded;
D. Eligible Applicants;
E. Grantee Share of the Project; and
F. Review Criteria;

Part III General Application Information and Guidance

Provides important information and guidance that must be taken into account in developing an application:

A. Definitions;
B. General Considerations;
C. Activities That Cannot be Funded by ANA;
D. Multi-Year Projects;
E. Intergovernmental Review of Federal Programs;
F. The Application Process;
G. The Review Process;
H. General Guidance to Applicants;
I. Paperwork Reduction Act of 1995; and
J. Receipt of Applications

Part I—ANA Policy and Goals

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Natives Hawaiians, and other Native American Pacific Islanders.

The Administration for Native Americans believes that a Native American community is self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

The Administration for Native Americans also believes that the responsibility for achieving self-sufficiency resides with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner which is consistent with its established long-range goals.

The Administration for Native Americans' policy is based on three interrelated goals:

1. Governance: To assist tribal and Alaska Native village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

2. Economic Development: To foster the development of stable, diversified local economics and economic activities which will provide jobs and promote economic well-being.

3. Social Development: To support local access to, control of, and coordination of services and programs which safeguard the health, well-being and culture of people, provide support services and training so people can work, all of which are essential to a thriving and self-sufficient community.

Applicants under this program announcement may propose to undertake 12 to 36 month projects. For each type of project, applicants must describe a locally-determined strategy to carry out a proposed project with fundable objectives and activities. Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.

Part II—ANA Competitive Areas

This competitive area is in addition to other competitive areas identified in the **Federal Register**, Vol. 62, No. 186, September 25, 1997, pp. 50372–50386, and is designated as competitive area 4. This part describes ANA's funding authorities, priorities, special initiatives, special application requirements, and review criteria under competitive area 4. The standard requirements necessary for each application, as well as standard ANA program guidance and technical guidance are described in Part III of this announcement.

Native Hawaiian applicants who submitted applications for the May 1, 1998 SEDS closing previously announced in the **Federal Register**, Vol. 62, No. 186, September 25, 1997, pp. 50372–50386, have the opportunity to withdraw their application and submit the same proposal or a different proposal for this closing. Eligible Native Hawaiian entities who do not withdraw their application from the May 1, 1998 SEDS closing, will not be eligible to submit another application under this closing. To withdraw an application,

notice must be provided to ANA no later than Midnight, June 15, 1998.

Notice to withdraw an application must be in writing and sent to: Jean Luka, Program Specialist, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop: HHH 348F, Washington, D.C. 20447. Telefax or e-mail will be accepted. The telefax number is (202) 690–7441 and the e-mail address is jluka@acf.dhhs.gov. All instructions to withdraw an application will be confirmed in writing.

Under this competitive area, ANA will only accept one application per Native Hawaiian entity.

Hawaiian-Specific Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1998 funds for Native Hawaiian social and economic development projects. Approximately $2 million of financial assistance is anticipated under the competitive area for Native Hawaiian governance, social and economic development projects.

With the participation by the State of Hawaii's Office of Hawaiian Affairs and the statutory limitations placed on their funding, funding of successful applicants may be through a combination of state and federal funds.

All funded applications will receive federal awards and the entire project will be monitored by ANA.

ANA plans to award approximately 10–15 grants under this competitive area.

B. Background

ANA assists tribal and village governments, and Native American organizations in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

Based on the three ANA goals described in part I, ANA is implementing a special Native Hawaiian social and economic initiative through the joint efforts of the State of Hawaii's Office of Hawaiian Affairs. This special effort is designed to provide financial assistance at the local level or for community-specific projects aimed at improving a community's governance capabilities and for social and economic development.

The SEDS approach is based on ANA's program goals and incorporates two fundamental principles:

1. The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

2. Governance and social and economic development are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities. ANA's SEDS policy uses the following definitions:

- *Governmental infrastructure* includes the constitutional, legal, and administrative development requisite for independent governance.
- *Economic infrastructure* includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- *Social infrastructure* includes those components through which health, economic well-being and culture are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local social and economic development strategy is developed as part of a grant application.

A community's movement toward self-sufficiency could be jeopardized if a careful balance between governmental, economic and social development is not maintained. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services.

Conversely, inadequate support services and training could seriously impede productivity and local economic development. Additionally, the necessary infrastructures must be developed or expanded at the community level to support social and economic development and growth. In designing their social and economic development strategies, ANA encourages an applicant to use or leverage all available human, natural, financial, and physical resources.

In discussion their community-based, long-range goals. and the objectives for the proposed projects, ANA recommends that Native organizations include a description of what constitutes their specific community.

ANA encourages the development and maintenance of comprehensive strategic plans which are an integral part of attaining and supporting the balance necessary for successful activities that lead to self-sufficiency.

C. Proposed Projects To Be Funded

This section provides descriptions of activities which are consistent with the SEDS philosophy. Proposed activities should be tailored to reflect the governance, social and economic development, needs of the local community and should be consistent with supportive of the proposed project objectives. Examples of the types of projects that ANA may fund include, but are not limited to, projects that will:

Governance

- Increasing the ability of Hawaiian groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency (including strategic planning); and
- Increasing awareness of and exercising the legal rights to which Hawaiians are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, executive orders, administrative and court decisions, or as citizens of a particular state, territory, or of the United States.

Economic Development

- Development of a community economic infrastructure that will result in businesses, jobs, and an economic support structure.
- Establishment or expansion of businesses and jobs in areas such as tourism, specialty agriculture, light and/or heavy manufacturing, construction, housing and fisheries or aquaculture.
- Stabilizing and diversifying a Hawaiian community's economic base through business development ventures; and,
- Creation of microenterprises or private sector development.

Social Development

- Enhancing organizational capabilities to design or administer programs aimed at strengthening the social environment desired by the local community;
- Developing local models related to comprehensive planning and delivery of services;
- Developing programs or activities to preserve and enhance Hawaiian heritage and culture; and
- Establishing programs which involve extended families or Hawaiian

communities in activities that strengthen cultural identity and promote community development or self-esteem.

Other SEDS Relationships. ANA encourages projects designed to use the SEDS approach to help achieve current priorities of the Administration for Children and Families which are to:

- Address welfare reform such as moving families to work.
- Help ensure child support from both parents.
- Create access to afford child care for low income working families.
- Reach children earlier to promote full development, including links to Head Start, Early Head Start and Child Care.
- Help enroll children in quality Head Start and prepare them to be ready to learn.
- Provide safety, permanency and well-being for children and double the number of adoptions from the public child welfare system.

D. Eligible Applicants

Native Hawaiian applicants who submitted applications for the May 1,1998 SEDS closing previously announced in the **Federal Register,** Vol. 62, No. 186, September 25, 1997, pp. 50372–50386, have the opportunity to withdraw their application and submit the same proposal or a different proposal for this closing. Eligible Native Hawaiian entities who do not withdraw their application from the May 1, 1998 SEDS closing, will not be eligible to submit another application under this closing. To withdraw an application, notice must be provided to ANA no later than Midnight, June 15, 1998.

Notice to withdraw an application must be in writing and sent to: Jean Luka, Program Specialist, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop: HHH 348F, Washington, D.C. 20477. Telefax or e-mail will be accepted. The telefax number is (202) 690–7441 and the e-mail address is: jluka@acf.dhhs.gov All instructions to withdraw an application will be confirmed in writing.

Current Hawaiian ANA SEDS grantees whose project period ends on or before September 30, 1998 are eligible to apply for a grant award under this program.

The following organizations are eligible to apply under this competitive area:

- Non-profit private agencies serving Hawaiians (The populations served may be located on these islands or on the continental United States). The non-profit private agency must submit proof of its non-profit status in the application at the same time of submission. The non-profit agency can accomplish this by providing a copy of their agency's listing in the Internal Revenue Services (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the current valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

All agencies must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more or the following categories;

(1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

ANA will only accept one application which serves or impacts a Native Hawaiian community.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% of the total $375,000 project cost).

As per 45 CFR 74.2, In-Kind contributions are defined as ''the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.''

In addition, it may include other Federal funding sources where legislation or regulations authorize using specific types of funds for match and provided the source relates to the ANA project.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and program goals described in the Background section of this competitive area: include a social and economic development strategy which reflects the needs and specific circumstances of the local community; and address the specific developmental steps that the Hawaiian community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applicants which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. Examples of documentation include: community surveys; minutes of community meetings; questionnaires; and/or discussion position papers.

Applications from Native Hawaiian organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. Native Hawaiian organizations should define their membership and describe how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

- ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not

factually establish the authenticity of other resources.

• ''Letters and other documents of commitment'' are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resource.)

(2) Organizational Capabilities and Qualifications. (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Objective Work Plan and in the proposed budget. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes and/or proposed position descriptions demonstrate that the proposed staff are or will be qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (45 points) The application proposes specific project Objective Work Plan(s) with activities related to each specific objective.

The Objective Work Plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

• Is measurable and/or quantifiable in terms of results or outcomes;

• Supports the community's social and economic development strategy;

• Clearly relates to the community's long-range goals;

• Can be accomplished with the available or expected resources during the proposed project period;

• Indicates when the objective, and major activities under each objective, will be accomplished;

• Specifies who will conduct the activities under each objective; and

• Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

• Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;

• Included and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and

• Requests funds which are appropriate and necessary for the scope of the proposed project.

For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

Part III—General Application Information and Guidance

A. Definitions

References in this program announcement are based on the following definitions:

• *A multi-purpose community-based Native American organzation* is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human serviced such as health care, day care, counseling, education, and training.

• *A multi-year project* is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

• *Budget Period* is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

• *Core administration* is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

• *Real Property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

• *Construction* is the term which specifies a project supported rough a discretionary grant or a cooperative agreement, to support the initial building of a facility.

B. General Considerations

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants musts show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

Costs of fund raising, including financial campaign, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be

treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. ''Completed'' means that the project ANA funded is finished, and the desired result(s) have been attained. ''Self-sustaining'' means that a project will continue without outside resources. ''Supported by other than ANA funds'' means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

C. Activities That Cannot Be Funded by ANA

The Administration for Native Americans does not fund:

- Projects that operate indefinitely or require ANA funding on a recurring basis.
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.
- The support of on-going social service delivery programs or the expansion or continuation of existing social service delivery programs.
- ANA will not fund the purchase of real property.
- ANA will not fund construction.

Objectives or activities for the support of core administration of an organization. ''Core administration'' is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. However, functions and activities that are clearly project related are eligible for grant funding.

For example, the management and administrative functions necessary to carry out an ANA approved project are not considered ''core administration'' and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section H, General Guidance to Applicants, below.

D. Multi-Year Projects

A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects as defined in Section D of this Part. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-to-three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

E. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

F. The Application Process

1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, SW., Mail Stop HHH 348F, Washington, D.C. 20447, Attention: 93612–983, Telephone: (202) 690–7776, fax (202) 690–7441.

Copies of this program announcement and many of the required forms may be obtained electronically at the ANA World Wide Web Page: www.acf.dhhs.gov/programs/ana/index.html

The printed **Federal Register** notice is the only program announcement. Although all reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of the Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

2. Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the specific closing date of each ANA competitive area to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW, Mail Stop 6C–462, Washington, DC 20447, Attention: Lois B. Hodge, ANA No. 93612–983.

Hand delivered applications are accepted between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, if they are either received on or before the deadline date or postmarked on or before the established closing date at: Administration for Children and Families, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024.

The application (Form 424) must be signed by an individual authorized (1) to act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Native Hawaiian applicants who submitted applications for the May 1, 1998 SEDS closing previously announced in the **Federal Register**, Vol. 62, No. 186, September 25, 1997, pp. 50372–50386, have the opportunity to withdraw their application and submit the same proposal or a different proposal for this closing. Eligible Native Hawaiian entities who do not withdraw their application from the May 1, 1998 SEDS closing, will not be eligible to submit another application under this closing. To withdraw an application, notice must be provided to ANA no later than Midnight, June 15, 1998.

Notice to withdraw an application must be in writing and sent to: Jean Luka, Program Specialist, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop: HHH 348F, Washington, D.C. 20447. Telefax or e-mail will be accepted. The

telefax number is (202) 690–7441 and the e-mail address is: jluka@acf.dhhs.gov.

All instructions to withdraw an application will be confirmed in writing.

Each eligible Native Hawaiian organization may compete for a grant award in each of ANA's competitive funding areas (eg. SEDS, Native Languages Preservation and Enhancement). However, no applicant may receive more than one grant in each area.

If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

3. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants: Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA. An incomplete application is one that is: Missing Form SF 424; or Does not have a signature on Form SF 424; or Does not include proof of non-profit status, if applicable.

- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with Native Hawaiian communities and organizations, evaluate each application using the published criteria in each funding competitive area. As a result of the review, normalized numerical score will be assigned to each application. A normalized score reflects the average score from the reviewers, adjusted to reflect the average score from the panels.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- Due to the participation and source of funding from OHA, funding will be from either funding source with limitations as applicable.
- ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a critique including recommendations for improving the application.
- Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

G. The Review Process

1. Initial Application Review

- Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:
- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application is signed and submitted by the deadline explained in section G, Application Due Date, in each competitive area of this announcement;
- The applicant has provided written correspondence that they have withdrawn from the May 1, 1998 SEDS closing previously announced in the **Federal Register**, Vol. 62, No. 186, September 25, 1997, pp. 50372–50386.
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in-depth evaluation and the project described is an allowable type. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit). Applications subjected to the pre-review described above which fail to satisfy one or more of the listed requirements will be ineligible or otherwise excluded from competitive evaluation.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

3. Appeal of Ineligibility

Applicants who are initially excluded from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

H. General Guidance To Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement.
- Projects will not be ranked on the basis of general financial need.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, Native Hawaiian entities are encouraged to include a description of what constitutes their specific ''community.''
- Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. The type of community you serve will determine the type of documentation necessary. Examples of documentation include: community surveys; minutes of community meetings; questionnaires; and/or discussion/position papers.
- Applications from Native Hawaiian organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and

the community's long-range goals or plan.

• The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.

• Supporting documentation, including letters of support, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.

• In the ANA Project Narrative, Section A of the application package, ''Resources Available to the Proposed Project,'' the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or a new business, if the applicant includes a business plan that clearly describes its feasibility and the approach for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these materials as guides in developing a proposal for an economic development project or business that is part of the application.

• Applications which were not funded under a previous closing date and revised for resubmission should make reference to the changes, or reasons for not making changes, in their current application which are based on ANA panel review comments.

2. Technical Guidance

• It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• For purposes of developing an application, applicants should plan for a project start date approximately 60 days after the closing date under which the application is submitted.

• The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

• If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.

• The Administration for Native Americans will accept only one application, per competitive area, from any one applicant. If an eligible applicant sends in two applications for the same competitive funding area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from a Native Hawaiian organization must be from the governing body of the organization.

• The Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92).

• Applicants proposing multi-year projects must fully describe each year's project objectives and activities.

• Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

• The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per ''unit.'' During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and deemed not appropriate to the needs of the project by ANA.

• Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of meeting application deadline.

3. Grant Administrative Guidance

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.

• An application with an original signature and two additional copies are required.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the request. ANA may negotiate a reduction of the project period. The approved project period is shown on block 9 of a Financial Assistance Award.

• Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

• For one-year projects, an applicant may propose up to a 17 month project period. However, the project period for the first year of a multi-year project may only be 12 months.

4. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

• Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. However, ANA is not

interested in funding ''wish lists'' of business possibilities. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.

- Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions.
- Project goals which are not responsive to one or more of the funding competitive areas.
- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.
- Project goals which are not responsive to one or more of the funding competitive areas.
- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.
- ANA will not fund investment capital for purchase or takeover of an existing business, for purchase or acquisition of a franchise, or for purchase of stock or other similar investment instruments.
- Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.
- Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization.

I. Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 29.5 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collections are included in the program announcement: ANA grant applications, OMB control number 0980–0204, expires August 31, 1999.

An agency may conduct or sponsor, and a person is not required to respond to, collection of information unless it displays a currently valid OMB control number.

J. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section F, The Application Process: Application Submission. The Administration for Native Americans cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ANA electronically will not be accepted regrdless of date or time of submission and time of receipt. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

Applications and related materials postmarked after the closing date will be classified as late; and not considered in the current competition.

1. Deadlines

- Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, D.C. 20447.
- Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to 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.
- Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date or postmarked on or before the deadline date, Monday through Friday (excluding Federal holidays), between the hours of 8:00 am and 4:30 pm at: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)
- ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.
- No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late Applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadlines

The Administration for Children and Families may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is a widespread disruption of the mails. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

(Catalog of Federal Domestic Assistance Program Numbers: 93:612 Native American Programs)

Dated: May 22, 1998.

Gary N. Kimple,

Commissioner, Administration for Native Americans.

[FR Doc. 98–14132 Filed 5–27–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0304]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements governing applications for FDA approval to market a new drug.

DATES: Submit written comments on the collection of information by July 27, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration,

12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Applications for FDA Approval to Market a New Drug—21 CFR Part 314—(OMB Control Number 0910–0001)—Reinstatement

Under section 505(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(a)), a new drug may not be commercially marketed in the United States, imported, or exported from the United States, unless an approval of an application filed with FDA under section 505(b) or (j) of the act is effective with respect to such drug. Section 505(b) and (j) of the act requires a sponsor to submit to FDA a new drug application (NDA) containing, among other things, full reports of investigations that show whether or not the drug is safe and effective for use, a full list of articles used as components in the drug, a full description of manufacturing methods, samples of the drugs required, specimens of the labeling proposed to be used, and certain patent information as applicable. Under the act, it is the sponsor's responsibility to provide the information needed by FDA to make a scientific and technical determination that the product is safe and effective.

This information collection approval request is for all information requirements imposed on sponsors by the regulations under part 314 (21 CFR part 314) , who apply for approval of a NDA in order to market or to continue to market a drug.

The following sections in part 314 set forth the specific format and content requirements for NDA's.

Section 314.50(a) requires that an application form (Form FDA 356h) must be submitted that includes basic introductory information about the drug as well as a checklist of enclosures. (Section 314.50(a) is already approved by OMB under 0910–0338 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.50(b) requires that an index must be submitted with the archival copy of the application and that it must reference certain sections of the application.

Section 314.50(c) requires that a summary of the application must be submitted that presents a good general synopsis of all the technical sections and other information in the application.

Section 314.50(d) requires that the NDA contain the following technical sections about the new drug: Chemistry, manufacturing, and controls; nonclinical pharmacology and toxicology; human pharmacokinetics and bioavailability; microbiology; clinical data; and statistical section.

Section 314.50(e) requires that the applicant must submit samples of the drug if requested by FDA. In addition, the archival copy of the application must include copies of the label and all labeling for the drug.

Section 314.50(f) requires that case report forms and tabulations must be submitted with the archival copy.

Section 314.50(h) requires that patent information as described under § 314.53 must be submitted with the application. (Section 314.50(h) is already approved by OMB under 0910–0305 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.50(i) requires that a patent certification information must be submitted in 505(b)(2) applications for patents claiming the drug, drug product, method of use, or method of manufacturing. (Section 314.50(i) is already approved by OMB under 0910–0305 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.50(j) requires that applicants that request a period of marketing exclusivity must submit certain information with the application. (Section 314.50(j) is already approved by OMB under 0910–0305 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.50(k) requires that an archival, review, and field copy of the application must be submitted.

Section 314.52 requires that notice of certification of invalidity or noninfringement of a patent to patent holders and NDA holders must be sent by 505(b)(2) applicants and must follow certain content and notification procedures. (Section 314.52 is already approved by OMB under 0910–0305 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.54 sets forth the content requirements for applications filed under section 505(b)(2) of the act.

Section 314.60 sets forth reporting requirements for sponsors who amend an unapproved application.

Section 314.65 states that the sponsor must notify FDA when withdrawing an unapproved application.

Sections 314.70 and 314.71 require that supplements must be submitted to FDA for certain changes to an approved application.

Section 314.72 requires sponsors to report to FDA any transfer of ownership of an application.

Section 314.80(c)(1) and (c)(2) sets forth requirements for expedited adverse drug experience postmarketing reports and followup reports, as well as for periodic adverse drug experience postmarketing reports (Form FDA 3500A). (Section 314.80(c)(1) and (c)(2) is already approved by OMB under 0910–0230 and 0910–0291 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.80(c)(1)(iii) and (i) establishes recordkeeping requirements for reports of postmarketing adverse drug experiences. (Section 314.80(c)(1)(iii) and (i) is already approved by OMB under 0910–0230 and 0910–0291 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.81(b)(1) requires that field alert reports must be submitted to FDA (Form FDA 3331).

Section 314.81(b)(2) requires that annual reports must be submitted to FDA (Form FDA 2252).

Section 314.81(b)(3)(i) requires that drug advertisements and promotional labeling must be submitted to FDA (Form FDA 2253). (Section 314.81(b)(3)(i) is already approved by OMB in ''Transmittal of Advertisements and Promotional Labeling for Drugs and Biologics for Human Use,'' which published in the **Federal Register** of October 24, 1997 (62 FR 55408), and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.81(b)(3)(iii) sets forth reporting requirements for sponsors who withdraw an approved drug product from sale. (Section 314.81(b)(3)(iii) is already approved by OMB under 0910–0045 and is not included in the hour burden estimates in Table 1 of this document).

Section 314.90 sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.50 through 314.81. (The information collection hour burden estimate for NDA waiver requests is included in Table 1 of this document under estimates for §§ 314.50, 314.60, 314.70, and 314.71.)

Section 314.93 sets forth requirements for submitting a suitability petition in accordance with 21 CFR 10.20 and 10.30. (Section 314.93 is already approved by OMB under 0910–0183 and is not included in the hour burden estimates in Table 1 of this document.)

The following sections in part 314 set forth requirements when submitting an abbreviated new drug application (ANDA).

Section 314.94(a) and (d) requires that an ANDA must contain the following and information: Application form; table of contents; basis for ANDA submission; conditions of use; active ingredients; route of administration, dosage form, and strength; bioequivalence; labeling; chemistry, manufacturing, and controls; samples; and patent certification.

Section 314.95 requires that notice of certification of invalidity or noninfringement of a patent to patent holders and NDA holders must be sent by ANDA applicants. (Section 314.95 is already approved by OMB under 0910–0305 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.96 sets forth requirements for amendments to an unapproved application.

Section 314.97 sets forth requirements for submitting supplements to an approved ANDA for changes that require FDA approval.

Section 314.98(a) sets forth postmarketing adverse drug experience reporting and recordkeeping requirements. (Section 314.98(a) is already approved by OMB under 0910–0230 and 0910–0291 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.98(c) requires other postmarketing reports: Field alert reports (Form FDA 3331), annual reports (Form FDA 2252), and advertisements and promotional labeling (Form FDA 2253). (The information collection hour burden estimate for field alert reports is included in Table 1 of this document under § 314.81(b)(1); the estimate for advertisements and promotional labeling is included under § 314.81(b)(3)(i).)

Section 314.99(a) requires that sponsors must comply with certain reporting requirements for withdrawing an unapproved ANDA and for a change in ownership of an ANDA.

Section 314.99(b) sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.92 through 314.99. (The information collection hour burden estimate for ANDA waiver requests is included in Table 1 of this document under estimates for §§ 314.94(a) and (d), 314.96, and 314.97.)

Section 314.101(a) requires that, if FDA refuses to file an application, the applicant may request an informal conference with FDA and request that the application be filed over protest.

Section 314.107(c)(4) requires notice to FDA by ANDA or 505(b)(2) application holders of any legal action concerning patent infringement. (Section 314.107(c)(4) is already approved by OMB under 0910–0305 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.107(e)(2)(iv) requires that an applicant must submit a copy of the entry of the order or judgement to FDA within 10 working days of a final judgement. (Section 314.107(e)(2)(iv) is already approved by OMB under 0910–0305 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.107(f) requires that an ANDA or 505(b)(2) applicants must notify FDA of the filing of any legal action filed within 45 days of receipt of the notice of certification. A patent owner may also notify FDA of the filing of any legal action for patent infringement. The patent owner or approved application holder who is an exclusive patent licensee must submit to FDA a waiver that waives the opportunity to file a legal action for patent infringement. (Section 314.107(f) is already approved by OMB under 0910–0305 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.110(a)(3) and (a)(4) requires after receipt of an FDA approvable letter, an applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (Section 314.110(a)(3) and (a)(4) is included under the parts 10 through 16 (21 CFR part 10 through 16) hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.110(a)(5) requires that, after receipt of an approvable letter, an applicant may notify FDA that it agrees to an extension of the review period so that it can determine whether to respond further.

Section 314.110(b) requires after receipt of an approvable letter, an ANDA applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (Section 314.110(b) is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.120(a)(3) requires that, after receipt of a not approvable letter, an applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (Section 314.120(a)(3) is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.120(a)(5) requires that, after receipt of a not approvable letter, an applicant may notify FDA that it agrees to an extension of the review period so that it can determine whether to respond further.

Section 314.122(a) states that an ANDA or a suitability petition that relies on a listed drug that has been voluntarily withdrawn from sale must be accompanied by a petition seeking a determination whether the drug was withdrawn for safety or effectiveness reasons. (Section 314.122(a) is already approved by OMB under 0910–0183 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.122(d) sets forth requirements for relisting petitions for unlisted discontinued products. (Section 314.122(d) is already approved by OMB under 0910–0183 and is not included in the hour burden estimates in Table 1 of this document).

Section 314.126(c) sets forth requirements for a petition to waive criteria for adequate and well-controlled studies. (Section 314.126(c) is already approved by OMB under 0910–0183 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.151(a) and (b) sets forth requirements for the withdrawal of and approval of an ANDA and the applicant's opportunity for a hearing and submission of comments. (Section 314.151(a) and (b) is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and it is not included in the hour burden estimates in Table 1 of this document.)

Section 314.151(c) sets forth the requirements for withdrawal of approval of an ANDA and the applicant's opportunity to submit written objections and participate in a limited oral hearing. (Section 314.151(c) is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.152(b) sets forth the requirements for suspension of an ANDA when the listed drug is voluntarily withdrawn for safety and effectiveness reasons, and the applicant's opportunity to present comments and participate in a limited oral hearing. (Section 314.152(b) is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.161(b) and (e) sets forth the requirements for submitting and petition to determine whether a listed drug was voluntarily withdrawn from sale for safety or effectiveness reasons. (Section 314.161(b) and (e) is already approved by OMB under 0910–0183 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.200(c), (d), and (e) requires that applicants or others subject to a notice of opportunity for a hearing who wish to participate in a hearing must file a written notice of participation and request for a hearing as well as the studies, data, and so forth, relied on. Other interested persons may also submit comments on the notice. This section also sets forth the content and format requirements for the applicants' submission in response to notice of opportunity for hearing. (Section 314.200(c), (d), and (e) is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.200(f) requires that participants in a hearing may make a motion to the presiding officer for the inclusion of certain issues in the hearing. (Section 314.200(f) is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.200(g) requires that a person may respond to a proposed order from FDA denying a request for a hearing by providing sufficient data, information, and analysis to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing. (Section 314.200(g) is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.420 states that an applicant may submit to FDA a drug master file in support of an application, in accordance with certain content and format requirements.

Section 314.430 states that data and information in an application are disclosable under certain conditions, unless the applicant shows that extraordinary circumstances exist. (Section 314.430 is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.530(c) and (e) requires that, if FDA withdraws approval of a drug approved under the accelerated approval procedures, the applicant has the opportunity to request a hearing and submit data and information. (Section 314.530(c) and (e) is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.530(f) requires that an applicant must first submit a petition for stay of action before requesting an order from a court for a stay of action pending review. (Section 314.530(f) is already approved by OMB under 0910–0194 and is not included in the hour burden estimates in Table 1 of this document.)

Section 314.550 requires that applicants must submit all promotional materials to FDA for consideration during the preapproval review period. (Section 314.550 is already approved by OMB in ''Transmittal of Advertisements and Promotional Labeling for Drugs and Biologics for Human Use,'' which published in the **Federal Register** (62 FR 55408), and is not included in the hour burden estimates in Table 1 of this document.)

Based on information provided by the pharmaceutical industry for the number of ''hours per response,'' and based on submissions collected and data tabulated by FDA for the ''number of respondents,'' the ''number of responses per respondent,'' and the number of ''total annual responses,'' FDA estimates the burden of this collection of information as follows:

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section/Form	No. of Respondents	No. of Responses per Respondents	Total Annual Responses	Hours per Response	Total Hours
314.50(b), (c), (d), (e), (f), and (k)	83	1.49	124	1,600	198,400
314.54	4	1.25	5	300	1,500
314.60	144	16.89	2,432	80	194,560
314.65	18	1.28	23	2	46
314.70 and 314.71	418	5.33	2,229	300	668,700
314.72	59	2.17	128	2	256
314.81(b)(1) (FDA 3331)	140	5	700	48	33,600
314.81(b)(2) (FDA 2252)	269	9.06	2,438	40	97,520
314.94(a) and (d)	117	3.96	464	480	222,720
314.96	315	12.43	3,915	80	313,200
314.97	152	19.74	3,000	80	240,000

TABLE 1.—Estimated Annual Reporting Burden[1]—Continued

21 CFR Section/Form	No. of Respondents	No. of Responses per Respondents	Total Annual Responses	Hours per Response	Total Hours
314.98(c) (FDA 2252)	265	17.17	4,551	40	182,040
314.99(a)	46	13.04	600	2	1,200
314.110(a)(5)	55	1.13	62	8	496
314.120(a)(5)	26	1.12	29	8	232
314.420	450	1.11	500	8	4,000
Total Burden Hours					2,158,470

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14050 Filed 5–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0273]

Texas Vitamin Co., RSR Laboratories Inc.; Proposal to Withdraw Approval of New Animal Drug Applications; Opportunity for Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing an opportunity for hearing on a proposal to withdraw approval of new animal drug application (NADA) 117–688 held by Texas Vitamin Co. and NADA 140–850 held by RSR Laboratories Inc., because the applicants have failed to submit required periodic reports. FDA has been unable to locate the firms and to contact them at their previous business addresses.

DATES: Requests for hearing with data, analysis, and information relied upon to justify a request for hearing are due by June 29, 1998.

ADDRESSES: Requests for hearing filed in response to this notice should be identified with Docket No. 98N–0273 and sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Glenn A. Peterson, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0224; or

Mukund R. Parkhie, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6642.

SUPPLEMENTARY INFORMATION: An applicant is required to report periodically to the Center for Veterinary Medicine (CVM) concerning each applicant's approved NADA as provided in § 510.300 (21 CFR 510.300). Texas Vitamin Co., P.O. Box 18417, 10695 Aledo St., Dallas, TX 57218 (last known address), is sponsor of NADA 117–688. RSR Laboratories Inc., 501 Fifth St., Bristol, TN 37620 (last known address), is sponsor of NADA 140–850. The sponsors have not submitted the required periodic reports for their NADA's and have not responded to CVM requests for submission of those reports. Letters to the firms have been returned indicating the firms are no longer at the above-listed addresses.

Therefore, notice is given to Texas Vitamin Co. and RSR Laboratories Inc., and to all other interested persons who may be adversely affected, that the Director, CVM, proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)) withdrawing approval of NADA's 117–688 and 140–850 and all amendments and supplements thereto on the ground that the applicants have failed to submit the reports required under § 510.300. Upon withdrawal of the NADA's, the applicable parts of the regulations in 21 CFR 510.600(c)(1) and (c)(2) and 520.580(b)(1) will be revoked.

In accordance with the provisions of section 512 of the act and regulations issued under it (parts 510 and 514 (21 CFR parts 510 and 514)), and under authority delegated to the Director, CVM (§ 5.84 (21 CFR 5.84)), CVM hereby provides the applicants an opportunity for hearing to show why approval of the NADA's and all amendments and supplements thereto should not be withdrawn (and the corresponding regulations revoked) and an opportunity to raise, for administrative determination, all issues relating to the legal status of the application and drug products approved thereunder. Any hearing would be subject to the provisions of 21 CFR part 12.

An applicant who decides to seek a hearing shall file on or before June 29, 1998, a written notice of appearance, request for hearing, and data, information, and analyses relied on to justify a hearing as specified in § 514.200.

Procedures and requirements governing this notice of opportunity for hearing, notice of appearance and request for hearing, submission of information and analysis to justify a hearing, other comments, and a grant or denial of a hearing, are contained in § 514.200.

The failure of an applicant to file a timely, written notice of appearance and request for hearing as required by § 514.200 constitutes an election by the applicant not to make use of the opportunity for hearing concerning the proposed action and constitutes a waiver of any contentions about the legal status of the product. In such case, the Director, CVM, under the authority delegated to him in § 5.84(a)(2), will, without further notice, enter a final order withdrawing approval of the application. Thereafter, the product may not be legally marketed, and FDA may begin appropriate regulatory action to remove it from the market. Any new animal drug product that is not the subject of an approved application is subject to regulatory action at any time.

A request for hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that justifies a hearing. Reports submitted to remedy the deficiencies must be complete in all respects as required by § 510.300. If the reports submitted are not complete or there is no genuine and substantial issue of fact that precludes the withdrawal of approval, or the request for hearing is not made in the required format or with the required analysis, the Commissioner of Food and Drugs will enter summary judgment against the person who

requests the hearing, making findings and conclusions, and denying a hearing. If a hearing is requested and is justified by the sponsor's response to this notice, the issues will be defined, an administrative law judge will be assigned, and a written notice of the time and place at which the hearing will begin will be issued.

All submissions under this notice shall be filed in two copies. Except for information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512(e) (21 U.S.C. 360b(e))) and under authority delegated to the Director, Center For Veterinary Medicine (21 CFR 5.84).

Dated: May 20, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–14103 Filed 5–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Pulmonary-Allergy Drugs and Endocrinologic and Metabolic Drugs Advisory Committees; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Joint meeting of the Pulmonary-Allergy Drugs and the Endocrinologic and Metabolic Drugs Advisory Committees.

General Function of the Committees: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on July 30, 1998, 8 a.m. to 5 p.m., and on July 31, 1998, 8 a.m. to 3:45 p.m.

Location: Bethesda Marriott Hotel, Grand Ballroom, 5151 Pooks Hill Rd., Bethesda, MD.

Contact Person: Leander B. Madoo or Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 12545 and 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 30, 1998, the committees will: (1) Discuss the impact of orally inhaled and intranasal corticosteroids on growth in children, (2) hear from invited experts regarding the process of normal growth and development in children and how various factors including corticosteroids may impact on it, and (3) review examples from industry of completed ''growth studies'' testing the various inhaled and intranasal corticosteroid drug products. On July 31, 1998, the agency will: (1) Present the proposed ''class labeling'' for inhaled and intranasal corticosteroid drug products, (2) review the data which support it, and (3) lead a general scientific discussion among all meeting participants to reach a consensus concerning appropriate labeling for these products and recommendations for the design and conduct of future clinical trials which assess growth.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 23, 1998. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4:30 p.m., on July 30, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 23, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 20, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–14106 Filed 5–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Healthy Start Initiative—Phase II Limited Competition for the Mississippi Delta

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of availability of funds for a limited competition for the ten counties of Mississippi known as the Mississippi Delta.

SUMMARY: The HRSA announces the availability funds in fiscal year 1998 for a single cooperative agreement for the replication of the Healthy Start Initiative (HSI) Phase II within the ten counties of Mississippi known as the Mississippi Delta. The Healthy Start Initiative is a program of projects which, since FY 1991, has developed and implemented community-based strategies to reduce infant mortality in areas with a high incidence of infant mortality. The purpose of Healthy Start-Phase II is to operationalize successful infant mortality reduction strategies developed during the demonstration phase and to launch Healthy Start projects in new rural and urban communities (i.e., communities currently without a Healthy Start Initiative-funded project). Within the HRSA, the Healthy Start Initiative is administered by the Maternal and Child Health Bureau (MCHB). This cooperative agreement for Healthy Start-Phase II in the Mississippi Delta will be made under the program authority of Section 301 of the Public Health Service Act. Funds for this award were appropriated under Public Law 104–208.

To continue Healthy Start efforts to meet critical maternal and child health needs in the Mississippi Delta, public and nonprofit private organizations serving the following counties in the Mississippi Delta—Humphries, Holmes, Leflore, Bolivar, Quitman, Sunflower, Tallahatchie, Washington, Cohoma, and Tunica—are encouraged to apply. Applicants must provide services to all ten counties. Only one applicant organization will be funded.

The project period is three years, subject to continuing availability of funds.

ADDRESSES: Interested parties may contact the HRSA Grants Application Center for an application package. Requests should specify the Healthy Start Initiative—Phase II limited competition within the Mississippi Delta (CFDA #93.926b). The Center may

be contacted by: telephone: 1–888–300-HRSA, FAX: 301–309–0579, or e-mail: HRSA.GAC@x.netcom.com. Completed applications should be returned to: Grants Management Officer (CFDA #93.926b), HRSA Grants Application Center, 40 West Gude Drive, Suite 100, Rockville, Maryland 20850.

DATES: The application deadline date is Thursday, July 1, 1998.

Dated: May 21, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–14091 Filed 5–27–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 Eye Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Clinical Research.
Date: May 27, 1998.
Time: 2:00 p.m.
Place: Telephone Conference, Executive Plaza South, Room 350.
Contact Person: Andrew P. Mariani, Ph.D., Executive Plaza South, Room 350, 6120 Executive Blvd., Bethesda, MD 20892–7164, (301) 496–5561.
Purpose/Agenda: Review of Grant Applications.

Name of SEP: Clinical Research.
Date: May 29, 1998.
Time: 8:30 a.m.
Place: National Eye Institute, Executive Plaza South, Room 350, 6120 Executive Blvd., Bethesda, MD 20892–7164.
Contact Person: Andrew P. Mariani, Ph.D., Executive Plaza South, Room 350, 6120 Executive Blvd., Bethesda, MD 20892–7164, (301) 496–5561.
Purpose/Agenda: Review of 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. 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 fifteen 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 No. 93.867, Vision Research: National Institutes of Health)

Dated: May 21, 1998.

LaVerne Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–14137 Filed 5–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel Program Project.
Date: June 22, 1998.
Time: 8:00 am to 7:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: AFTAB A. ANSARI, PHD, NIAMS, 45 CENTER DRIVE, 5AS 25U.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–14135 Filed 5–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review and evaluate a contract proposal.
Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.
Date of Meeting: May 21, 1998 (Telephone Conference).
Time: 10:00 a.m.
Place of Meeting: Willco Building, Suite 400, 6000 Executive Boulevard, Rockville, MD.
Contact Person: Sean O'Rourke, 6000 Executive Boulevard, Suite 409, Rockville, MD 20892–7003, 301–443–2861.

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 Sections 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. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: May 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–14136 Filed 5–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Noncompetitive Antagonists of Dopamine Reuptake Inhibitors To Treat Drug Addiction

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: PCT Application Serial No. PCT/US97/19758, entitled, ''Sustained Release Derivatives of Hydroxylated Analogs of Substituted 1-(2-[Bis(aryl)methoxy]ethyl)-piperazines and -homopiperazines and Their Use as

Noncompetitive Antagonists of Dopamine Reuptake Inhibitors'', based on U.S. Provisional Patent Application Serial No. 60/030,248, filed October 31, 1996, to Trillium Neuroscience Inc., having a place of business in Washington, DC. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before July 27, 1998 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Leopold J. Luberecki, Jr., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Box 13, Rockville, MD 20852–3804; Telephone: (301) 496–7735, ext. 223; Facsimile: (301) 402–0200.

SUPPLEMENTARY INFORMATION: In an effort to develop an efficacious treatment for cocaine addiction, this invention describes sustained-release derivatives of hydroxylated analogs of substituted 1-(2-[bis(aryl)methoxy]ethyl)-piperazines and -homopiperazines. These compounds bind to the dopamine transporter but do not inhibit dopamine reuptake, thereby providing a sustained increase in the level of extracellular dopamine and providing the drug abuser with some relief from drug craving due to dopamine deficiency, yet they simultaneously inhibit cocaine from further elevating the level of extracellular dopamine and increasing the probability of additional toxic side effects. The invention provides the sustained-release derivatives, pharmaceutical compositions comprising the same, and a method of using such sustained released derivatives as a treatment for cocaine addiction.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the use of the invention for the development of pharmaceutical compounds to treat drug addiction.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 18, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–14139 Filed 5–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences National Toxicology Program; Request for Comments on Chemicals Nominated to the National Toxicology Program (NTP) for Toxicology Studies—Recommendations by the Interagency Committee for Chemical Evaluation and Coordination (ICCEC) for Study, No Studies, or Deferral to Obtain Additional Information

Background

As part of an effort to earlier inform the public and obtain input into the selection of chemicals for evaluation, the National Toxicology Program (NTP) routinely seeks public input on (1) chemicals nominated to the Program for toxicological studies, and (2) the testing recommendations made by the ICCEC, the Federal interagency committee that serves as the first level of review for nominations. Summaries of the ICCEC's recommendations and public comments received on the nominated chemicals are next presented to the NTP Board of Scientific Counselors (the Program's external scientific advisory committee) for their review and comment in an open, public session. The ICCEC recommendation, Board recommendations, and public comments are incorporated into the recommendations that are then submitted to the NTP Executive Committee, the Federal interagency policy oversight body. The Executive Committee reviews and approves action to move forward to test, defer, or delete on each of the nominated chemicals for the various types of study, and recommends priorities.

Request for Comment

Interested parties are encouraged to comment on the recommendations and provide information on the chemicals listed below. The Program would welcome receiving toxicology and carcinogenesis information from completed or ongoing studies, and information on planned studies, as well as current production data, human exposure information, use patterns, and environmental occurrence for any of the chemicals listed in this announcement. To provide comments or information, please contact Dr. William Eastin at the address given below within 60 days of the appearance of this announcement.

At their meeting on April 23, 1998, the ICCEC reviewed 18 agents nominated to the NTP for consideration to study and recommended 11 chemicals for absorption, toxicity, or carcinogenicity studies, recommended that no studies be performed on 4 chemicals, and deferred 3 substances pending receipt of test data from other organizations or from related studies in progress by the NTP, and information on production, exposure, and use patterns. Chemicals with CAS numbers, nomination source types of studies under consideration, and other information are given in the following tables.

Contact may be made by mail to: Dr. William Eastin, NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709; by telephone at (919) 541–7941; by FAX at (919) 541–3687; or by email at Eastin@NIEHS.GOV.

Dated: May 18, 1998.

Samuel H. Wilson,

Deputy Director, National Toxicology Program.

Attachment

CHEMICALS NOMINATED TO THE NTP FOR STUDY, AND TESTING RECOMMENDATIONS MADE BY THE ICCEC ON APRIL 23, 1998

Chemical [CAS No.]	Nominated by	Recommended for	Study rationale; other information
Chemicals Recommended for Testing			
Bixin (Annatto) [6973–79–5 (1393–63–1)].	NCI	—Genetic toxicity —Subchronic toxicity	—Widespread human exposure. —Natural product.
Diethyl amine [109–89–7]	NIEHS	—Subchronic toxicity —Ocular toxicity —Carcinogenicity	—High production. —Also present in foods. —Widespread human exposure.
Dihydroxyacetone [96–26–4].	NCI	—Skin absorption	—Widely used as component of tanning compounds. —Natural product of metabolism.
Fenchone, α-, l-, d-, [1195–79–5 (α-); 7787–20–4 (l-); 4695–62–9 (d-)].	NCI	—Genetic toxicity —Defer prechronic studies pending completion and evaluation of NTP camphor study	—Natural product. —Used as flavoring. —Widespread human exposure. —Production, usage, and exposure data requested.
Isopropylamine [75–31–0]	NIEHS	—Subchronic toxicity —Ocular toxicity —Carcinogenicity (through TSCA–ITC)	—High production. —Also present in foods. —Widespread human exposure.
Pulegone [89–82–7] Menthofuran (494–90–6].	NIEHS	—Toxicologic characterization —Carcinogenicity study with pulegone	—Natural product. —Used as flavoring. —Widespread human exposure. —Menthofuran is a metabolite of pulegone.
α-Solanine [20562–02–1	(1)	—Carcinogenicity	—Natural product. —Widespread human exposure. —Known human toxicant.
α-Thujone (546–80–5)	NCI	—Genetic toxicity —Neurotoxicity —Subchronic toxicity —Multigeneration reproductive toxicity	—Natural product. —Component of food flavoring additives. —Banned as direct food additive by FDA.
Triethylamine [121–44–8]	UAW	—Subchronic toxicity —Ocular toxicity —Carcinogenicity (through TSCA–ITC)	—High production. —Known worker exposure.
Trigonelline [535–83–1] ...	(1)	—Toxicologic characterization —Metabolic differences between humans and rodents	—Plant hormone. —Widespread human exposure through diet.

[1] Private Individual.

Chemical [CAS No.]	Nominated by	Recommended for	Rationale; other information
Chemicals For Which No Testing Is Recommended			
β-Caryophyllene [87–44–5].	NCI	—Subchronic toxicity; metabolism; cell transformation; consider for carcinogenicity.	—Insufficient use to warrant testing.
α-Cubebene [17699–14–8].	NCI	—metabolism	—Insufficient use to warrant testing.
Orthanilic acid [88–21–1].	NIEHS	—Carcinogenicity	—Low production; little, if any, exposure to the population.
2-Phenethyl alcohol (60–12–8].	(1)	—Carcinogenicity	—No suspicion for carcinogenicity based on structure and genetic toxicity tests.
Chemicals Deferred for Additional Information			
α-Chaconine [20562–03–2].	(1)	—Carcinogenicity	—Defer testing pending results of α-solanine studies.
St John's Wort Hypericin [548–04–9].	NCI	—Carnogenicity (St. John's Wort); genetic toxicity and carcinogenicity (hypericin). —Defer pending NTP evaluation of carcinogenicity testing being performed by industry.	—Herbal remedy in widespread use. —NCI clinical trial in progress. —Industry has completed subchronic toxicity studies and is completing a rodent carcinogenicity study using St. John's Wort.

[1] Private Individual.

[FR Doc. 98–14138 Filed 5–27–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1998 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 1998 funds for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available	Estimated No. of awards	Project period
Faculty Development Program	7/28/98	$1.0M	10	3 yrs.

Note: SAMHSA also published notices of available funding opportunities for FY 1998 in the **Federal Register** on January 6, 1998, January 20, 1998, February 26, 1998, March 20, 1998, April 8, 1998, April 16, 1998, April 20, 1998, and on April 22, 1998.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1998 funds for activities discussed in this announcement were appropriated by the Congress under Public Law No. 105–78. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of each of the activities (i.e., the GFA) described in Section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Unless otherwise stated in the GFA, applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*

(*Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt date(s) to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified in the GFA will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline
- Purpose.
- Priorities.
- Eligible Applicants.
- Grants/Cooperative Agreements/Amounts.
- Catalog of Federal Domestic Assistance Number.
- Contacts.
- Application Kits.

Table of Contents

1. Program Background and Objectives
2. Special Concerns
3. Criteria for Review and Funding
   3.1 General Review Criteria
   3.2 Funding Criteria for Scored Applications
4. Special FY 1998 Substance Abuse and Mental Health Services Activities
   4.1 Grants
   4.1.1 Faculty Development Program—Faculty Developing People, Programs, Products and Policies for Integrated Service Delivery
5. Public Health System Reporting Requirements

6. PHS Non-use of Tobacco Policy Statement
7. Executive Order 12372

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1998 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a ''menu'' of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1998 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's ''Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals,'' peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1998 SAMHSA Activities

4.1 Grants

4.1.1 Faculty Development Program—Faculty Developing People, Programs, Products and Policies for Integrated Service Delivery, GFA No. SP 98–006)

- Application Deadline: July 28, 1998
- Purpose: The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of funds for grants to support the application of the Faculty Development Program (FDP) model to Schools of Public Health and Residency Training Programs in Preventive Medicine without a substance abuse prevention program. Such programs will work in association with institutions that educate health and social service professionals (Schools of Medicine, Osteopathy, Nursing, Dentistry, Social Work, and university-affiliated Departments of Psychology) that have existing substance abuse prevention programs.

The overall purpose of the FDP is twofold: (1) The education of students at Schools of Public Health and in Residency Training Programs in Preventive Medicine to foster an understanding of the importance of substance abuse prevention services that will be reflected in policy making and program planning; and (2) The transfer of expertise between institutions through a mentor relationship. Expected results from the application of the FDP model include: the development of expertise in substance abuse prevention by faculty of professional programs at funded institutions; the institutionalization of substance abuse prevention programs in the curriculum or curricula at funded institutions; the creation of linkages between the community and funded institutions promoting the application of science-based substance abuse prevention strategies within the community; and the diffusion of expertise of professionals trained by the program to others in their professional discipline.

• *Priorities:* None

• *Eligible Applicants:* Eligibility is limited to Schools of Medicine, Osteopathy, Nursing, Dentistry, Social Work, and university-affiliated Departments of Psychology with an existing substance abuse prevention program *or* to Schools of Public Health or Residency Training Programs in Preventive Medicine without an existing substance abuse prevention program.

Applications from Schools of Medicine, Osteopathy, Nursing, Dentistry, Social Work, and university-affiliated Departments of Psychology must identify the School of Public Health or Residency Training Program in Preventive Medicine they will mentor in order to develop a substance abuse prevention program.

Applications from Schools of Public Health or Residency Training Programs in Preventive Medicine must identify the School of Medicine, Osteopathy, Nursing, Dentistry, Social Work or university-affiliated Department of Psychology which has an existing substance abuse prevention program and with whom they have established a mentoring relationship in order to assist them in establishing a substance abuse prevention program.

Eligibility is being limited to these particular entities because this program is limited to three years and the need for appropriately trained health care practitioners and the integration of state-of-the-art substance abuse prevention, screening, assessment, and referral strategies as standards of care is critical to reducing health care costs and improving health status. By capitalizing on the experience of the mentor agencies with existing substance abuse prevention programs, these partnerships will be able to complete their program within the allotted three years. Absent this pre-existing and continuing experience, completion within this time frame would not be possible.

• *Grants/Amounts:* It is estimated that up to $1,000,000 will be available to support approximately ten new grant awards of approximately $100,000 each (total costs—direct + indirect) under this GFA in FY 1998.

• *Catalog of Federal Domestic Assistance Number:* 93.274

• For programmatic or technical information regarding this grant program (not for application kits) contact: Lucille C. Perez, M.D., Associate Director, Medical and Clinical Affairs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II Building, Room 9D–10, 5600 Fishers Lane, Rockville, Maryland 20857, 301/443–5266.

For grants management assistance, contact: Peggy Jones, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II Building, Room 621, 5600 Fishers Lane, Rockville, Maryland 20857, 301/443–9666.

• For application kits, contact: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, MD 20847–2345, 800/729–6686, 301/468–2600 (local calls).

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1998 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to the FY 1998 activity listed above are not subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100.

Dated: May 20, 1998.

Patricia S. Bradford,

Acting Executive Officer, SAMHSA.

[FR Doc. 98–14011 Filed 5–27–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4352–N–02]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing. HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* July 27, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) 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; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgage Credit Analysis for Loan Guarantee Program and Transmittal for Payment of Loan Guarantee Fee

OMB Control Number: 2577–0200

Description of the need for the information and proposed use: The information is required by Section 184 of the Housing and Community Development Act of 1994, as amended by Section 701 of the Native American Housing Assistance and Self-Determination Act of 1996 and implementing regulations at 24 CFR Section 1005. HUD has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- and 4-family homes to be owned by Native Americans on restricted Indian lands. Mortgage lenders (mortgagees) approved by HUD provide borrower and lender information to HUD for guarantee of the loan. If the information were not provided on Forms HUD–53036 and HUD–53038, HUD would be unable to guarantee lenders and as a result unable to provide financing to Native Americans.

Agency for numbers: HUD–53036 and HUD–53038

Members of affected public: Businesses or Other For-Profit

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 1,000 respondents (500 × 2 forms), on occasion, 10 minutes to prepare HUD–53036, 8 minutes to prepare HUD–53038, 92 hours total reporting burden.

Status of the proposed information collection: Reinstatement, without change. Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 18, 1998.

Deborah Vincent,

General Deputy, Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Mortgage Credit Analysis Worksheet

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No.2577-0200 (exp. 9/30/97)

Native American Loan Guarantee Program

See the Public Reporting Burden and Privacy Act statements on back

Section 184 Case Number			Type of Construction: (check one) ☐ Existing Construction ☐ Proposed Construction		
1a. Borrower's name	2a. Social Security Number	3a. Age	4. Dependents a.Numbers	b. Ages	5. Marital Status a. ☐ Married
1b. Co–Borrower's name	2b. Social Security Number	3b. Age:			b. ☐ Separated c. ☐ Unmarried

6a. Mortgage **without** LG Fee	6b. Total LG Fee (1% of maximum mortgage)	6c. Mortgage **with** LG Fee	7. a. Total Closing Costs b. Less Paid by Seller c. Borrower's Closing Costs

8. Current housing expenses	9. Term of loan (years)	10. Interest rate (%)	11. First–time Homebuyer? ☐ Yes ☐ No	12. Adj. buy-down interest rate %	13. Appraised Value

14. **Settlement Requirements / Mortgage Calculation**	
a. Contract Sales Price or Construction Cost	
b. Repairs & Improvements	
c. Borrower-paid Closing Costs (from line 7c)	
d. Sales Concessions (subtract)	
e. Acquisition Cost (sum of lines 14a + b + c minus 14d)	
f. Multiply Acquisition Cost (line 14e) by	
0.9775 if greater than $50,000	
0.9875 if $50,000 or less	
g. Mortgage (without LG Fee)(lowest of 14f, 18b, or 18e)	
h. Required investment (line 14e minus line 14g)	
i. Discounts	
j. Prepayable expenses	
k. LG Fee paid in cash	
l. Non-Realty and other items (see 14d)	
m.Total requirements (sum of lines 14h - 14l)	
n. Amount paid in ☐ cash ☐ other (explain)	
o. Amount **to be** paid in ☐ cash ☐ other	
p. Assets available	
q. 2nd mortgage proceeds (if applicable)	

15. **Monthly Effective Income**	
a. Borrower's base pay	
b. Borrower's other earnings (explain)	
c. Co-borrower's base pay	
d. Co-borrower's other earnings (explain)	
e. Net income from real estate	
f. Gross monthly income	

Remarks: (attach additional paper if needed)

16. **Debts & Obligations**	Monthly Payment	Unpaid Balance
a. Total installment debt		
b. Child support, etc.		
c. Other		
d. Total monthly payments		

17. **Future Monthly Payments**	
a. Principal & Interest – 1st mortgage	
b. Homeowners Association Fee	
c. Ground rent	
d. Principal & Interest – 2nd mortgage	
e. Hazard Insurance	
f. Taxes & special assessments	
g. Total mortgage payment	
h. Recurring expenses (from line 16d)	
i. Total fixed payment	

18. **Ratios / Residual Income**	
a. Loan–to–value (line 14g ÷ item 13)	. %
b. Value	
(item 13) x 0.9775 if greater than $50,000	
(item 13) x 0.9875 if $50,000 or less	
c. Total fixed payment–to–income (line 17i ÷ line 15f)	. %
d. Residual Income (15f x 0.80 - 17g - 16d)	
e. 150% of FHA Mortgage Limit	

19. **Borrower Rating** (enter "A" for acceptable or "R" for reject)	
a. Credit characteristics	
b. Adequacy of effective income	
c. Stability of effective income	
d. Adequacy of available assets	

20. Contract Sales Price of Property (line 14a)
a. 6% of line 20
b. Total Seller Contribution
c. Excess Contribution

21. Borrower's CAIVR number	Co–borrower's CAIVR number

22. Total Amount of Gifts
$

DRAFT

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

21. **Final application decision**	22. **Underwriter's signature & date:**	23. **HUD Representative's signature & date:**
☐ Approve ☐ Reject	X	X

Public reporting burden for this collection of information is estimated to average 6 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is required by Section 184 of the Housing and Community Development Act of 1992, as amended by Section 701 of the Native American Housing Assistance and Self-Determination Act of 1996 and implementing regulations at 24 CFR Section 1005. HUD has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes to be owned by Native Americans on restricted Indian lands. Mortgage lenders (mortgagees) provide borrower and lender information to HUD for the guarantee of the loan. Responses to the collection of information are required to obtain a benefit. The information requested is considered sensitive and is protected by the Privacy Act.

Sensitive Information: The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained.

Line 14d (Subtract Sales Concessions): Refers to seller-paid prepaid items, personal property items, seller concessions exceeding 6% from Attachment A, etc. This does not include seller-paid closing costs from line 7b. This amount should also appear on line 14l to correctly determine total cash requirements.

DRAFT

Transmittal for
Loan Guarantee Fee (LGF)
Native American Loan Guarantee Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0200 (exp. 9/30/97)

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is required by Section 184 of the Housing and Community Development Act of 1992, as amended by Section 701 of the Native American Housing Assistance and Self-Determination Act of 1996 and implementing regulations at 24 CFR Section 1005. HUD has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes to be owned by Native Americans on restricted Indian lands. Mortgage lenders (mortgagees) provide borrower and lender information to HUD for the guarantee of the loan. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

This transmittal shall be prepared by the remitting mortgagee to accompany all LGF payments sent to HUD. Incomplete and/or inaccurate data may delay endorsement of the 184 case involved.

Mail all transmittals to: HUD c/o Processing Center, PO Box 198353, Atlanta, GA 30384-8353.

Part 1 Lender Information

1a. Reason for Payment:
☐ Initial Fee on a new loan ☐ Additional Fee on an underpayment ☐ Late Charge/ Interest

1b. Lender's Name: (print)

1c. Lender Number: (10 digits)

1d. Name of Person to be contacted regarding this payment:

1e. Phone Number: (include area code & extension)

Instructions: Part 1 Lender Information

1a. Check the appropriate box(es) to indicate the purpose of the transmittal.

1b. Enter the name of the remitting Lender.

1c. Enter the remitting Lender's ID number. The LGF statement of account confirming receipt of the funds will be sent to the related address in HUD's records.

Part 2 Mortgage Data

2a. 184 Case Number: (10 digits, 3 +7)

2b. Closing Date: (mm/dd/yy)

2c. Term in Months:
(1) ☐ 1 to 215 months
(2) ☐ 216 to 264 months
(3) ☐ 265 to 300 months
(4) ☐ over 300 months

LG Fee Financed?
☐ Yes
☐ No

2d. Mortgage Amount:
$

2e. Percentage of the LGF Financed:
%

2f. Borrower's Loan Number or Last name

Instructions: Part 2 LGF Mortgage Data

2a. Enter the 184 Case Number assigned by HUD.

2b. Enter the closing date of the mortgage.

2c. Check the box indicating the number of payments in the mortgage.

2d. Enter the mortgage amount.

2e. Enter the percent of LGF financed, e.g. 0% or 100%

2f. Enter the borrower's loan number or the borrower's last name. HUD will include this information on the LGF statement of account to assist mortgagees in matching statements to the appropriate mortgage file.

DRAFT

Part 3 Loan Guarantee Fee Data

3a. Fee Amount for Mortgage:
$

3b. Late Charge Due: (4% of 3a)
$

3c. Interest Due:
$

3d. Total Amount of Check: (3a plus 3b plus 3c)
$

Instructions: Part 3 LGF Data

3a. Enter the LGF due HUD as shown on form HUD-1, Settlement Statement, or if applicable, the additional LGF being remitted.

3b. A 4% late charge shall be paid if the LGF is not expected to reach HUD within 15 days of the closing date entered in item 2b. Enter 4% of the Net LGF shown in item 3a.

3c. In addition to the late charge, daily interest shall be paid on the Net LGF (item 3a) from the closing date if the LGF payment is not expected to reach HUD within 30 days of the closing date. Use the current value of Federal funds rate (published annually in the Federal Register) to compute the interest due.

3d. Enter the total of items 3a plus 3b plus 3c. This amount must equal the amount of the check. An individual check is required for each form HUD-53038. **Do not combine remittances.**

form **HUD-53038** (05/13/1998 draft)

[FR Doc. 98–14044 Filed 5–27–98; 8:45 am]
BILLING CODE 4210–33–MC

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–21]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 29, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 20, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Annual Adjustment Factor (AAF) Rent Increase Requirement Pursuant to the Housing Appropriation Act of 1994.

Office: Housing.

OMB Approval Number: 2502–0507.

Description of the Need for the Information and Its Proposed Use: Owners must submit form HUD–92273, Estimates of Market Rent by Comparison, in order to receive a rent increase when rent levels for a specific unit type, in a Substantial Rehab or New Construction contract, exceeds the existing Fair Market Rent (FMRs) for the specific unit type. This form must be completed by a non-identity of interest State certified appraiser and must contain at least three examples of unassisted housing in the same market area for similar age, type and quality which indicate rent levels of similar unassisted housing area for similar age, type, and quality which indicate rent levels of similar unassisted housing are above the published FMRs.

Form Number: HUD–92273.

Respondents: Businesses or other for-profit.

Frequency of Submission:

Reporting Burden:

	Number of respondents	×	Frequency of Response	×	Hours per Response	=	Burden hours
HUD–92273	10,000		1		.553		5,527

Total Estimated Burden Hours: 5,527.

Status: Reinstatement without changes.

Contact: Ulyses Brinkley, HUD, (202) 708–4162; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 20, 1998.

[FR Doc. 98–14046 Filed 5–27–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–04]

Announcement of OMB Approval Number for the HOME Investment Partnerships Program Final Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of OMB Approval Number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the HOME Investment Partnership Program.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2470. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to the HOME Investment Partnerships Program. The OMB approval number for this information collection is 2506–0162, which expires on January 31, 2000.

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.

Dated: May 20, 1998.

Fred Karnas,

Deputy Assistant, Secretary for Economic Development.

[FR Doc. 98–14045 Filed 5–27–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum to be held from 9:00 a.m. to noon on Wednesday, June 3, 1998. The videoconference meeting will take place in Room 528 of the Frontier Building, 3601 C Street, Anchorage, Alaska; and in the Governor's Conference Room, 3rd floor, State Capitol Building, Juneau, Alaska. This meeting will be held to receive and discuss work group reports on recreation and tourism. The agenda will also include several briefing items.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

Deborah L. Williams,

Special Assistant to the Secretary for Alaska.

[FR Doc. 98–14266 Filed 5–27–98; 8:45 am]

BILLING CODE 4310–RP–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Agency Information Collection Activities; Announcement of the Office of Management and Budget (OMB) Approval Number

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) announces that a collection of information entitled ''Evaluation of visitor responses to recreation fee demonstration program'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Stephen R. Vehrs, Refuge Program Specialist, Division of Refuges, 703/358–2397; or Phadrea Ponds, Wildlife Biologist, U.S. Geological Survey, Fort Collins, CO, 970/226–9445.

SUPPLEMENTARY INFORMATION: The **Federal Register** of March 9, 1998 (63 FR 11449), the Service 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). The notice also listed the title of the proposal, and description of the need for the information and proposed use. 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 1018–0098. The OMB approval expires on April 30, 1999.

Dated: May 22, 1998.

Carolyn A. Bohan,

Acting Assistant Director for Refuge and Wildlife.

[FR Doc. 98–14111 Filed 5–27–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–08–1220–00: GP8–-0197]

Notice of Meeting of the Oregon Trail Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, June 11, 1998 from 8:00 a.m. to 4:00 p.m. at the National Historic Oregon Trail Interpretive Center, Oregon Highway 86, Flagstaff Hill, Baker City, Oregon 97814. At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 2:00 p.m. to 2:30 p.m., on June 11, 1998. Topics to be discussed are how to measure successes of the Pilot Fee Demonstration Program and the facility, the developing of an Action Plan, and reports from Coordinators of Subcommittees.

DATES: The meeting will begin at 8:00 a.m. and run to 4:00 p.m. June 11, 1998.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail Interpretive Center, P.O. Box 987, Baker City, OR 97814, (Telephone 541–523–1845).

Edwin J. Singleton,

District Manager.

[FR Doc. 98–14128 Filed 5–27–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 136096]

Public Land Order No. 7337; Withdrawal of Public Lands for the Protection of Thelesperma pubescens Plant Habitat; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 590 acres of reserved Federal mineral interest from mining, and 3,646.51 acres of public lands from surface entry and mining for a period of 50 years to protect *Thelesperma pubescens* (Uinta greenthread) plant habitat. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: May 28, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the reserved Federal mineral interest in the following described lands is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect *Thelesperma pubescens* plant habitat:

Sixth Principal Meridian

T. 13 N., R. 111 W.,
Sec. 9, NW¼NE¼;
Sec. 19, N½NW¼NE¼.
T. 13 N., R. 112 W.,
Sec. 23, E½SW¼, W½SE¼, and NE¼SE½.
T. 14 N., R. 113 W.,
Sec. 35, W½SW¼.
T. 13 N., R. 114 W.,
Sec. 13, SE¼SW¼SW¼;
Sec. 23, SE¼NE¼ and NE¼SE¼;
Sec. 24, W½NW¼ and NW¼SW¼;
Sec. 28, SE¼SE¼.

The areas described aggregate 590 acres in Sweetwater and Uinta Counties.

2. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect *Thelesperma pubescens* plant habitat:

Sixth Principal Meridian

T. 13 N., R. 111 W.,
Sec. 5, lot 8 and NW¼SW¼NW¼;
Sec. 6, SE¼NE¼, S½NE¼SW¼, SE¼SW¼, and N½SE¼;
Sec. 7, N½NE¼NW¼;
Sec. 17, SW¼SW¼;
Sec. 18, S½S½SE¼;
Sec. 19, lot 6 and E½NW¼.
T. 14 N., R. 111 W.,
Sec. 19, E½SE¼;
Sec. 30, SE¼NW¼ and NE¼SW¼;
Sec. 32, S½NE¼SW¼, E½SW¼SW¼, and SE¼SW¼;
Sec. 33, S½NE¼ and N½SE½.
T. 13 N., R. 112 W.,
Sec. 2, SW¼NW¼ and NW¼SW¼;
Sec. 3, E½SE¼;
Sec. 10, E½NE¼ and SE¼;
Sec. 15, NW¼NE¼, E½NW¼, N½SW¼, and SW¼SW¼;
Sec. 16, NE¼SW¼, S½SW¼, and NW¼SE¼;
Sec. 17, SE¼SW¼ and SW¼SE¼;
Sec. 20, N½, SW¼, and W½SE¼;
Sec. 21, NW¼;
Sec. 22, W½NW¼, NW¼SW¼, and SE¼;
Sec. 23, W½SW¼.
T. 13 N., R. 113 W.,
Sec. 3, lots 6, 7, W½SW¼NE¼, E½SE¼NW¼, E½E½SW¼, and W½W½SE¼;
T. 14 N., R. 113 W.,
Sec. 34, SE¼NE¼ and W½SE¼.
T. 13 N., R. 114 W.,
Sec. 13, SW¼NE¼, E½SW¼, and W½SE¼;
Sec. 23, SE¼SE¼;
Sec. 24, E½W½ and SW¼SW¼;
Sec. 33, E½NE¼.

The areas described aggregate 3,646.51 acres in Sweetwater and Uinta Counties.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: May 20, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–14013 Filed 5–27–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–01; NMNM99206]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action; R&PP Act Classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to Gadsden Independent School District (GISD), New Mexico under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). GISD proposes to use the land for a wastewater leach field to serve their elementary and middle schools.

T. 26 S., R. 5 E., NMPM
Sec. 14, part of the SW¼NW¼SW¼.
Containing 6 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before July 13, 1998.

ADDRESSES: Comments should be sent to the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–4349.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before July 13, 1998, interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a wastewater leach field. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a wastewater leach field.

Dated: May 21, 1998.

Linda S. C. Randall,

Las Cruces Field Office Manager.

[FR Doc. 98–14084 Filed 5–27–98; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–985–0777–66; WY–142430]

Proposed Lease of Public Lands Under the Recreation and Public Purposes Act in Washakie County, Wyoming, Bighorn Basin Resource Area

ACTION: Noticeof Realty Action; correction.

SUMMARY: The Bureau of Land management, Worland District, published a notice in the **Federal Register** of April 27, 1998, regarding the proposed lease of public lands under the provisions of the Recreation and Public Purposes Act, as amended. The notice contained in incorrect U.S.C. citation and an incorrect legal description.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Worland District Office, Steven R. Till, Realty Specialist, P.O. Box 119, Worland,

Wyoming 82401–0119, or telephone (307) 347–5100.

Correction

In the **Federal Register** issue of April 27, 1998 in FR Doc. 98–11067, on page 20643, in the third column, correct the **SUMMARY** caption to read:

SUMMARY: The following public lands near the community of Worland, Washakie County, Wyoming, have been examined and found suitable for classification for lease under the provisions of the Recreation and Public Purposes Act, as amended (43 United States Code 869 *et seq.*). The Washakie County Fair Board proposes to use the lands for an Olympic-style cross-country horse track and associated jumping facilities.

Sixth Principal Meridian

T. 48 N., R. 93 W.
Section 8, S½SE¼SE¼NE¼, NE¼SE¼
Section 9, E½W½SW¼NW¼, E¼SW¼NW¼, NW¼SW¼, SW¼SW¼SW¼NW¼, W½NW¼NW¼SE¼, E½NE¼NE¼SW¼.

Containing 127.5 acres more or less.

Dated: May 13, 1998.

David Atkins,

Bighorn Basin Assistant Area Manager.

[FR Doc. 98–14033 Filed 5–27–98; 8:45 am]

BILLING CODE 4310–22–P–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Proposed Western Gulf Sales 171, 174, 177, and 180

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of the Final Multisale Environmental Impact Statement (EIS) on Proposed Western Gulf of Mexico (GOM) Sales 117, 174, 177, and 180.

The Minerals Management Service (MMS) has prepared a final multisale EIS on four proposed Outer Continental Shelf (OCS) oil and gas lease sales in the Western GOM. We will conduct a planning process for one sale each year from 1998 through 2001. Although this EIS addresses four proposed lease sales, it is a decision document only for proposed Sale 171. We will consult with other Federal agencies and the affected States for each of the yearly proposed sales. We will perform a National Environmental Policy Act review, and give the public an opportunity to participate in each sale.

You may obtain single copies of the final multisale EIS from the Minerals Management Service, Gulf of Mexico OCS Region, *Attention:* Public Information Office (MS–5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 or by calling 1–800–200–GULF.

You may look at copies of the draft EIS in the following libraries:

Texas

Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene;
Alma M. Carpenter Public Library, 330 South Ann, Sourlake;
Aransas Pass Public Library, 110 North Lamont Street, Aransas Pass;
Austin Public Library, 402 West Ninth Street, Austin;
Bay City Public Library, 1900 Fifth Street, Bay City;
Baylor University, 13125 Third Street, Waco;
Brazoria County Library, 410 Brazoport Boulevard, Freeport;
Calhoun County Library, 301 South Ann, Port Lavaca;
Chambers County Library System, 202 Cummings Street, Anahuac;
Comfort Public Library, Seventh and High Streets, Comfort;
Corpus Christi Central Library, 805 Comanche Street, Corpus Christi;
Dallas Public Library, 1513 Young Street, Dallas;
East Texas State University Library, 2600 Neal Street, Commerce;
Houston Public Library, 500 McKinney Street, Houston;
Jackson County Library, 411 North Wells Street, Edna;
Lamar University, Gary Library, Virginia Avenue, Beaumont;
LaRatama Library, 505 Mesquite Street, Corpus Christi;
Liberty Municipal Library, 1710 Sam Houston Avenue, Liberty;
Orange Public Library, 220 North Fifth Street, Orange;
Port Arthur Public Library, 3601 Cultural Center Drive, Port Arthur;
Port Isabel Public Library, 213 Yturria Street, Port Isabel;
R.J. Kleberg Public Library, Fourth and Henrietta, Kingsville;
Reber Memorial Library, 193 North Fourth, Raymondville;
Refugio County Public Library, 815 South Commerce Street, Refugio;
Rice University, Fondren Library, 6100 South Main Street, Houston;
Rockwall County Library, 105 South First Street, Rockwall;
Rosenberg Library, 2310 Sealy Street, Galveston;
Sam Houston Regional Library and Research Center, FM 1011 Governors Road, Liberty;
Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches;
Texas A & M University, Corpus Christi Library, 6300 Ocean Drive, Corpus Christi;
Texas A & M University, Evans Library, Spence and Lubbock Streets, College Station;
Texas Southmost College Library, 1825 May Street, Brownsville;
Texas State Library, 1200 Brazos Street, Austin;
Texas Tech University Library, 18th and Boston Avenue, Lubbock;
University of Houston Library, 4800 Calhoun Boulevard, Houston;
University of Texas at Arlington, Library, 701 South Cooper Street, Arlington;
University of Texas at Austin, Library, 21st and Speedway Streets, Austin;
University of Texas at Brownsville, Oliveria Memorial Library, 80 Fort Brown, Brownsville;
University of Texas at Dallas, McDermott Library, 2601 North Floyd Road, Richardson;
University of Texas at El Paso, Library, Wiggins Road and University Avenue, El Paso;
University of Texas at San Antonio, Library, 6900 North Loop 1604 West, San Antonio;
University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin;
University of Texas, LBJ School of Public Affairs Library, 2313 Red River Street, Austin;
Victoria Public Library, 320 North Main, Victoria;

Louisiana

Calcasieu Parish Library, 327 Broad Street, Lake Charles;
Cameron Parish Library, Marshall Street, Cameron;
Grand Isle Branch Library, Highway 1, Grand Isle;
Government Documents Library, Loyola University, 6363 St. Charles Avenue, New Orleans;
Iberville Parish Library, 24605 J. Gerald Berret Boulevard, Plaquemine;
Jefferson Parish Regional Branch Library, 4747 West Napoleon Avenue, Metairie;
Jefferson Parish West Bank Outreach Branch Library, 2751 Manhattan Boulevard, Harvey;
Lafayette Public Library, 301 W. Congress Street, Lafayette;
Lafitte Branch Library, Route 1, Box 2, Lafitte;
Lafourche Parish Library, 303 West 5th Street, Thibodaux;
Louisiana State University Library, 760 Riverside Road, Baton Rouge;

Louisiana Tech University, Prescott Memorial Library, Everett Street, Ruston;
LUMCON, Library, Star Route 541, Chauvin;
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles;
New Orleans Public Library, 219 Loyola Avenue, New Orleans;
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux;
Plaquemines Parish Library, 203 Highway 11, South, Buras;
St. Bernard Parish Library, 1125 East St. Bernard Highway, Chalmette;
St. Charles Parish Library, 105 Lakewood Drive, Luling;
St. John The Baptist Parish Library, 1334 West Airline Highway, LaPlace;
St. Mary Parish Library, 206 Iberia Street, Franklin;
St. Tammany Parish Library, Covington Branch, 310 West 21st Street, Covington;
St. Tammany Parish Library, Slidell Branch, 555 Robert Boulevard, Slidell;
Terrebonne Parish Library, 424 Roussell Street, Houma;
Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans;
University of New Orleans Library, Lakeshore Drive, New Orleans;
University of Southwestern LA, Dupre Library, 302 East St. Mary Boulevard, Lafayette;
Vermilion Parish Library, Abbeville Branch, 200 North Street, Abbeville;

Mississippi

Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs;
Hancock County Library System, 312 Highway 90, Bay St. Louis;
Harrison County Library, 14th and 21st Avenues, Gulfport;
Jackson George Regional Library System, 3214 Pascagoula Street, Pascagoula;

Alabama

Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island;
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores;
Mobile Public Library, 701 Government Street, Mobile;
Thomas B. Norton Public Library, 221 West 19th Avenue, Gulf Shores;
University of South Alabama, University Boulevard, Mobile;
Montgomery Public Library, 445 South Lawrence Street, Montgomery;

Dated: May 12, 1998.

Thomas A. Readinger,

For Associate Director for Offshore Minerals Management.

[FR Doc. 98–14090 Filed 5–27–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Rio Arriba County and Taos County, NM in the Control of the Carson National Forest, United States Forest Service, Taos, NM

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the control of the Carson National Forest, United States Forest Service, Taos, NM.

A detailed assessment of the human remains was made by Museum of New Mexico, Maxwell Museum (University of New Mexico), and U.S. Forest Service professional staff in consultation with representatives of the Navajo Nation, the Pueblo of Taos, and the Pueblo of Picuris.

In 1934, human remains representing one individual were recovered from site LA 1684 during legally authorized excavations conducted by C.O. Erwin and M.W. Kelly of the Laboratory of Anthropology (Museum of New Mexico). No known individuals were identified. No associated funerary objects are present.

Based on material culture, architecture, and site organization, site LA 1684 has been identified as a Navajo pueblito occupied during the first half of the 18th century.

Based on the above mentioned information, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the United States Forest Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Navajo Nation.

In 1965, human remains representing one individual were recovered from site LA 9203 during legally authorized excavations conducted by the University of New Mexico Archaeological Field School. No known individual was identified. No funerary objects are present.

Based on material culture and site organization, site LA 9203 has been identified as an Anasazi pithouse occupied between 1100-1225 A.D.

In 1967, human remains representing three individuals were recovered from sites LA 9204, LA 9205, and LA 9206 during legally authorized excavations conducted by the University of New Mexico Archaeological Field School. No known individuals were identified. The one associated funerary object is a piece of animal bone with the individual at site LA 9204.

Based on material culture, architecture, and site organization, sites LA 9204, LA 9205, and LA 9206 have been identified as three Anasazi roomblocks occupied between 1100-1225 A.D.

In 1968, human remains representing nine individuals were recovered from site LA 66407 near Los Rancho de Taos during legally authorized excavations conducted by U.S. Forest Service personnel. No known individuals were identified. The five associated funerary objects include pottery sherds.

Based on material culture, architecture, and site organization, site LA 66407 has been identified as an Anasazi pithouse occupied between 1150-1350 AD.

Based on the above mentioned information, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 13 individuals of Native American ancestry. Officials of the United States Forest Service have also determined that, pursuant to 43 CFR 10.2 (d)(2), the six objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the United States Forest Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Taos and the Pueblo of Picuris.

This notice has been sent to officials of the Navajo Nation, the Pueblo of Taos, and the Pueblo of Picuris. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA

Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Ave., SW, Albuquerque, NM 87102; telephone: (505) 842-3238, fax (505) 842-3800, before June 29, 1998. Repatriation of the human remains and associated funerary objects to the culturally affiliated tribes may begin after that date if no additional claimants come forward.

Dated: May 20, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–14047 Filed 5–27–98; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–794–796 (Preliminary)]

Certain Emulsion Styrene-Butadiene Rubber From Brazil, Korea, and Mexico

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, Korea, and Mexico of certain emulsion styrene-butadiene rubber,[2] provided for in subheading 4002.19.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On April 1, 1998, a petition was filed with the Commission and the Department of Commerce by Ameripol Synpol Corp. of Akron, OH, and DSM Copolymer of Baton Rouge, LA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain emulsion styrene-butadiene rubber from Brazil, Korea, and Mexico. Accordingly, effective April 1, the Commission instituted antidumping investigations Nos. 731–TA–794–796 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 9, 1998 (63 FR 17443). The conference was held in Washington, DC, on April 22, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 18, 1998. The views of the Commission are contained in USITC Publication 3108 (May 1998), entitled ''Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico: Investigations Nos. 731–TA–794–796 (Preliminary).''

Issued: May 20, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–14145 Filed 5–27–98; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of these investigations, emulsion styrene-butadiene rubber (ESBR) consists of a synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil-extended non-pigmented rubbers that contain at least one percent of organic acids from the emulsion polymerization process.

ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to these investigations consists of grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as ''Clear'' or ''White Rubber.'' The 1700 grades are oil-extended and thus darker in color, and are often called ''Brown Rubber.'' Products manufactured by blending ESBR with other polymers, high styrene resin masterbatch, carbon black masterbatch (i.e., IISRP 1600 series and 1800 series), and latex (an intermediate product) are not included within the scope of these investigations.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–375 and 731–TA–787 (Preliminary)]

Extruded Rubber Thread From Indonesia

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Indonesia of extruded rubber thread, provided for in subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Indonesia and to be sold in the United States at less than fair value (LTFV).[2]

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phases of its investigations. The Commission will issue final phase notices of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Carol T. Crawford found in the negative with respect to food grade extruded rubber thread.

appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phases of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 31, 1998, petitions were filed with the Commission and the Department of Commerce by North American Rubber Thread Co., Fall River, MA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and LTFV imports of extruded rubber thread from Indonesia. Accordingly, effective March 31, 1998, the Commission instituted countervailing duty investigation No. 701–TA–375 (Preliminary) and antidumping duty investigation No. 731–TA–787 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 9, 1998 (63 FR 17444). The conference was held in Washington, DC, on April 20, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigation to the Secretary of Commerce on May 15, 1998. The views of the Commission are contained in USITC Publication 3106 (May 1998), entitled ''Extruded Rubber Thread from Indonesia: Investigations Nos. 701–TA–375 (Preliminary) and 731–TA–787 (Preliminary).''

Issued: May 22, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–14141 Filed 5–27–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–376–379 (Preliminary) and 731–TA–788–793 (Preliminary)]

Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Belgium, Italy, Korea, and South Africa of certain stainless steel plate in coils, provided for in subheadings 7219.11.00, 7219.12.00, 7219.31.00, and 7220.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the respective Governments of Belgium, Italy, Korea, and South Africa. The Commission also determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of such imports from Belgium, Canada, Italy, Korea, South Africa, and Taiwan that are alleged to be sold in the United States at less than fair value.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under section 703(b) and section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 705(a) and section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

On March 31, 1998, a petition was filed with the Commission and the Department of Commerce by Armco, Inc., Pittsburgh, PA; J&L Specialty Steel, Inc. (J&L), Pittsburgh, PA; Lukens Inc., Coatesville, PA; North American Stainless (NAS), Ghent, KY; and the United Steelworkers of America, AFL–CIO/CLC, alleging that an industry in the United States is materially injured by reason of subsidized or LTFV imports of certain stainless steel plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan. Accordingly, effective March 31, 1998, the Commission instituted antidumping investigations Nos. 701–TA–376–379 (Preliminary) and investigations Nos. 731–TA–788–793 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 9, 1998 (63 FR 17445). The conference was held in Washington, DC, on April 21, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 15, 1998. The views of the Commission are contained in USITC Publication 3107 (May 1998), entitled ''Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan: Investigations Nos. 701–TA–376–379 (Preliminary) and Investigations Nos. 731–TA–788–793 (Preliminary).''

Issued: May 21, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–14142 Filed 5–27–98; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Local Arts Agencies/Presenting Section (Creation & Presentation Category) to the National Council on the Arts will be held on June 16–17, 1998. The panel will meet from 9:00 a.m. to 7:30 p.m. on June 16 and from 8:30 a.m. to 6:00 p.m. on June 17, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 1:00 p.m. to 3:30 p.m. on June 17, will be open to the public for a policy discussion of guidelines, planning, field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9:00 a.m. to 7:30 p.m. on June 16, and from 8:30 a.m. to 1:00 p.m. and 3:45 p.m. to 6:00 p.m. on June 17, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 21, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–14125 Filed 5–27–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comments Request; Title of Collection: Cross Projects Evaluation of the Local Systemic Change Through Teacher Enhancement Program

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewal of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

SEND COMMENTS TO: Gail A. McHenry, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 245, Arlington, Virginia 22230 or send email to gmchenry@nsf.gov. Written comments should be received within 60 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Mrs. McHenry on (703) 306–1125 x2010 or send email to gmchenry@nsf.gov. You may also obtain a copy of the data collection instrument and instructions from Mrs. McHenry.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including the use of automated collection techniques or other forms of information technology.

Renewal Project: The current National Science Foundation Local Systemic Change Teacher and Principal Questionnaires have been in use for three years. This program provides funds for the initiation of systemic efforts that will result in K–12 teachers making significant progress toward national goals for the teaching of science, mathematics, and technology.

Use of Information: Information obtained will provide the Foundation with a common set of evaluation data from all projects in order to evaluate individual projects, aggregate data and information across projects; and produce cross-project analyses.

Burden on the Public: There are currently 55 projects. A sample of 300 science or mathematics teachers per project will complete the Teacher Questionnaire (approximately 20 minutes) and an average of 60 principals per project will complete the Principal Questionnaire (approximately 20 minutes). Each project will conduct one-half hour interviews with each of 10 teachers.

Dated: May 21, 1998.

Gail A. McHenry,

Reports Clearance Officer.

[FR Doc. 98–14041 Filed 5–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical 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 and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and time: June 18–20, 1998, 8:30 A.M. until 5:00 P.M.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact person: Dr. Ann Boyle, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1875.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Mathematical Sciences Research Institutes Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 22, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–14148 Filed 5–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; 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 Polar Programs (1130).

Date and Time: June 16, 17, and 18, 1998–8:30 a.m.-5:00 p.m. each day.

Place: Rm. 320, NSF, 4201 Wilson Boulevard, Arlington, Va.

Type of Meeting: Open

Contact Person: Mr. Dwight D. Fisher, Deputy Head, Polar Research Support Section, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1032.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation and GPRA assessments, of the Polar Research Support Section, Office of Polar Programs.

Agenda: To assess the results of NSF program investments in the Polar Research Support Section. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized in providing support to research in Antarctica during the preceding three fiscal years. These results may be based on NSF contracts, interagency agreements, or other investments made in earlier years.

Dated: May 22, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–14147 Filed 5–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 63, No. 91/Tuesday, May 12, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, May 19, 1998.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required amending the agenda to delete the following item:

6283A: Safety Recommendation Letter regarding AlliedSignal TPE–331 engine flameouts in icing conditions.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: May 26, 1998.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–14277 Filed 5–26–98; 2:40 pm]

BILLING CODE 7533–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider administration matters and issues relating to the price regulation.

DATES: The meeting is scheduled for Wednesday, June 3, 1998 commencing at 10:00 AM to adjournment.

ADDRESSES: The meeting will be held at the Holiday Inn, Capitol Room, 172 North Main Street, Concord, New Hampshire (exit 14 off Interstate 93).

FOR FURTHER INFORMATION CONTACT: Kenneth Becker, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Northeast Dairy Compact Commission will hold its regularly scheduled monthly meeting. The Commission will consider matters relating to administration and issues relating to the price regulation, including the reports and recommendations of the Commission's standing committees.

(Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and all other applicable Articles and Sections, as approved by Section 147, of the Federal Agriculture Improvement and Reform Act (FAIR ACT), Pub. L. 104–127, and as thereby set forth in S.J. Res. 28(1)(b) of the 104th Congress; Finding of Compelling Public Interest by United States Department of Agriculture Secretary Dan Glickman, August 8, 1996 and March 20, 1997. (b) Bylaws of the Northeast Dairy Compact Commission, adopted November 21, 1996.)

Kenneth Becker,

Executive Director.

[FR Doc. 98–14079 Filed 5–27–98; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 70—Domestic Licensing of Special Nuclear Material.

3. How often the collection is required: Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses and amendments may be submitted at any time. Generally, renewal applications are submitted every ten years and for major fuel cycle facilities updates of the safety demonstration section are submitted every two years. Nuclear material control and accounting information is submitted in accordance with specified instructions. Nuclear criticality safety training program information pursuant to DG–3008 is submitted with the application or renewal.

4. Who will be required or asked to report: Applicants for and holders of specific NRC licenses to receive title to, own, acquire, deliver, receive, possess, use, or initially transfer special nuclear material.

5. The number of annual responses: 1,123.

6. The number of hours needed annually to complete the requirement or request: 77,835 (an average of approximately 64.9 hours per response for applications and reports, plus approximately 23.6 hours per recordkeeper).

7. An indication of whether Section 3507(d), Public Law 104–13 applies: Not applicable.

8. Abstract: 10 CFR Part 70 establishes requirements for licenses to own, acquire, receive, possess, use, and transfer special nuclear material. Draft

Regulatory Guide DG–3008 provides guidance on an acceptable nuclear criticality safety training program. The information in the applications, reports and records is used by NRC to make licensing and other regulatory determinations concerning the use of special nuclear material. The revised estimate of burden reflects the addition of requirements for documentation for termination or transfer of licensed activities.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by June 29, 1998. Erik Godwin, Office of Information and Regulatory Affairs (3150–0009), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 20th day of May 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–14101 Filed 5–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison 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–43, issued to Detroit Edison Company (the licensee), for operation of the Fermi 2 Plant located in Newport, Michigan.

The proposed amendment would modify the scram discharge volume (SDV) vent and drain valve action requirements to be consistent with those contained in NUREG–1433, Revision 1, ''Standard Technical Specifications General Electric Plants, BWR/4.'' Technical Specification (TS) Limiting Condition for Operation 3.1.3.1, Action d., currently specifies that ''With one scram discharge volume vent valve and/or one scram discharge volume drain valve inoperable and open, restore the inoperable valve(s) to OPERABLE status within 24 hours or be in at least HOT SHUTDOWN within the next 12 hours.'' TS 3.1.3.1, Action e., currently specifies that ''With any scram discharge volume vent valve(s) and/or any scram discharge volume drain valve(s) otherwise inoperable, restore the inoperable valve(s) to OPERABLE status within 8 hours or be in at least HOT SHUTDOWN within the next 12 hours.'' The licensee proposes to revise TS 3.1.3.1, Action d. making it applicable to valves inoperable for any reason, and to increase the time allowed for restoring a SDV vent or drain line with one valve inoperable from the current 24 hours to 7 days. This proposed change would also allow separate entry into the action for each affected drain and vent line. TS 3.1.3.1, Action e. would be revised to allow continued operation with both valves in one or more SDV vent or drain lines inoperable, provided the lines are isolated within 8 hours, and each valve is restored to operable status within 7 days of its respective inoperability. A footnote would be added to TS 3.1.3.1, Action e. that would allow the SDV line to be unisolated under administrative control for the purpose of venting and draining the SDV. As with the proposed change to Action d., the proposed change to Action e., would allow separate entry into the action for each SDV vent or drain line.

Detroit Edison is requesting that this license amendment request be processed in an exigent manner in accordance with 10 CFR 50.91(a)(6) because delay in granting this amendment could lead to a plant shutdown. The plant is currently operating at 96% power with the SDV vent and drain valves open for normal operation. One of the SDV isolation valves, although currently operable in accordance with TS, has recently shown signs of stoke time performance degradation. The licensee has observed an increase in the stoke time over several weeks for C1100F0010, one of the SDV vent valves, during testing of the valve in accordance with Surveillance Requirement 4.1.3.1.4.a.1 and the Inservice Testing Program. Increased frequency testing (approximately every 7 days) has been initiated in order to establish a trend in the rate of degradation. However, the licensee has indicated that no clear trend can be established. Fermi 2 management has determined that it is prudent to repair the actuator for the valve before degradation causes the valve to exceed its testing performance criteria limits. In order to perform this repair, the vent line will be isolated, which will place the plant in the TS 3.1.3.1, Action e., 8 hour allowed outage time. The licensee believes that the actuator repair cannot be accomplished within the 8-hour limit.

The licensee was unable to make a more timely application because it only recently concluded that the valve might fail testing at any time and that rework in the near future would be prudent. The licensee evaluated the time required to rework the valve and estimated that the work would take 11 hours unless unforeseen problems are encountered. Because the time required for the work exceeds the time allowed by the action statement, the licensee decided to request an amendment to change the action statement using the improved standard technical specifications as a guide. The licensee submitted the amendment request within a few days of the time it decided to make the request.

The staff has determined that the licensee used its best efforts to make a timely application for the proposed changes and that exigent circumstances do exist and were not the result of any intentional delay on the part of the licensee.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change does not involve a significant increase in the probability or

consequences of an accident previously evaluated.

The proposed change will:

(a) allow operation with one valve in each SDV vent or drain line to be inoperable for any reason for a period of 7 days. The SDV vent and drain valves are not considered to be an initiator for any previously analyzed accident. Therefore, this change does not involve a significant increase in the probability of any accident previously evaluated. Redundant OPERABLE isolation valves are installed in the vent and drain lines so that isolation capability is maintained for the short period the inoperable valve may not be capable of performing its function. The ability of the SDV vent and drain valves to limit the amount of water discharged during scram so that adequate core cooling and offsite doses remain within 10 CFR 100 limits is maintained. Therefore, this change does not involve a significant increase in the consequences of an accident previously evaluated.

(b) allow continued operation with one or more SDV vent or drain lines with both valves inoperable provided the line(s) are isolated within 8 hours, and each valve is restored to OPERABLE status within 7 days of its respective inoperability. It also allows the line(s) to be unisolated under administrative controls to vent or drain the affected SDV. The SDV vent and drain valves are not considered to be an initiator for any previously analyzed accident and, therefore, these changes do not involve a significant increase in the probability of any previously evaluated accident. With the vent or drain lines isolated, the accident containment isolation function is maintained. The administrative control provision allows the lines to be unisolated to preclude an unnecessary reactor trip on high SDV level and to ensure sufficient volume is available to accept the reactor coolant discharged during a scram. The administrative controls also provide for prompt action to isolate the line(s), if necessary, should a scram occur while the valve is open. Because the intended function is maintained, these changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any physical modifications to the plant systems, structures, or components. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The proposed changes:

(a) allow operation with one valve in each SDV vent or drain line to be inoperable for any reason for a period of 7 days. The automatic scram on high SDV level (TS 3.3.1, Table 3.3.1–1, Functional Unit 8) ensures the SDV does not fill beyond the capacity needed to assure a complete scram. The primary containment isolation function can be maintained by the redundant valve in each of these lines. Also, allowing the SDV to have an inoperable valve in the drain or vent line and not meet single failure considerations is acceptable because it is limited to 7 days. This length of time has been found to be acceptable because of the redundancy and low probability of a scram occurring while the valve(s) are inoperable. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

(b) allow continued operation with SDV vent or drain lines with both valves inoperable if the affected line(s) is isolated within 8 hours, and each valve is restored to OPERABLE status within 7 days of its respective inoperability. With the line(s) isolated the primary containment isolation function is maintained. The provision that permits the line(s) to be unisolated under administrative control ensures that an unnecessary reactor scram on SDV high level will not occur. The provision also ensures the line(s) that are unisolated under administrative controls can be promptly isolated. These provisions ensure that sufficient SDV volume is maintained to assure a complete reactor scram and that primary containment integrity is maintained. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

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 by close of business within 14 days after the date of publication of this notice will be considered in making any final determination. The licensee requested issuance of the amendment by May 26, 1998. Issuance of the amendment on this date would not have allowed any time for public comments on the amendment request. However, the NRC staff has determined that it would be appropriate to allow more time for public review of and comment on the amendment request.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 29, 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 Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 20, 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 Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 22nd day of May 1998.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14146 Filed 5–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company; FERMI 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–43, issued to Detroit Edison Company (the licensee), for operation of the Fermi 2 plant, located in Monroe County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee, in certain cases, from the requirements of 10 CFR 70.24(a), which, in part, requires a monitoring system in each area in which special nuclear material is handled, used, or stored, that will energize clear audible alarms if accidental criticality occurs.

The proposed action is in accordance with the licensee's application for exemption dated April 27, 1998.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored onsite in any given location (e.g., calibration sources or in-

core instrumentation that is not in use) is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent uranium-235, and because commercial nuclear plant licensees have procedures and features that are designed to prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. Therefore, an exemption from the requirements of 10 CFR 70.24 in selected cases will not have a negative impact on the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that inadvertent or accidental criticality will be precluded through compliance with the Fermi 2 Technical Specifications, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures.

The proposed exemption will not result in an increase in the probability or consequences of accidents, affect radiological plant effluents or offsite dose, or cause any significant occupational exposures. Therefore, there are no radiological impacts associated with the proposed exemption.

The proposed exemption will not result in a change in nonradiological effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no significant 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 exemption, the staff considered denial of the requested exemption. Denial of the request 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 related to the operation of Fermi 2 dated August 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on May 7, 1998, the staff consulted with the Michigan State official, Dennis Hahn, of the Michigan Department of Environmental Quality, 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 April 27, 1998, which is available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 20th day of May 1998.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Project Manager, Project Directorate III–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14102 Filed 5–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–1021]

Transnuclear, Inc.; Issuance of Environmental Assessment and Finding of No Significant Impact

By letter dated April 9, 1998, Transnuclear, Inc. (TN or applicant) requested an exemption, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.234(c). TN, located in Hawthorne, New York, is seeking Nuclear Regulatory Commission (NRC or the Commission) approval to fabricate six TN–32 dry spent fuel storage casks prior to receipt of a Certificate of Compliance (COC). The casks are intended for use under the general license provisions of Subpart K of 10 CFR Part 72 by Wisconsin Electric Power Company (WEPCo) at the Point Beach Nuclear Power Station (Point Beach) located in Two Rivers, Wisconsin. The TN–32 dry spent fuel storage cask is currently used at Surry Power Station under a site-specific license.

Environmental Assessment (EA)

Identification of Proposed Action

The applicant is seeking Commission approval to fabricate six TN–32 casks prior to the Commission's issuance of a COC. The applicant requests an exemption from the requirements of 10 CFR 72.234(c), which state that ''Fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask model.'' The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

Need for the Proposed Action

Point Beach was using the Ventilated Storage Cask, Model No. 24, fabricated by Sierra Nuclear, Corp. (VSC–24), however, they have not been able to load a cask for 2 years. The VSC–24 vendor is under a demand for information, and a confirmatory action letter regarding closure lid weld issues that prevents Point Beach from loading any VSC–24s. To ensure future operations, Point Beach requires another cask option if they cannot load VSC–24s. TN requests the exemption to ensure the availability of storage casks so that WEPCo can continue operating the Point Beach Units 2 and 1 past March 2000 and late 2000, respectively, and to restore full core off-load capability. Three casks are required to ensure continued operation into 2001, and three additional casks are required to restore full core off-load capability. Therefore, to support the March 2000 loading, WEPCo requests the delivery of the first cask by December 1999. TN states that to meet this schedule, purchase of cask components must begin promptly and fabrication must begin by September 1998.

The TN–32 COC application, dated September 24, 1997, is under consideration by the Commission. It is anticipated, if approved, the TN–32 COC may be issued in late 1999.

The proposed fabrication exemption will not authorize use of the casks to store spent fuel. That will occur only when, and if, a COC is issued. NRC approval of the fabrication exemption request should not be construed as an NRC commitment to favorably consider TN's application for a COC. TN will bear the risk of all activities conducted under the exemption, including the risk that the six casks TN plans to construct

may not be usable because they may not meet specifications or conditions placed in a COC that NRC may ultimately approve.

Environmental Impacts of the Proposed Action

The Environmental Assessment for the final rule, ''Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites'', (55 FR 29181 (1990)) considered the potential environmental impacts of casks which are used to store spent fuel under a COC and concluded that there would be no significant environmental impacts. The proposed action now under consideration would not permit use of the casks, but only fabrication. There are no radiological environmental impacts from fabrication since cask fabrication does not involve radiological or radioactive materials. The major non-radiological environmental impacts involve use of natural resources due to cask fabrication. Each TN–32 storage cask weighs approximately 100 tons and is fabricated mainly from steel and plastic. The estimated 600 tons of steel required for six casks is expected to have very little impact on the steel industry. Additionally, the estimated 6 tons of plastic required for six casks is insignificant compared to the millions of tons of plastic produced annually. Cask fabrication would be at a metal fabrication facility, not at the reactor site. Fabrication of six casks is insignificant compared to the amount of metal fabrication performed annually in the United States. If the casks are not usable, the casks could be disposed of or recycled. The amount of material disposed of is insignificant compared to the amount of steel and plastic that is disposed of annually in the United States. Based upon this information, the fabrication of six casks will have no significant impact on the environment since no radioactive materials are involved, and the amount of natural resources used is minimal.

Alternative to the Proposed Action

Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and, therefore, not allow cask fabrication until a COC is issued. However, if a COC is issued and fabrication of the cask occurs, the environmental impacts of the proposed action and the alternative action would be the same.

Given that there are no significant differences in environmental impacts between the proposed action and the alternative considered and that the applicant has a legitimate need to fabricate the casks prior to certification and is willing to assume the risk that the fabricated casks may not be certified or may require modification, the Commission concludes that the preferred alternative is to grant the exemption.

Agencies and Persons Consulted

The Wisconsin Public Utility Commission was consulted about the EA for the proposed action and had no concerns.

References used in preparation of the EA:

1. NRC, Environmental Assessment Regarding Final Rule, ''Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites,'' 55 FR 29181.

2. NRC, 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.234(c) so that TN may fabricate six TN–32 casks prior to issuance of a COC will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

This application was docketed under 10 CFR Part 72, Docket 72–1021. For further details with respect to this action, see the application dated April 9, 1998, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and the Local Public Document Room at the Joseph Mann Library, 1516 16th Street, Two Rivers, WI 54241.

Dated at Rockville, Maryland, this 20th day of May 1998.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–14100 Filed 5–27–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23198; 812–10942]

Boston 1784 Funds, et al.; Notice of Application

May 20, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') exempting applicants from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act exempting applicants from sections 17(a)(1) and 17(a)(2) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF THE APPLICATION: The requested order would permit certain registered open-end management investment companies to invest excess cash and collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Boston 1784 Funds (the ''Trust''), and all other registered open-end management investment companies and series thereof that currently or in the future are part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G) of the Act, that includes the Trust, and BankBoston, N.A. (''BankBoston'').

FILING DATES: The application was filed on December 31, 1997, and amended on May 20, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 15, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 2 Oliver Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564,

(Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Massachusetts business trust. The Trust currently consists of nineteen series (''Funds''), five of which hold themselves out as money market funds and are subject to the requirements of rule 2a–7 under the Act (''Money Market Funds''). BankBoston (formerly, The First National Bank of Boston) is the investment adviser to each Fund. Kleinwort Benson Investment Management Americas Inc. (''KBIMA'') serves as co-investment adviser to the Boston 1784 International Equity Fund with BankBoston. BankBoston, as a national bank, is not required to register as an investment adviser under the Investment Adviser Act of 1940 (''Advisers Act''). KBIMA is registered as an investment adviser under the Advisers Act. (BankBoston together with KBIMA, the ''Investment Advisers''.) BankBoston also serves as custodian (''Custodian'') for the assets of all series of the Trust.

2. Each Fund may participate in a securities lending program (''Securities Lending Program'') under which the Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. Before a Fund will participate in the Securities Lending Program, it will select a securities lending agent which is not affiliated with BankBoston or any of its affiliates. The agreements governing these loans require that the loans be continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash (''Cash Collateral''), securities of the U.S. Government or its agencies, or any combination of cash and such securities. Any investment of Cash Collateral will comply with all present and future applicable SEC positions regarding securities lending agreements.

3. Each of the Funds has, or may have, uninvested cast (''Uninvested Cash'') held by its Custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new monies received from investors. Currently, the Funds may invest Uninvested Cash in individual short-term money market instruments and repurchase agreements.

4. The Funds wish to have the flexibility to invest their Uninvested Cash and Cash Collateral (collectively, ''Cash Balances'') in the Money Market Funds. Investment of Cash Balances in shares of the Money Market Funds will be made only to the extent that such investments are consistent with each Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings. Applicants request an order to permit certain Funds (''Investing Funds'') to invest their Cash Balances in one or more of the Money Market Funds.[1]

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any person, security, or transaction (or classes thereof) from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors.

3. Applicants' proposal would permit the Investing Funds to use Cash Balances to acquire shares of the Money Market Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases the Investing Fund's aggregate investment of Uninvested Cash in shares of the Money Market Funds will not exceed 25% of the Investing Fund's total assets. Applicants' proposal also would permit the Money Market Funds to sell their securities to an Investing Fund in excess of the percentage limitations in section 12(d)(1)(B). Applicants represent that no Money Market Funds will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Applicants believe that the proposed arrangement would not result in the abuses that sections 12(d)(1) (A) and (B) were intended to prevent. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee. In addition, in connection with approving any advisory contract, the Investing Fund's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), will consider to what extent, if any, the advisory fees charged to the Investing Fund by the Investment Adviser should be reduced to account for reduced services provided to the Investing Fund by the Investment Adviser as a result of a portion of the assets of the Investing Fund being invested in the Money Market Funds.

5. Section 17(a) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of another person as any person directly or indirectly controlling, controlled by, or under common control with, such other person. Under section 2(a)(3), because the Trust has one board of trustees, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. As a result, section 17(a) would prohibit the sale of the shares of the Money Market Funds to the Investing Funds, and the redemption of the shares by the Money Market Funds.

6. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the

[1] All investment companies that currently intend to rely on the requested order are named as applicants. Any other existing or future investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act.

7. Section 6(c) of the Act permits the SEC to exempt persons or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

8. Applicants submit that their request for relief satisfies the standards in sections 17(b) and 6(c). Applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies, if they believe they can obtain a higher rate of return, or for any other reason. Similarly, each of the Money Market Funds has the right to discontinue selling shares to any of the Investing Funds if the Board of the Money Market Fund determines that such sale would adversely affect its portfolio management and operations. In addition, applicants note that shares of the Money Market Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder.

9. Section 17(d) and rule 17d–1 prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants believe that the Funds, by participating in the proposed transactions, and the Investment Advisers, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1 under the Act.

10. In considering whether to grant an exemption under rule 17d–1, the SEC considers whether the investment company's participation in such joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds will participate in the proposed transactions on a basis not different from or less advantageous than that of any other participant and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2380(b)(9) of the NASD's Conduct Rules).

2. Before the next meeting of the Board is held for the purpose of voting on an advisory contract under section 15 of the Act, the Investment Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Investment Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. In connection with approving any advisory contract for an Investing Fund, the Board, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Investment Adviser should be reduced to account for reduced services provided to the Investing Fund by the Investment Adviser as a result of Uninvested Cash being invested in the Money Market Funds. The minute book of the Investing Fund Will record fully the Board's consideration in approving the advisory contract, including the considerations referred to above.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Investing Fund's investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund, each Money Market Fund, and any future registered open-end management investment company that may rely on the order shall be part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, that includes the Trust.

6. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Program, a majority of the Board, including a majority of the Disinterested Trustees, will approve the Fund's participation in the Securities Lending Program. Such Trustees also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Investing Fund.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14018 Filed 5–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23202; 813–174]

Chase Global Co-Invest Partners 1997, L.P., et al.; Notice of Application

May 21, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9, certain provisions of sections 17 and 30, sections 36 through 53, and the rules and regulations under those sections.

Summary of Application: Applicants request an order to exempt certain investment funds formed for the benefit of key employees of the The Chase Manhattan Corporation (''Chase'') and its affiliates from certain provisions of the Act, and to permit the funds to engage in certain joint transactions. Each fund will be an ''employees' securities company'' as defined in section 2(a)(13) of the Act.

Applicants: Chase Global Co-Invest Partners 1997, L.P. (the ''1997 Partnership'') and Chase.

Filing Dates: The application was filed on August 12, 1997 and amended on February 9, 1998. Applicants have agreed to file an additional amendment, the substance of which is incorporated this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 15, 1998 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: 1997 Partnership, 380 Madison Avenue, New York, NY 10017; and Chase, 270 Park Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Senior Counsel, at (202) 942–0553, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Chase is a bank holding company. Chase and its affiliates, as defined in rule 12b-2 under the Securities Exchange Act of 1934 (the ''Exchange Act'') (collectively, the ''Chase Group''), provide diversified financial services internationally through various bank and non-bank subsidiaries.

2. The 1997 Partnership is a Delaware limited partnership. The 1997 Partnership was the first of several anticipated investment programs (each an ''Investment Program'') that was established to enable certain key employees of the Chase Group to participate in a variety of investment opportunities that would not be offered to them as individual investors. Applicants propose to establish one or more partnerships or investment vehicles for the same purpose (the ''Subsequent Partnerships'' and collectively with the 1997 Partnership, the ''Partnerships''). Each Partnership will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end non-diversified management investment company.

3. The goal of the Partnerships is to reward and retain certain key employees and to attract qualified employees to the Chase Group. Chase believes that the Partnerships will meet the desire of these employees for an in-house investment program similar to those offered by other financial institutions to their employees.

4. Each Partnership will have a general partner or a similar entity (the ''General Partner''), that will be (i) registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), (ii) exempt from registration by virtue of section 203(b)(3) of the advisers Act, or (iii) excluded from the registration requirements because it is a bank or bank holding company. The General Partner will be an entity within the Chase Group, and will manage, control, and make investment decisions for the Partnerships.

5. Interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act''), and will be sold without a sales load or any similar fee. Interests will be offered and sold only to (i) current or former key employees, officers, directors, partners or persons on retainer of an entity within the Chase Group (''Eligible Employees''), (ii) spouses, parents, children, spouses of children, brothers, sisters and grandchildren of Eligible Employees (''Qualified Family Members'' and collectively with Eligible Employees, the ''Limited Partners''), or (iii) trusts or other investment vehicles established for the benefit of Limited Partners (''Qualified Investment Vehicles'' and collectively with Qualified Family Members, ''Qualified Participants''). Prior to offering Interests to Limited Partners, the General Partner must reasonably believe that the Limited Partners will be capable of understanding and evaluating the merits and risks of participation in the Partnership. Eligible Employees will be professionals engaged in various aspects of the banking or financial services business, or in related administrative, financial, accounting or operational activities.

6. Limited Partners must meet the standards for an ''accredited investor'' under rule 501(a) (5) or (6) of Regulation D of the Securities Act, except that a maximum of 35 persons who are sophisticated investors but who do not meet the definition of an accredited investor may become Limited Partners if approved by the General Partner after taking into consideration such factors as income level, investment experience, risk tolerance, professional background and length of employment with the Chase Group. Eligible Employees who satisfy the net worth requirements of rule 501(a)(5) of Regulation D will typically be senior Chase employees who have accumulated significant individual net worth. Generally, those Eligible Employees who satisfy the requirements of rule 501(a)(5) also would be expected to satisfy the requirements of rule 501(a)(6).

7. At the time an Eligible Employee is offered the right to subscribe for Interests in a Partnership, the Eligible Employee will be given a copy of the limited partnership agreement or other organizational documents (the ''Partnership Agreement'') and any investment agreement relating to the Partnership's co-investment with the entities described below (the ''Co-Investment Agreement''). The Partnership Agreement and the Co-Investment Agreement will set forth fully the terms applicable to the Limited Partners.

8. The General Partner of the 1997 Partnership will not receive any fees or other compensation for serving as the General Partner.. A General Partner of a Subsequent Partnership may be paid an annual management fee, which may be determined as a percentage of assets under management, invested capital or aggregate commitments. In addition, a General Partner may be entitled to a performance-based fee (''carried interest''), based on the Partnership's gains and losses.

9. General Partner will be required to make capital contributions to the Partnership that generally will be equal to at least 1% of the Partnership's aggregate capital commitments. The General Partner of the 1998 Partnership may contribute capital to the 1997 Partnership in a multiple of the aggregate amount of capital contributed by the Limited Partners.

10. The 1997 Partnership will make distributions to the Limited Partners and the General Partner annually with respect to tax liabilities and at other times and in other amounts as determined by the General Partner in its discretion. After distributions with respect to taxes, distributions from the 1997 Partnership will be made, first, 100% to the General Partner in respect of a portion of its capital contribution (the ''Preferred Capital Contribution'') until 90% of the amounts received by the General Partner equals three times the aggregate capital contributions of the Limited Partners plus an 8% annum return on the Preferred Capital

Contribution and, thereafter, 90% to the Limited Partners and 10% to the General Partner. Subsequent Partnerships will make distributions to the General Partners and the Limited Partners in a similar manner, provided that the priorities, amounts and percentages may differ. A more complete description of the method and timing of distributions will be contained in each Partnership's private placement memorandum.

11. The General Partner or another entity of the Chase Group may lend money to a Partnership at an interest rate no less favorable than the rate obtainable on an arm's-length basis.

12. Partnerships generally will co-invest alongside a wholly-owned subsidiary of Chase in various affiliated limited partnerships through which underlying portfolio investments are made. Except for variations in management fees or carried interests, a Partnership will co-invest on a least as favorable terms as an entity of the Chase Group. It also is possible that Chase and a Partnership may co-invest in a portfolio company alongside an investment fund or account organized for the benefit of investors who are not affiliated with the Chase Group, over which an entity within the Chevy Chase Group (other than Chase Capital Partners [1]) exercises investment discretion (a ''Third Party Fund'').

13. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner in its sole discretion. No person or entity will be admitted into a Partnership unless the person or entity is (i) an Eligible Employee, (ii) a Qualified Participant, or (iii) an entity within the Chase Group (as a General Partner or through the reallocation of a Limited Partner's Interest as described below). A portion of a Limited Partner's Interest in profits and losses may be reallocated to the General Partner upon the Limited Partner's termination of employment with the Chase Group. After a reallocation, the Interest retained by the Limited Partner will be at least equal in value to the lesser of (i) the amount invested by the Limited Partner, or (ii) the fair market value of the Interest prior to the reallocation.

14. Limited Partners' Interests initially will be partially vested and will vest in greater proportion over time as specified percentages and at specified intervals, as set forth in the applicable Partnership Agreement. The vesting terms will be disclosed to the Limited Partner at the time the Limited Partner is offered the right to purchase Interest in the Partnership.

15. The term of each Partnership generally is expected to be fixed for a period less than 30 years from the date of its creation, but may be subject to earlier termination by the General Partner. In addition, each Partnership may be dissolved upon (i) the resignation, withdrawal, dissolution or bankruptcy of the General Partner, (ii) the insolvency or bankruptcy of the Partnership, (iii) the sale of all or substantially all of the Partnership's assets, or (iv) the conversion of the Partnership to corporate form pursuant to the terms of the applicable Partnership Agreement. Upon dissolution of the Partnership, the Partnership's assets will be distributed in accordance with the applicable Partnership Agreement.

16. A Partnership will not acquire any security issued by a registered investment company if, immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

17. As soon as practicable after the end of each fiscal year of each Partnership, the General Partner will mail or otherwise furnish a copy of a certified public accountant's report, which will include the Partnership's financial statements, to each Limited Partner of the Partnership. In addition, each Partnership will supply the Limited Partners with all information reasonably necessary to enable the Limited Partners to prepared their federal and state income tax returns.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned by (i) current or former employees, or persons on retainer, of one or more affiliated employers, (ii) immediate family members of those persons, or (iii) the employer or employers together with any of the persons in (i) or (ii).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though that company was registered under the Act.

3. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act, except section 9, certain provisions of sections 17 and 30, sections 36 through 53, and the rules and regulations under those sections.

4. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting is principal, from knowingly selling or purchasing any security or other property to or from that company. Applicants request an exemption from section 17(a) to permit (i) an entity within the Chase Group (including a Third Party Fund) to engage in any transaction with a Partnership, or a company controlled by the Partnership (''Controlled Company''), (ii) a Partnership to invest in or engage in any transaction with any entity in which a Partnership, a Controlled Company, or an entity within the Chase Group (a) has invested or will invest, or (b) is or will become otherwise affiliated, and (iii) a Third Party Investor [2] to engage in any transaction with a Partnership or Controlled Company.

5. Applicants submit that an exemption from section 17(a) is consistent with the policy of each Partnership and the protection of investors. Applicants believe that an exemption is necessary to enable the Partnerships to participate in attractive investments that may be offered by the Chase Group. Applicants assert that the Limited Partners will have been fully informed of the possible extent of the Partnership's investments with affiliates and will be able to understand and

[1] Chase Capital Partners is the general partner of a separate limited partnership, the CCP Limited Partnership, into which certain partners and principals of Chase Capital Partners, and certain employees of the Chase Group, invest. The CCP Limited Partnership is not included as a Partnership for purposes of this application.

[2] A Third Party Investor is a partner or other investor of a Third Party Fund that is not an entity within the Chase Group, or any affiliate of that partner or investor.

evaluate the risks associated with those investments.

6. Section 17(d) and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of that person or underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request exemptive relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Partnership or a company controlled by the Partnership is a participant.

7. Applicants assert that the flexibility to structure co-investments and joint investments in the manner described in the application will not involve abuses of the type that section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by Chase and the Partnership might lead to less advantageous treatment of the Partnership, should be mitigated by the community of interest among the Chase Group and the personnel who invest in the Partnership, and the fact that officers, directors, and partners of entities within the Chase Group will be investing in the Partnership. In addition, applicants assert that strict compliance with section 17(d) would prevent the Partnerships from participating in attractive investments solely because an affiliate of the Partnership also may participate in the investment. Finally, applicants contend that the ''lock-step'' procedures described in condition 3 below, align the interests of the Eligible Employees with those of the Chase Group and, therefore, minimize the possibility that a Partnership may be disadvantaged by an affiliate's participation in a transaction.

8. Co-investments with Third Party Funds will not be subject to Condition 3. Applicants believe it is important that the Third Party Fund not be burdened or otherwise affected by a Partnership's participation in an investment opportunity. In addition, applicants believe that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to the Chase Group. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by the Chase Group in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships vis-a-vis the investors of a Third Party Fund.

9. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to the extent necessary to permit an entity within the Chase Group to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that independent accountants periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest of all the parties involved and the existing requirement for an independent annual audit, compliance with these requirements would be unnecessarily burdensome and expensive. Each Partnership will comply with all other requirements of rule 17f–1.

10. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the members of a related board of directors or other committee serving similar functions (the ''Board''), who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all of the members of a related Board will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the members of the related Board take such actions and make such approvals as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

11. Section 17(j) and paragraph (a) of rule 17j–1 prohibit certain enumerated persons from engaging in fraudulent or deceptive practices in connection with the purchase and sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1 (except rule 17j–1(a)) because they are unnecessarily burdensome as applied to the Partnerships.

12. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e) and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants believe that the forms prescribed by the SEC for periodic reports have little relevance to a Partnership and would entail administrative and legal costs that outweigh any benefit to the Limited Partners in a Partnership. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Limited Partners. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any others who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4 and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the ''Section 17 Transactions'') will be effected only if the Board determines that: (i) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Limited Partners and do not involve overreaching of the Partnership or its Limited Partners on the part of any person concerned; and (ii) the transaction is consistent with the interests of the Limited Partners, the Partnership's organizational documents, and the Partnership's reports to its Limited Partners. In addition, the General Partner will record and preserve a description of the affiliated transactions, the Board's findings, the information or materials upon which the Board's findings are based, and the basis for the findings. All records relating to an Investment Program will be maintained until the termination of the Investment Program and at least two

years thereafter, and will be subject to examination by the SEC and its staff.[3]

2. In connection with the Section 17 Transactions, the Board, through the General Partner, will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any transaction, with respect to the possible involvement in the transaction of any affiliated person, promoter of, or principal underwriter for the Partnerships, or any affiliated person of that person, promoter, or principal underwriter.

3. The General Partner will not invest the funds of any Partnership in any investment in which a ''Co-Investor'' (as defined below) has acquired, or proposes to acquire, the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless the Co-Investor, prior to disposing of all or part of its investment (i) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (ii) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to, or concurrently with, on the same terms as, and pro rata with, the Co-Investor. The term ''Co-Investor'' means any person who is (i) an ''affiliated person'' (as that term is defined in the Act) of the Partnership (other than a Third Party Fund); (ii) Chase Capital Partners or another entity within the Chase Group; (iii) an officer, director or partner of Chase Capital Partners or another entity within the Chase Group; or (iv) a company in which the General Partner of the Partnership acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by a Co-Investor (i) to its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (ii) to Qualified Family Members of the Co-Investor or a trust or other investment vehicle established for a Qualified Family Member; (iii) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (iv) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under that Act, or (v) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner or the investment manager of the Partnership will maintain and preserve, for the life of the Partnership and at least two years thereafter, those accounts, books, and other documents that constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners, and each annual report of the Partnership required to be sent to the Limited Partners, and agree that all of those records will be subject to examination by the SEC and its staff.[4]

5. The General Partner will send to each Limited Partner who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. As of the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of that fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, as soon as practicable after the end of each fiscal year of each Partnership, the General Partner will send a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth tax information as will be necessary for the preparation by the Limited Partner of federal and state income tax returns, and a report of the investment activities of the Partnership during that year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with that Partnership by reason of a 5% or more investment in that entity by a Chase Group director, officer or employee, that individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14112 Filed 5–27–98; 8:45 am]

BILLING CODE 8010–01–M

[3] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23199; File No. 812–10978]

U.S. Global Leaders Variable Insurance Trust, et al.; Notice of Application

May 20, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting exemptive relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to permit shares of any current or future series of U.S. Global Leaders Variable Insurance Trust (the ''Fund'') and shares of any other investment company that is designed to fund variable insurance products for which Yeager, Wood & Marshall, Inc. (the ''Adviser'') or any of its affiliates, may now or in the future serve as manager, investment adviser, administrator, principal underwriter or sponsor (the Fund and such other investment companies, collectively, ''Insurance Products Funds'') to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''); and (3) the Adviser or any of its affiliates (representing seed money investments in the Insurance Products Funds).

Applicants: U.S. Global Leaders Variable Insurance Trust and Yeager, Wood & Marshall, Inc.

Filing Date: The application was filed on January 23, 1998, and amended on March 26, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request

a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 15, 1998, and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Raymond A. O'Hara, III, Esq., Blazzard, Grodd & Hasenauer, P.C., 943 Post Road East, Westport, Connecticut 06881.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicant's Representations

1. The Fund is a Delaware business trust registered under the 1940 Act as an open-end management investment company. The Fund, which was organized in October 1997, currently consists of one series.

2. The Adviser, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the Fund's investment adviser.

3. Applicants desire that the Insurance Products Funds have the flexibility to offer their shares to separate accounts of Participating Insurance Companies that fund variable annuity and variable life insurance contracts (including single premium, scheduled premium, modified single premium and flexible premium contracts) (collectively, ''Variable contracts''). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration.

4. The Participating Insurance Companies will establish their own separate accounts and design their own Variable Contracts. Each Participating Insurance company will have the legal obligation of satisfying all requirements under the federal securities laws. Each Participating Insurance company will enter into a fund participation agreement with the Insurance Products Fund in which the Participating Insurance company invests.

5. Applicants state that shares of the Insurance Products Funds also may be offered directly to Qualified Plans outside the separate account context. The Plans may choose one or more of the Insurance Products Funds as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given the right to select among the Insurance Products Funds, depending on the Plan. ''Plan participants'' include not only those participants of qualified pension or retirement plans as set forth in Treasury Regulation § 1.817–5(f)(3)(iii) and Revenue Ruling 94–62, but also include any other trust, account, contract or annuity that is determined to be within the scope of Treasury Regulations § 1.817–5(f)(3)(iii). Fund shares sold to Plans will be held, where applicable, by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act (''ERISA'').

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b) are available only where the management investment company offers its shares exclusively to the variable life insurance separate accounts of the life insurer or any affiliated life insurance company.

2. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' ''Mixed and shared funding'' denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Thus, Rule 6e–3(T) permits mixed funding with respect to a flexible-premium variable life insurance separate account, but precludes shared funding.

4. Applicants assert that the use of the Insurance Products Funds as common investment media for the Variable Contracts would allow Participating Insurance Companies to benefit not only from the investment and administrative expertise of the Adviser, but also from the cost efficiencies and investment flexibility afforded by a larger pool of funds. Applicants also submit that mixed and shared funding would benefit Variable Contract owners by: (a) Eliminating a significant portion of the costs of establishing and administering separate funds; (b) permitting a greater amount of assets available for investment by the Insurance Products Funds, thereby promoting economies of scale, permitting greater diversification, and making the addition of new portfolios more feasible; and (c) encouraging more insurance companies to offer Variable Contracts, resulting in increased competition with respect to both the design and pricing of Variable Contracts, which can be expected to result in greater product variation and lower charges.

5. Applicants assert that the relief granted by sub-paragraph (b)(15) of Ruled 6e–2 and 6e–3(T) will not be affected by the proposed sale of Insurance Products Fund shares to Plans. Applicants note, however, that because the relief under sub-paragraph

(b)(15) of Rules 6e–2 and 6e–3(T) is available only where shares are offered exclusively to separate accounts of life insurance companies, additional exemptive relief is necessary if shares of the Insurance Products Funds also are to be sold to Plans.

6. Applicants state that current tax law permits the Insurance Products Funds to increase their asset base through the sale of fund shares to Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held by the portfolios of the Insurance Products Funds. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. The regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5(1989). The regulations do, however, contain certain exceptions to this requirement, one of which permits shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

7. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations, and that the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Applicants therefore request an Order of the Commission exempting variable life insurance and variable annuity separate accounts of Participating Insurance Companies (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) and Applicants from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder, when shares of the Insurance Products Funds are offered and sold to, and held by, such separate accounts in the mixed and shared funding context, regardless of whether shares of the Insurance Products Funds also are offered and sold directly to Plans.

9. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2).

10. Rules 6e–2 and 6e–3(T) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by sub-paragraph (b)(15(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of an insurance company or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying investment company. The relief provided by sub-paragraph (b)(15)(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

11. Applicants state that the partial relief from Section 9(a) found in sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that Section. Applicants state that those rules recognize that it is not necessary to apply the provisions of Section 9(a) to the many individuals who may be involved in an insurance company complex, but who have no connection with the investment company funding the separate accounts. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Products Funds. Therefore, Applicants assert that applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants state that the relief requested should not be affected by the proposed sale of Insurance Products Funds to Qualified Plans, because the insulation of the Insurance Products Funds from those individuals who are disqualified under the 1940 Act remains in place. Moreover, since the Plans are not investment companies and will not be deemed affiliated solely by virtue of their shareholdings, no additional relief is necessary.

12. Sections 13(a), 15(a) and 15(b) of the 1940 Act require ''pass-through'' voting with respect to underlying investment company shares held by a separate account. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) under the 1940 Act provides partial exemptions from the pass-through voting requirements in limited circumstances.

13. For example subparagraph (b)(15)(iii)(B) of Rules 6e–2 and 6e–3(T) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in the investment company's investment policies, principal underwriter, or investment adviser. Under the rules, voting instructions with respect to a change in investment policies may be disregarded only if the insurance company makes a good faith determination that such changes would: (a) Violate state law; (b) result in investments that were not consistent with the investment objectives of the separate account; or (c) result in investments that would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives.

14. Applicants state that Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts and are subject to extensive state regulation of insurance. Applicants maintain, therefore, that in adopting Rule 6e–2, the Commission expressly recognized that exemptions from pass-through voting requirements were necessary to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonable could be expected to increase the risks undertaken by the life insurer. Flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority, and therefore, corresponding provisions of Rule 6e–3(T) presumably were adopted in recognition of the same considerations the Commission applied in adopting Rule 6e–2. Applicants submit that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding, and that such funding does not compromise the goals of the

insurance regulatory authorities or of the Commission.

15. Applicants further state that the sales of shares of the Insurance Products Funds to Plans does not affect the relief requested in this regard. As previously noted, shares of the Insurance Products Funds will be held, where applicable, by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustees are subject to the direction of a name fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA.

16. Applicants submit that there is no contractual or other relationship between the Participant Insurance Companies and any Plans which would affect the solvency of the life insurer, would affect the performance of the life insurer's contractual obligations, or would be expected to increase the risks undertaken by the life insurer. Accordingly, Applicants submit that where Plans provide participants with the right to give voting instructions, the purchase of shares by Plans does not present any complications not otherwise occasioned by mixed or shared funding.

17. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that where different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with which the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different or greater than exists where a single insurer and its affiliates offer their insurance products in several states.

18. Applicants further submit that affiliation does not reduce the potential for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Insurance Products Funds.

19. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Variable Contract owner voting instructions. Potential disagreement is limited by the requirements that the Participating Insurance Company's decision to disregard voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Variable Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment in that Insurance Products Fund. No charge or penalty will be imposed upon the Variable Contract owners as a result of such a withdrawal.

20. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund with mixed funding would, or should, be materially different from what those policies would, or should, be if such Insurance Products Fund or series thereof funded only variable annuity or variable life insurance contracts. Moreover, Applicants represent that the Insurance Products Funds will not be managed to favor or disfavor any particular insurer or type of insurance product.

21. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants assert that neither the Code, the Treasury regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

22. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or Qualified Plan is unable to net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Insurance Products Funds at their respective net asset values. The Qualified Plan will then make distributions in accordance with the terms of the Plan. The Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract.

23. Applicants state that they do not see any greater potential for irreconcilable material conflicts arising between the interests of participants under the Plans and owners of the Variable Contracts issued by the separate accounts of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

24. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Variable Contract owners as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of participants under the Qualified Plans, or Variable Contract owners under their Variable Contracts, the Plans and the separate accounts have rights only with respect to their respective shares of the Insurance Products Funds. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

25. Applicants state that there are no conflicts between the Variable Contract owners and the Plan participants with respect to state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power to prevent, among other things, insurance companies from indiscriminately redeeming their separate accounts out of one fund and investing in another. To accomplish such redemptions and transfers,

complex and time consuming transactions must be undertaken. Conversely, trustees of Plans or the participants in participant-directed Plans can make the decision quickly and implement redemption of shares from an Insurance Products Fund and reinvest the moneys in another funding vehicle without the same regulatory impediments, or, as is the case with most Plans, even hold cash pending a suitable alternative investment. Based on the foregoing, Applicants represent that even should the interests of Variable Contract owners and the interests Plan participants conflict the conflicts can be resolved almost immediately in that trustees of the Plans can, independently, redeem shares out of the Insurance Products Funds.

26. Applicants state that, regardless of the types of Insurance Products Fund shareholders, a fund's adviser is legally obligated to manage the fund in accordance with the fund's investment objectives, policies and restrictions as well as any guidelines established by the fund's board. Applicants assert that the Adviser does so, and thus, would manage the Insurance Products Funds in the same manner as any other mutual fund.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of each Insurance Products Fund's Board of Trustees or Directors (each, a ''Board'') shall consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Board member, then the operation of this condition shall be suspended: (a) for a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Insurance Products Fund's Board will monitor the fund for the existence of any material irreconcilable conflict between and among the interests of the Variable Contract owners of all separate accounts and of Plan participants and Qualified Plans investing in the Insurance Products Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Variable Contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. The Adviser (or any other investment adviser of an Insurance Products Fund), any Participating Insurance Company and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% of more of the assets of an Insurance Products Fund (collectively, ''Participants'') will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be obligated to assist the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of all Participating Insurance Companies and Qualified Plans investing in the Insurance Products Funds under their respective agreements governing participation in the Insurance Products Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Variable Contract owners and, if applicable, Plan participants.

4. If a majority of an Insurance Products Fund's Board members, or a majority of the disinterested Board members, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Board members), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Insurance Products Fund or any of its series and reinvesting such assets in a different investment medium, which may include another series of the Insurance Products Fund or another Insurance Products Fund; (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance contract owners of one ore more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Variable Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and this decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Insurance Products Fund, to withdraw its separate account's investment in such fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Products Fund, to withdraw its investment in such fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Products Funds and these responsibilities shall be carried out with a view only to the interests of the Variable Contract owners and, as applicable, Plan participants.

5. For purposes of Condition 4, a majority of the disinterested members of the applicable Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will an Insurance Products Fund or the Adviser (or any other investment adviser of the Insurance Products Funds) be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract if a majority of Variable Contract owners materially affected by the material irreconcilable conflict vote to decline such offer. No qualified Plan shall be required by Condition 4 to establish a new funding medium for such Qualified Plan if: (a) A majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer; or (b) pursuant to governing plan documents and applicable law, the Plan makes such decision without Plan participant vote.

6. Participants will be informed promptly in writing of a Board's determination of the existence of an irreconcilable material conflict and its implications.

7. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract Owners. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the Insurance Products Fund held in their separate accounts in a manner consistent with voting instructions timely received from Variable Contract owners. In addition, each Participating Insurance Company will vote shares of the Insurance Products Fund held in its separate accounts for which it has not received timely voting instructions from contract owners, as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in an Insurance Products Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Products Fund's shares and calculate voting privileges in a manner consistent with all other separate accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Plan will vote as required by applicable law and governing Plan documents.

8. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners, the Adviser (or any of its affiliates) will vote its shares of any series of any Insurance Products Fund in the same proportion as all Variable Contract owners having voting rights with respect to that series; provided, however, that the Adviser (or any of its affiliates) shall vote its shares in such other manner as may be required by the Commission or its staff.

9. All reports of potential or existing conflicts received by a Board, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. Each Insurance Products Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risk of mixed and shared funding may be appropriate. Each Insurance Products Fund shall disclose in its prospectus that: (a) Its shares may be offered to insurance company separate accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) differences in tax treatment or other considerations may cause the interests of various Variable Contract owners participating in the Insurance Products Fund and the interests of Qualified Plans investing in the Insurance Products Fund to conflict; (c) the Board will monitor the Insurance Products Funds for any material conflicts and determine what action, if any, should be taken.

11. Each Insurance Products Funds will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Insurance Products Funds). In particular, each such Insurance Products Fund either will provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although none of the Insurance Products Funds shall be one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent that Rule 6e–2 or rule 6e–3(T) under the 1940 Act is amended or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Insurance Products Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, or proposed rule 6e–3 as adopted, to the extent such Rules are applicable.

13. The Participants, at least annually, shall submit to each Board such reports, materials or data as each Board may reasonably request so that such Boards may fully carry out the obligations imposed upon them by the conditions stated in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data upon reasonable request of a Board shall be contractual obligation of all Participants under the agreements governing their participation in the Insurance Products Funs.

14. If a Qualified Plan or Plan participant shareholder should become an owner of 10% or more of the assets of an Insurance Products Fund, such Plan will execute a participation agreement with such fund which includes the conditions set forth herein to the extent applicable. A Qualified Plan or Plan participant will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40008; File No. SR–Amex–98–17]

Self-Regulatory Organizations; Notice of Filing of Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Listing and Trading of Warrants on the PaineWebber Oil & Gas Producers Index

May 19, 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 April 29, 1998, the American Stock Exchange, Incorporated (''Amex'' or Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 The Proposed Rule Change

The Amex proposes to list and trade warrants on the PaineWebber Oil & Gas Producers Index (''Index''), a narrow-based index developed by PaineWebber Incorporated currently comprised of stocks of 22 companies in the oil and gas industry. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.[3]

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 represented that no comments were 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 purpose of the proposed rule change is to permit the Amex to list and trade warrants on the Index. The Amex states that warrants on the Index are designed to provide investors with an investment vehicle to participate in or hedge against volatility associated with the ownership of stocks of companies in the oil and gas industry and decrease the risk involved in selecting individual stocks in this industry. The Amex filed this proposal pursuant to Section 19(b)(3)(A) of the Act, and Section 106[4] of the Amex *Company Guide* and Amex Rule 901C, Commentary .02, which together provide for the commencement of the trading of warrants on the Index thirty days after the date of this filing. The proposal meets all the criteria set forth in Section 106 of the Amex *Company Guide,* Amex Rule 901C, Commentary .02 and the Commission's order approving Exchange Rule 910C.[5]

Criteria Under Section 106 of the Amex Company Guide. Warrant issues on the Index will conform to the listing guidelines under Section 106 of the Amex *Company Guide,* which provide, among other things, that (1) the issuer shall have tangible net worth in excess of $250,000,000 and otherwise substantially exceed size and earnings requirements in Section 101(A) of the *Company Guide* or meet the alternate guideline in paragraph (a); (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

Criteria Under Exchange Rule 901C For Index Components. Pursuant to Commentary .02 to Exchange Rule 901C, (1) each of the component securities has a minimum market capitalization of at least $75 million and has a trading volume in each of the last six months of not less than 1,000,0000 shares; (2) the lesser of the five highest weighted component securities in the Index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months; (3) at least 90% of the Index's numerical index value and at least 80% of the total number of component securities meet the current criteria for standardized option trading set forth in Exchange Rule 915 (in fact, all of the component securities in the Index currently underlie standardized options); (4) the Index contains no American Depositary Receipts (''ADRs''); (5) all component stocks are listed on the Amex, the New York Stock Exchange (''NYSE''), or traded through the facilities of the National Association of Securities Dealers Automated Quotation System and are reported National Market System securities (''Nasdaq/NMS''); and (6) no component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60% of the weight of the Index.

Index Design. The Index was designed by PaineWebber and will be maintained by the Amex. The Amex represents that the Index is a narrow-based index currently comprised of stocks of 22 companies from the oil and gas industry. The total capitalization of the component securities in the Index as of April 21, 1998 was approximately $57 billion. The average capitalization on that date was approximately $2.6 billion. The individual market capitalization of the component securities ranges from $324 million to $9.9 billion. the components in the Index had a six month average daily trading volume of 7 million shares per day and ranged from 1.6 million shares per day to 13.2 million shares per day.

Index Calculation. The Index is market capitalization-weighted such that the Index value is calculated by multiplying the primary exchange regular way last sale price of each component security by its number of shares outstanding, adding the sums

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] The text of the proposed rule change contains a list of the component securities including the individual component security weights and average daily trading value and market capitalization for each security.

[4] Section 106(j) of the Amex *Company Guide* provides that in order to list warrants on a stock index industry group pursuant to Section 19(b)(3)(A) of the Act, the Exchange may file for approval of a stock index industry group underlying a proposed warrant pursuant to the procedures and criteria set forth in Commentary .02 to Exchange Rule 901C. (See also Securities Exchange Act Release No. 34–37007 (March 21, 1996), 61 FR 14165 (March 29, 1996).

[5] See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994). Accordingly, the Exchange has represented that the proposed rule will not become operative for 30 days after the date of this filing. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change.

and dividing by the current index divisor.

Maintenance of the Index. The Index will be maintained by the Amex. If necessary in order to maintain continuity of the Index, its divisor may be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, stock distributions, stock splits, reverse stock splits, spin-offs, certain rights issuance, recapitalizations, reorganizations, and mergers and acquisitions.

The Exchange will maintain the Index in accordance with Amex Rule 901C, Commentary .02 so that, (1) the Index is comprised of not less than 15 underlying stocks, and not more than 29 underlying stocks; (2) component stocks constituting the top 90% of the Index, by weight, will have a minimum market capitalization of $75 million, and the component stocks constituting the bottom 10% of the Index, by weight, may have minimum market capitalization of $50 million; (3) 90% of the Index's numerical index value and at least 80% of the total number of components will meet the then current criteria for standardized options trading set forth in Amex Rule 915; (4) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component stocks will either be listed on the Amex, the NYSE, or Nasdaq/NMS; (6) no component security will represent more than 25% of the weight of the Index, and the five highest weighted components will not in the aggregate account for more than 60% of the Index; (7) trading volume of each component security shall be at least 500,000 shares for each of the last six months, or for each of the lowest weighted components that in aggregate account for no more than 10% of the weight of the Index, the monthly trading volume may be at least 400,000 shares for each of the last six months; and (8) the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index shall have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

Dissemination of the Index Value. Similar to other stock index values which underlie exchange-traded products, the value of the index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Warrant Expiration and Settlement. Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a ''put'' would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated index level. Conversely, holders of a warrant structured as a ''call'' would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated index level. If ''out-of-the-money'' at the time of expiration, the warrants would expire worthless. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

Other Exchange Rules Applicable to Index Warrants. The listing and trading of warrants on the Index will comply in all respects to Exchange Rules 1100 through 1110 for the trading of stock index and currency warrants. These rules cover issues such as exercise and position limits and reporting requirements. Surveillance procedures currently used to monitor trading in each of the Exchange's other index warrants will also be used to monitor trading in warrants on the PaineWebber Oil & Gas Producers Index. The Index is deemed to be a Stock Index Industry Group under Rule 900C(b)(1). The Exchange expects that the review required by Rule 1107(b)(ii) will result in a position limit of 6,750,000 warrants.

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designated 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act. The Amex may not list warrants for trading on the Index prior to 30 days after the date the proposed rule change was filed with the Commission.[6] At any time within 60 days of the filing of such proposed rule change, 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, 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 in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–98–17 and should be submitted by June 12, 1998.

[6] See Securities Exchange Act Release No. 34–34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 98–14020 Filed 5–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40019; File No. SR–Amex–97–40]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Proposed Revisions to the Exchange's Policy Regarding the Use of Wireless Data Communications Devices

May 21, 1998.

I. Introduction

On October 29, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its policy regarding the use of wireless data communications devices on the trading floor.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 39411 (December 8, 1997), 62 FR 65727 (December 15, 1997). No comments were received on the proposal. The Exchange subsequently filed Amendment No. 1 on March 17, 1998.[3] The order approves the proposed rule filing, as amended.

II. Description

The Exchange has undertaken to build an infrastructure (''Infrastructure'') to support wireless data communications on the trading floor by members and Exchange staff. On September 26, 1996, the Commission approved various rule changes and a policy regarding the use of wireless data communications devices on the trading floor (the ''Wireless Communications Policy'' or ''Policy'').[4] The Wireless Communications Policy was originally based upon a design for the Infrastructure that called for all wireless data transmissions to pass through an application residing between the member firms and the Exchange's wireless infrastructure (the ''Gateway''). The Gateway would have monitored data that was being transmitted to and from the Infrastructure and would have repackaged it to conform to a standard format for all members to use. The Gateway would have permitted the Exchange to make a record of all wireless communications and to unilaterally ''throttle'' all, or selected, member communications in the event that such transmissions used a disproportionate amount of the available radio frequency or threatened to exceed available radio frequency capacity. The Exchange is now proposing to eliminate the Gateway.

As noted above, the Gateway would have maintained a record of all wireless communications. The Exchange states that the records obtained through the Gateway would have been duplicative of records already maintained by member firms pursuant to Commission and Exchange rules and that the proposed rule change will eliminate this duplicative data base. Under the revised Wireless Communications Policy, members will still be required to maintain books and records pursuant to Exchange rules and policies and federal securities laws. According to the Exchange, the relevant Exchange rules require members to prepare and maintain records of orders and transactions containing the information specified in Exchange Rule 111, Commentary .04; Exchange Rule 114, Commentary .09; and Exchange Rules 153, 180, 181, and Exchange Rule 950(a), (c) and (d), Commentary .03. The Exchange's audit trail policies also require members to records the time of trade, executing broker badge number and contra broker badge number with respect to all trades. In addition, the Exchange states that Rules 17a–3(a) (6) and (7) under the Act require registered brokers and dealers to prepare records of brokerage orders and dealer transactions meeting the requirements of these rules, and that these records must be maintained for the period stated in Rule 17a–4(b)(1) under the Act.[5]

In addition, the Exchange states that the elimination of the record keeping capabilities of the Gateway will not cause any diminution of the Exchange's surveillance capabilities because the Exchange will retain the same access to member books and records that it currently possesses. The Exchange currently has the ability to obtain records from its members for investigative purposes pursuant to its authority to require members to produce their books and records and to discipline members (and their employees) that fail to comply with such requests.[6] In the Absence of a Gateway, the Exchange would continue to employ its current procedures for obtaining information from its members and their employees.[7]

With respect to monitoring radio frequency capacity and usage, the revised Wireless Communications Policy will state that the Exchange's staff may request members to reduce radio traffic if and when required because a particular user is using more than its fair share to radio frequency capacity of overall usage is reaching its maximum. Members will be obligated to comply immediately with any such request and their ability to send wireless communications may be immediately terminated for failure to comply.

The Exchange also proposes some further changes to the Wireless Communications Policy to include a requirement that members using wireless technology maintain a record of orders and quotes initiated on the Floor and transmitted to other markets, a statement that members do not acquire a property interest in their assigned band width, a requirement that affiliates be treated as a single entity for purposes of band width assignment and a reduction in the number of handheld terminals that the system is able to support in view of anticipated demand for this capacity.

III. Discussion

The Commission finds that the proposed rule change is consistent with

[7] 17 CFR 200.30–3(a)(12)(1994).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from William Floyd-Jones, Assistant General Counsel, Amex, to Heather Seidel, Attorney, Market Regulation, Commission, dated March 16, 1998 (''Amendment No. 1''). Amendment No. 1 explains in further detail why the Exchange is eliminating the Gateway; which records members are required to keep pursuant to Exchange and Commission rules that the Gateway would have separately maintained; how the Exchange will obtain records from its members for surveillance purposes without the Gateway; and how the Exchange will monitor overall radio frequency usage and individual firm usage in the absence of the a Gateway in order to determine that the wireless infrastructure is approaching its capacity, and which firm(s) is using a disproportionate amount of the radio frequently capacity.

[4] See Securities Exchange Act Release No. 37728 (September 26, 1996), 61 FR 51476 (October 2, 1996).

[5] The Commission notes that in general members, brokers, and dealers are subject to the Commission's recordkeeping and record retention rules, Rule 17a–3, and 17a–4 under the Act (17 CFR 240.17a–3 and 240.17a–4).

[6] See, *e.g.*, Article II, Section 3(a) of the Exchange Constitution, Article V, Section 4(k) of the Exchange Constitution, and Exchange Rule 31.

[7] The Exchange also states that to the best of its knowledge, the Exchange's current procedures for obtaining member books and records are consistent with existing practice at all other exchanges.

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).[8] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.[9]

The Commission continues to believe that the Wireless Communication Policy should help remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest, by expediting and making more efficient the process by which members receive and execute orders on the floor of the Exchange. In particular, the Commission believes that the removal of the Gateway should increase efficiency by eliminating any time delay that the requirement that all orders pass through the Gateway subsystem may have caused. The Commission finds, based upon the Exchange's representations concerning the lack of need for a Gateway[10] and the excessive cost and difficulty of designing and implementing the Gateway,[11] that it is consistent with the Act for the Exchange to eliminate the Gateway.

The Commission believes that it is reasonable for the Exchange to conclude that the Gateway is not necessary because the selected radio frequency should be able to support all foreseeable wireless communications and because the Exchange will have the ability to monitor radio frequency capacity and usage and require member firms to cut down on their usage to ensure that the system does not become overloaded. The Exchange states that the Wireless Network Management System (''WNMS'') is a monitoring tool that will enable it to monitor radio frequency usage by (1) all wireless users collectively, (2) a particular firm, and (3) an individual using a handheld terminal within a particular firm. The WNMS combines some of the capabilities of the Gateway and Wireless Control Subsystem which existed in the former design of the wireless infrastructure. The next version of the WNMS will allow the Exchange's personnel to see all, or a selected number, of users sorted according to their use of the system. Each firm (or group of affiliated firms) that has been approved to use wireless technology currently may use up to 1/30th of total radio frequency capacity, and the Exchange would consider a member's use of more than 1/30th of total system capacity to be a disproportionate usage of its radio frequency capacity.[12]

The Commission also believes that the Exchange and member firms should be able to adequately maintain records of all wireless transactions, because of the already existing recordkeeping and surveillance procedures, in the absence of the Gateway. Member firms currently are, and will still be, subject to Exchange and Commission recordkeeping and record retention rules.[13] In addition, the elimination of the recordkeeping capabilities of the Gateway should not cause undue diminution of the Exchange's surveillance capabilities because the Exchange has the ability to obtain those records from members for investigative purposes, with the authority to discipline members who do not comply with such requests.[14]

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 clarifies and strengthens the proposed rule change by more fully explaining why the Exchange is amending the Wireless Communications Policy to eliminate the Gateway, and how the Exchange will still have adequate ability to monitor and surveille wireless usage and wireless transactions without the Gateway. Amendment No. 1 does not make any substantive changes to the proposed rule change. Also, the proposed rule change was noticed for the full statutory notice and comment period and no comment letters were received. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 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 also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Annex–97–40 and should be submitted by June 18, 1998.

IV. Conculsion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Amex–97–40), as amended, is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[16]

[8] 15 U.S.C. 78f(b).

[9] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] In late 1996, the Exchange reviewed the design of the Infrastructure. The Exchange determined that there was no immediate need for throttling because the amount of radio frequency capacity available in the 2.4 GHz frequency could support all foreseeable wireless communications, and that it was unclear when it might become necessary. The Exchange also noted that it could control excessive radio frequency use by denying requests to use wireless applications that required excessive capacity. Also, the Exchange noted there are other radio frequencies and emerging technologies that could be employed in the unlikely event that the capacity of the 2.4 GHz frequency is exhausted. The Exchange concluded that since there was no need for throttling, there was no need for a Gateway and that, if and when necessary, throttling could be accomplished by the member firms without a Gateway.

[11] Also during this 1996 review, the Exchange estimated that the use of a Gateway instead of a router would have more than doubled its costs to develop and install the infrastructure and would have also necessitated a high degree of customized programming which raised reliability issues. In addition to concerns with the Exchange's costs and system reliability, members using the infrastructure with a gateway would have had to conform their message formats to the gateway's requirements, which would have required members that already had developed wireless communications capabilities to incur significant costs to reprogram their existing systems to comply with the Exchange's unique requirements. Potentially, these members would have had to operate different wireless systems on different exchanges.

[12] According to Amex, the Infrastructure has been designed to support 4 million megabits per second; thus, overall usage that approaches the four million megabit level would be considered to be approaching system capacity.

[13] See Description Section *supra.*

[14] The Commission also believes that the miscellaneous amendments to the Wireless Communications policy are reasonable under the Act because the changes are designed to enhance the Policy in light of the Exchange's experience with wireless technology since the Policy was first adopted.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14116 Filed 5–27–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40015; File No. SR–CBOE–98–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Adjustments in Market Maker Equity

May 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 31, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE.[2] 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 CBOE proposes to amend CBOE Rule 12.3, ''Margin Requirements'' by adopting Interpretation and Policy .06, which will allow clearing firms to adjust a market maker's equity under certain limited circumstances so that the clearing firm may extend credit for opening trades. Specifically, proposed Interpretation and Policy .06 will allow a clearing firm to adjust the equity in a market maker's account when the underlying stock price is disseminated after the options close at 3.02 p.m.[3] at a price that is inconsistent with the options closing price.

Copies of the proposed rule change are available at the Office of the Secretary, CBOE, 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 CBOE 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 CBOE 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

CBOE Rule 12.3(f)(3) (C)(3)[4] prohibits clearing firms from extending credit to a market maker for opening transactions when the market maker's account is in deficit. The CBOE proposes to add Interpretation and Policy .06 to CBOE Rule 12.3 to permit a clearing firm to adjust the equity in a market maker's account under certain limited circumstances in order to allow the clearing firm to extend credit for opening trades. Specifically, proposed Interpretation and Policy .06 will permit a clearing firm to adjust the equity in market maker's account when the underlying stock price is disseminated after the options close at 3:02 p.m. at a price that is inconsistent with the options closing price.

In 1997, the CBOE and the other options exchanges changed the closing time for trading equity options and certain narrow-based index options from 3:10 p.m. to 3.02 p.m.[5] Since then, the CBOE has discovered that the equity of market maker's account at a clearing firm can be severely affected when news of a stock underlying a CBOE option is disseminated near the close, resulting in heavy trading and a late trade tape. In these situations, the last sale of the underlying stock could be disseminated well after the overlying options stop trading at 3:02 p.m.,[6] and closing price of the underlying stock may be out of line with the closing quotes and the last sale of the options series. The CBOE notes that while this situation would almost assuredly realign itself at the opening of trading on the next day, the discrepancy in closing prices may cause a market maker's account to have deficit equity. This is true even though from a market risk standpoint the market maker may be hedged.

Proposed Interpretation and Policy .06 would allow a clearing firm to appropriately adjust a market maker's account equity to eliminate a pricing disparity for a trader whose account is in deficit as a result of such a situation. The clearing firm will be required to provide documentation to the CBOE for such adjustments before the opening of trading the next day (or before the firm may extend credit for opening transactions). These adjustments will be made on a case-by-case basis. In situations where the deficit is eliminated by the adjustment and the adjustment is approved by the CBOE's Department of Financial and Sales Practice Compliance, the trader would be permitted to continue trading the next business day.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that, by allowing for an adjustment in a market maker's account equity in situations where the stock and the overlying options close at anomalous prices, the proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE 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

Within 35 days of the date of publication of this notice in the **Federal**

[1] 15 U.S.C. 78s(b)(1).

[2] On May 7, 1998, the CBOE filed Amendment No. 1 to the proposal. See Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Yvonne Fraticelli, Division of Market Regulation, Commission, dated May 6, 1998 (''Amendment No. 1'') In Amendment No. 1, the CBOE revised its proposal to: (1) indicate that CBOE Rule 12.3(f)(3)(C)(3), rather than Regulation X of the Board of Governors of the Federal Reserve System, prohibits a clearing firm from extending credit to a market maker when the market maker's account is in deficit; (2) replace a reference in proposed Interpretation and Policy .06 to CBOE Rule 12.3(b)(1)(D) with a reference to CBOE Rule 12.3(f)(1)(F) to define net liquidating equity; and (3) revise proposed Interpretation and Policy .06 to indicate that clearing firms will be allowed to extend credit for opening trades, rather than to permit opening trades.

[3] All time references are in Central Time.

[4] See Amendment No. 1, *supra* note 2.

[5] See *e.g.*, Securities Exchange Act Release No. 38543 (May 14, 1997), 62 FR 28082 (May 22, 1997) (order approving File No. SR–CBOE–96–71).

[6] When the options markets closed at 3:10 p.m., this situation would rarely arise because the final stock prices were almost always disseminated by the time the options markets closed, thereby allowing options market makers to adjust their quotes accordingly.

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 by order approve such proposed rule change, or 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–11 and should be submitted by June 18, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40021; File No. SR–CBOE–98–12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Mandated Education Training

May 21, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on April 20, 1998, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to add a provision of Exchange Rule 6.20 Admission to and Conduct on the Trading Floor, Member Education, to require that Exchange members and persons associated with Exchange members attend mandatory continuing education classes as directed by the Exchange. Proposed new language is in italics.

Chicago Board Options Exchange, Inc. Rules

* * * * *

CHAPTER VI

Doing Business on the Exchange Floor

Section B: Member Activities on the Floor

Admission to and Conduct on the Trading Floor: *Member Education*

Rule 6.20(a)—(c) No change.

(d) *Education Classes. Members and persons associated with members are required to attend such educational classes as the Exchange may require from time to time. Failure to attend Exchange mandated continuing educational classes may subject members and persons associated with members to sanctions pursuant to the Exchange's Minor Rule Violation provided in Exchange Rule 17.50. Any action taken by Floor Officials thereunder shall not preclude further disciplinary action by the Business Conduct Committee under Chapter XVII of the Rules, except as otherwise provided in Rule 17.50.*

. . . Interpretations and Policies:

.01–.09 No change.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE 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 proposing to add a provision to Exchange Rule 6.20, Admission to and Conduct on the Trading Floor; Member Education, to require that Exchange members and persons associated with Exchange members attend mandatory continuing education classes as directed by the Exchange. The Exchange believes it is necessary from time to time to require mandatory participation in certain educational training classes by its members and persons associated with its members for a variety of reasons, including to promote professional behavior and decorum on the trading floor, or to explain the operation of new technology. For example, the Exchange intends to implement a harassment awareness training and ethics program for its members and persons associated with its members who are present on the trading floor.

Without this rule change, the Exchange would not have the ability to mandate attendance. The Exchange is also proposing to amend its Minor Rule Violation fine schedule pursuant to Exchange Rule 17.50(g)(6). Floor Officials are allowed, pursuant to Rule 17.50(g)(6), to fine members and associated persons for violations of trading conduct and decorum policies. For failure to attend an Exchange mandated continuing educational class, the Exchange proposes a fine of $500 for a first offense, $750 for a second offense

and $1,000 for subsequent offenses. The Exchange believes the amount of the fines will be sufficient to ensure attendance. However, in the event members refuse to attend even after being assessed a fine, as with all Minor Rule violations, the Exchange has the discretion to refer violations to the Business Conduct Committee pursuant to Chapter XVII of the Exchange's Rules.

2. Statutory Basis

The proposed rule change will give the Exchange the ability to provide for a more professional and informed membership and is therefore consistent with and furthers the objectives of Section 6(b)(5) of the Act [2] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number (SR–CBOE–98–12) and should be submitted by June 18, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the CBOE's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that, consistent with Section 6(b)(5) of the Act,[3] requiring members and those associated with members to attend continuing education classes on such topics as professional conduct and the operation of new technology will both promote just and equitable principles of trade and benefit investors. Moreover, the Commission finds that mandating continuing education training for members and persons associated with members is consistent with the provisions of Section 6(c)(3)(B) of the Act, which makes it the responsibility of an exchange to prescribe standards of training, experience, and competence for persons associated with self-regulatory organization members.

The Commission therefor finds good cause for approving the proposed rule change prior to the thirtieth day after date of publication of notice of filing thereof in the **Federal Register**.[4]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–CBOE–98–12) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[FR Doc. 98–14115 Filed 5–27–98; 8:45 am]

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[2] 15 U.S.C. 78f(b)(5).

[3] 15 U.S.C. 78f(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

[4] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40016; File No. SR–CHX–98–5]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Utilization of Exempt Credit by Market Makers

May 20, 1998.

I. Introduction

On February 18, 1998, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 the filing, the CHX proposed amendments to an interpretation to Article XXXIV, Rule 16 relating to registered market makers' utilization of exempt credit. Notice of the proposed rule change was published in the **Federal Register** on April 8, 1998.[3] The Commission received no comments on the proposal.

II. Description of the Proposal

Interpretation .01 to Article XXXIV, Rule 16 notes that ''[e]xchange members registered as equity market makers are members registered as specialists for purposes of [the Act] and as such they are entitled to obtain exempt credit for financing their market maker transactions.'' [4] The Interpretation also sets forth certain parameters that market makers must satisfy to obtain such exempt credit. The Interpretation specifies that 50% of the quarterly share volume that creates or increases a position in a market maker account must result from transactions consummated on the Exchange or sent from the Exchange floor for execution in another market via the Intermarket Trading System (''ITS''). The proposed rule change modifies this Interpretation by eliminating the reference to ''creating or increasing a position,'' thereby including all transactions consummated

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39822 (March 31, 1998), 63 FR 17248 (April 8, 1998).

[4] The Board of Governors of the Federal Reserve System is authorized, pursuant to Section 7 of the Act, to establish initial margin requirements and credit restrictions on margin financing. 12 CFR 220 and 221. Generally, Regulation T limits to 50% the amount of financing extended to or by a broker-dealer to finance a securities position. 12 CFR 220.18. Bona fide market making activity, however, may be exempt from these credit restrictions.

on the Exchange or sent from the Exchange floor via ITS in determining a market maker's ability to use exempt credit.

In providing assistance in maintaining a fair and orderly market, a market maker may be required to decrease either a long or a short position in a particular security. Consequently, a market maker may, from time to time, engage in transactions that decrease its position. These transactions were not previously included in the calculation of transactions that qualify for exempt credit. The proposed rule change amends Interpretation .01 to Article XXXIV, Rule 16 to note that positions that decrease a position in a market maker account will be treated the same way as those that create or increase a position for purposes of determining whether a market maker has satisfied the 50% volume requirements needed to obtain exempt credit.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with Sections 6(b) and 11(b) of the Act.[5] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, 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. The Commission believes, moreover, that the proposed rule change is consistent with the requirements of Section 11(b) and Rule 11b–1 thereunder[7] that specialist (*i.e.*, market maker)[8] transactions contribute to the maintenance of fair and orderly markets.

The Commission believes that registered market makers on the Exchange serve an important function inasmuch as they add depth and liquidity to the market for CHX-traded securities. Pursuant to Article XXXIV of the CHX Rules, market makers are subject to both affirmative and negative obligations,[9] and, in return, are accorded certain privileges, including exempt credit financing.[10] For this reason, it is critical that only those members who are engaged in bona fide market making activities qualify for favorable margin treatment under the Exchange's rules. To the extent that transactions that decrease a position in a market maker account contribute to the depth and liquidity in the market for CHX-traded securities, the Commission believes that it is appropriate for the Exchange to conclude that such transactions constitute bona fide market making activity.

By including in the Exchange's exempt credit 50% minimum quarterly share volume requirements a greater number of transactions that contribute to the maintenance of fair and orderly markets, registered market makers are facilitated in their ability to finance transactions that provide market continuity and stability. Enhancements in the quality of the market CHX-traded securities in turn foster investor confidence and participation in the market. Accordingly, the Commission believes 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) and 11(b).[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change SR–CHX–98–05 be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14021 Filed 5–27–98; 8:45 am]

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[5] 15 U.S.C. 78f(b) and 78k(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 240.11b–1.

[8] Under Article XXXIV, Rule 16, registered market makers are registered as specialists for purposes of the Act.

[9] For example, under Article XXXIV, a registered market maker on the Exchange has the duty to maintain fair and orderly markets in assigned issues (Rule 1); the duty to execute at least 50% of quarterly share volume in assigned issues (Rule 3); and the duty to register separately for each security to be traded as a market maker (Rule 4).

[10] Under the federal securities laws and the Exchange's Rules as set forth in Article XXXIV, market makers are also granted special treatment and exemptions from requirements regarding net capital, position financing, and short sales for transaction effected during the course of bona fide market making.

[11] 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).

[12] 15 U.S.C. 78s(b).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40017; File No. SR–CHX–98–09]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Partial Temporary Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Amending the SuperMAX and Enhanced SuperMAX Algorithms

May 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 20, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or ''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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval, on a temporary basis, for a portion of the proposed rule change relating to a new SuperMAX algorithm.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its SuperMAX and Enhanced SuperMAX programs, located in subsections (c) and (e) of Rule 37 of Article XX. Specifically, the Exchange is proposing new algorithms to provide price improvement under SuperMAX and Enhanced SuperMAX in 1/16th point markets. Below is the text of the proposed rule change, additions are italicized; deletions are bracketed.

(c) SuperMAX.

[The Exchange's SuperMAX program shall be an automatic execution program within MAX in which a Specialist may voluntarily choose to participate on a stock-by-stock basis. A Specialist shall decide if his or her stock will be eligible for SuperMAX treatment. In the event that a Specialist determines that his stock is eligible for SuperMAX and voluntarily chooses to participate in SuperMAX, small agency market orders in that stock will automatically be executed in MAX, through the SuperMAX program, without any Specialist intervention based on the following criteria (for purposes of this Rule, small market orders shall mean orders up to and including 599 shares, except for the 500 stocks listed in the

[1] 15 U.S.C. 78s(b)(1).

S&P 500™ Index, in which case, small market orders shall mean orders up to and including 1099 shares):

(1) Pricing.

(i) Both buy and sell orders in markets quoted with less than ¼ point spread or orders which do not meet the criteria in (ii) or (iii) below will be executed based on the ITS BBO.

(ii) Buy orders in markets quoted with a ¼ point spread or wider will be executed at a price ⅛th point better than the ITS Best Offer if (i) an execution at the ITS Best Offer would create a double up tick based upon the last sale in the primary market or (2) an execution at the ITS Best Offer would result in a greater than a ⅛th point price change from the last sale in the primary market.

(iii) Sell orders in markets quoted with a ¼ point spread or wider will be executed at a price ⅛th point better than the ITS Best Bid if (i) an execution at the ITS Best Bid would create a double down tick based upon the last sale in the primary market or (2) an execution at the ITS Best Bid would result in a greater than a ⅛th point price change from the last sale in the primary market.

For example, the execution price for a market buy order in a ¼–½ quoted market is as follows:

Tick/last sale	Execution price
+½	½
+⅜	⅜
−⅜	½
−¼	⅜
+¼	⅜ (if in range)

The execution price for a market buy order in a ¼–⅝ quoted market is as follows:

Tick/last sale	Execution price
+⅝	⅝
+½	½
⅜	½
−½	⅝
−⅜	½
−¼	½
+¼	½

(2) Operating Time. SuperMAX will operate each day that the Exchange is open for trading from 8:45 a.m. (C.T.) until the close. During volatile periods, individual stocks or all stocks may be removed from SuperMAX with the approval of two members of the Committee on Floor Procedure.

(3) Timing. Orders entered into SuperMAX shall be immediately executed without any delay (i.e. 0 seconds).

(4) Applicability to Odd-Lots. Although an order generated by the Odd-Lot Execution Service (''OLES'') is a professional order (because it is deemed to be for the account of a broker-dealer), it is nonetheless eligible for SuperMAX execution if: (i) the issue is on SuperMAX, (ii) it is an order for 200 shares or less, and (iii) it is an OLES passively driven, system-generated market order (and not an actively managed order).

(5) Other. Any eligible order in a stock included in SuperMAX which is manually presented at the Specialist post by a floor broker must also be guaranteed an execution by the Specialist pursuant to the criteria set forth in (1) above. In the event that a contra side order which would better a SuperMAX execution is presented at the post, the incoming order which is executed pursuant to the SuperMAX criteria must be adjusted to the better price.]

SuperMAX shall be a voluntary automatic execution program within the MAX System. SuperMAX shall be available for Dual Trading System securities. Dual Trading System securities are securities that are traded on both the Exchange and either the New York Stock Exchange or the American Stock Exchange. A specialist may choose to enable this voluntary program within the MAX System on a security-by-security basis. In the event that the security is eligible for SuperMAX and the specialist in such security has chosen to engage SuperMAX for such security, small agency market orders in that security will automatically be executed in accordance with the SuperMAX algorithm, as set forth below. For purposes of this subsection (c), the term ''small agency market order'' shall mean an agency order from 100 shares up to and including 499 shares (or such greater amount specified by the specialist and approved by the Exchange).

(1) Pricing.

(i) In the event that a small agency market order to buy or sell is received in a security in which SuperMAX has been enabled, such order shall be executed at the ITS Best Offer (for a buy order) or ITS Best Bid (for a sell order) if (A) the spread between the ITS Best Bid and the ITS Best Offer in such security at the time the order is received is less than ⅛th of a point, or (B) the order does not meet the criteria in (ii) below.

(ii) In the event that a small agency market order to buy or sell is received in a security in which SuperMAX has been enabled, and the last primary market sale is at least 1/8th of a point lower than (for a buy order) or higher than (for a sell order) the ITS Best Offer (for a buy order) or the ITS Best Bid (for a sell order), such order shall be executed a 1/16th of a point lower than the ITS Best Offer (for a buy order) or 1/16th of a point higher than the ITS Best Bid (for a sell order).

(2) Operating Time.

SuperMAX will operate each day that the Exchange is open for trading from 8:45 a.m. (C.T.) until the close of the Primary trading Session. A specialist may enable or remove SuperMAX for a particular security only on one given day each month, as determined by the Exchange from time to time. Notwithstanding the previous sentence, during unusual market conditions, individual securities or all securities may be removed from SuperMAX with approval of two members of the Committee on Floor Procedure.

(3) Timing.

Orders entered into SuperMAX shall be immediately executed upon completion of the algorithm without any delay (i.e., 0 seconds).

(4) Applicability to Odd-Lots.

Although an order generated by the Odd-Lot Execution Service (''OLES'') is a professional order (because it is deemed to be for the account of a broker-dealer), it is nonetheless eligible for SuperMAX execution if: (i) the issue is on SuperMAX, (ii) it is an order for 200 shares or less, and (iii) it is an OLES passively driven, system-generated market order (and not an actively managed order).

(5) Out of Range.

Notwithstanding anything herein to the contrary, SuperMAX will not automatically execute an order if such execution would result in an out of range execution.

(6) Other.

Any eligible order in a security included in SuperMAX, which is manually presented at the Specialist post by a floor broker must also be guaranteed an execution by the Specialist pursuant to the criteria set forth in (1) above. In the event that a contra side order which would better a SuperMAX execution is presented at the post, the incoming order which is executed pursuant to the SuperMAX criteria must be adjusted to the better price.

(d) No change in text.

(e) Enhanced SuperMAX

[The Exchange's Enhanced SuperMAX program shall be an automatic execution program within MAX in which a specialist may voluntarily choose to participate on a stock-by-stock basis. A specialist shall decide if his or her stock will be eligible for Enhanced SuperMAX treatment. In

the event that a stock is eligible for Enhanced SuperMAX treatment (pursuant to paragraph (e) of this Rule) and SuperMAX treatment (pursuant to paragraph (c) of this Rule) at the same time, the size of the order and the inclusion of the security in the S&P 500™ Index will determine which program will be followed for execution. If a stock is not included in the S&P 500™ Index, an order of 299 shares or less will execute according to the SuperMAX program and an order from 300 shares up to and including 1099 shares (or such greater size specified by the specialist and approved by the Exchange) will execute according to the Enhanced SuperMAX program. If a stock is included in the S&P 500™ Index, or if a specialist in a non-S&P 500™ Index issue so chooses, an order of 599 shares or less will execute according to the SuperMAX program and an order from 600 shares up to and including 1099 shares (or such greater size specified by the specialist and approved by the Exchange) will execute according to the Enhanced SuperMAX program. In the event that a specialist determines that his stock is eligible for Enhanced SuperMAX only and voluntarily chooses to participate in Enhanced SuperMAX, agency market orders up to and including 1099 shares (or such greater size specified by a specialist and approved by the Exchange) in that stock may automatically be stopped and executed in MAX, through the Enhanced SuperMAX program, without any specialist intervention based on the following criteria:

(1) Stopping. If an agency market order eligible for Enhanced SuperMAX would create either a double up tick (buy order) or double down tick (sell order) if the order was executed at the ITS BBO, the Enhanced SuperMAX program will ''stop'' the order. Once stopped, the order will not receive an execution that is worse than the stopped price. Notwithstanding anything in the previous sentence to the contrary, agency market orders in markets quoted in less and a ¼ point market will not be stopped. Orders not stopped will be immediately executed based upon the ITS BBO as the case may be.

(2) Pricing. Buy orders stopped under (1) above will be executed as follows:

(i) If the next primary market sale is equal to or less than the last sale then the stopped order will be executed at such last sale price (subject, however, to the Exchange's block protection policy as set forth in interpretation and policy .06 of Rule 7 of this Article).

(ii) If the next primary market sale is greater than the last sale then the stopped order will be executed at such next primary market sale price. However, if the next primary market sale is greater than the stopped price then the stopped order will be filled at the stopped price.

Sell orders stopped under (1) above will be executed as follows:

(iii) If the next primary market sale is equal to or greater than the last sale then the stopped order will be executed at such last sale price (subject, however, to the Exchange's block protection policy as set forth in interpretation and policy .06 of Rule 7 of this Article).

(iv) If the next primary market sale is less than the last sale then the stopped order will be executed at such primary market sale price. However, if the next primary market sale is less than the stopped price then the stopped order will be filled at the stopped price.

Notwithstanding anything in this paragraph (2) to the contrary, orders stopped under this paragraph that are subject to a Time Out Period (as defined below) shall be executed at the stopped price if there are no executions in the primary market at the end of the applicable Time Out Period. The Time Out Period shall be the time specified by the specialist on a stock-by-stock basis based on the size of the order. Such Time Out Period may be changed by a specialist no more frequently than once a month and may be no less than 30 seconds. A specialist shall not be required to specify a Time Out Period. If no Time Out Period is specified, no Time Out Period shall apply.

(3) Operating Time. Enhanced SuperMAX will operate each day that the Exchange is open for trading from 8:45 a.m. (C.T.) until the close. A specialist may make a particular stock eligible for Enhanced SuperMAX and may remove a particular stock from Enhanced SuperMAX only on one given day each month, as determined from time to time by the Exchange. Notwithstanding anything in the previous sentence to the contrary, in unusual trading situations, individual stocks or all stocks may be removed from Enhanced SuperMAX with the approval of two members of the Committee on Floor Procedure.

(4) Timing. Orders entered into Enhanced SuperMAX shall, when due a fill under the Enhanced SuperMAX program, be immediately executed without any delay (i.e. 0 seconds).

(5) Applicability to Odd-Lots. Although an order generated by the Odd-Lot Execution Service (''OLES'') is a professional order (because it is deemed to be for the account of a broker-dealer), it is nonetheless eligible for Enhanced SuperMAX execution if: (i) the issue is on Enhanced SuperMAX, (ii) it is an order for 200 shares or less, and (iii) it is an OLES passively drive, system-generated market order (and not an actively managed order).

(6) Out of Range. Notwithstanding anything in this paragraph (e) to the contrary, Enhanced SuperMAX will not execute an order at the ITS BBO if such execution would result in an out of range execution.

(7) Other. Any eligible order in a stock included in Enhanced SuperMAX which is manually presented at the Specialist post by a floor broker must also be guaranteed an execution by the Specialist pursuant to the criteria set forth in this paragraph (e). In the event that a contra side order which would better an Enhanced SuperMAX execution is presented at the post, the incoming order which is executed pursuant to the Enhanced SuperMAX criteria must be adjusted to the better price.]

Enhanced SuperMAX shall be a voluntary automatic execution program within the MAX System. Enhanced SuperMAX shall be available for any Dual Trading System security in which SuperMAX has been enabled. A specialist may choose to enable this voluntary program within the MAX System on a security-by-security basis. In the event that the security is eligible for Enhanced SuperMAX and the specialist in such security has chosen to engage Enhanced SuperMAX for such security, small agency market orders in that security will automatically be executed in accordance with the Enhanced SuperMAX algorithm, as set forth below. For purposes of this subsection (e), the term ''small agency market order'' shall mean an agency order for at least 500 shares, up to and including 2099 shares (or such greater amount chosen by the specialist and approved by the Exchange). Notwithstanding the previous sentence, the smallest size order in a particular security that is eligible for Enhanced SuperMAX shall always be of a size that is at least one share greater than the largest size order in such security that is eligible for SuperMAX.

(1) Stopping.

(i) In the event that a small agency market order to buy or sell is received in a security in which Enhanced SuperMAX has been enabled, and both (A) the spread between the ITS Best Bid and the ITS Best Offer in such security at the time the order is received is equal to or greater than 3/16th of a point, and (B) the last primary market sale is at least 1/8th of a point lower than (for a buy order) or higher than (for a sell order) the ITS Best Offer (for a buy

order) or the ITS Best Bid (for a sell order), Enhanced SuperMAX shall ''stop'' the order at the ITS Best Offer (for a buy order) or at the ITS Best Bid (for a sell order) for a Time Out Period (as defined below). Once stopped, the order shall be guaranteed an execution at the stopped price or better. The Time Out Period shall be the time specified by the specialist, and approved by the Exchange, on a security-by-security basis. Such Time Out Period may be changed by a specialist no more frequently than once a month and may be no less than 30 seconds. If a specialist does not specify a specific Time Out Period, the Time Out Period shall be 30 seconds.

(ii) In the event that a small agency market order to buy or sell is received in a security in which Enhanced SuperMAX has been enabled, and the order is not stopped under (1)(i) above, Enhanced SuperMAX shall immediately execute the order at the ITS Best Offer (for a buy order) or at the ITS Best Bid (for a sell order).

(2) Pricing.

(i) In the event that an order has been stopped in accordance with subsection (1)(i) above, it shall be executed at 1/16th of a point better than the stopped price immediately after the first (i.e., next) primary market sale that occurs during the Time Out Period, but only if such next primary market sale is at least *1/8th* of a point lower than (for a buy order) or higher than (for a sell order) the stopped price.

(ii) In the event that an order has been stopped in accordance with subsection (1)(i) above, it shall be executed at the stopped price immediately after the first (i.e., next) primary market sale that occurs during the Time Out Period, but only if such next primary market sale is less than 1/8th of a point lower than (for a buy order) or higher than (for a sell order) the stopped price.

(iii) in the event that an order has been stopped in accordance with subsection (1)(i) above, it shall be executed at the stopped price immediately at the end of the applicable Time Out Period if no sale of the security has occurred in the primary market during such Time Out Period.

(3) Operating Time.

Enhanced SuperMAX will operate each day that the Exchange is open for trading from 8:45 a.m. (C.T.) until the close of the Primary trading Session. A specialist may enable or remove Enhanced SuperMAX for a particular security only on one given day each month, as determined by the Exchange from time to time. Notwithstanding the previous sentence, during unusual market conditions, individual securities or all securities may be removed from Enhanced SuperMAX with approval of two members of the Committee on Floor Procedure.

(4) Timing.

Orders entered into Enhanced SuperMAX shall be immediately executed upon completion of the algorithm without any delay (i.e., 0 seconds).

(5) Applicability to Odd-Lots.

Although an order generated by the Odd-Lot Execution Service (''OLES'') is a professional order (because it is deemed to be for the account of a broker-dealer), it is nonetheless eligible for Enhanced SuperMAX execution if: (i) the issue is on Enhanced SuperMAX, (iii) it is an order for 200 shares or less, and (iii) it is an OLES passively driven, system-generated market order (and not an activity managed order).

(6) Out of Range.

Notwithstanding anything herein to the contrary, Enhanced SuperMAX will not automatically execute an order if such execution would result in an out of range execution.

(7) Other.

Any eligible order in a security included in Enhanced SuperMAX, which is manually presented at the Specialist post by a floor broker must also be guaranteed an execution by the Specialist pursuant to the criteria set forth in (1) and (2) above. In the event that a contra side order which would better a Enhanced SuperMAX execution is presented at the post, the incoming order which is executed pursuant to the Enhanced SuperMAX criteria must be adjusted to the better price.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The 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

On May 22, 1995, the Commission approved a proposed rule change of the CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[2] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

The CHX now proposes to amend the SuperMAX program and Enhanced SuperMAX programs. SuperMAX and Enhanced SuperMAX are two existing CHX programs within the MAX System that use computerized algorithms to provide automated price improvement. Both of these programs have been approved by the Commission on a permanent basis.[3]

Background. In 1997, virtually every registered national securities exchange and national securities association changed its minimum trading variation to one sixteenth of a point or smaller. Although the CHX made some technical changes to its SuperMAX and Enhanced SuperMAX programs at that time in light of assumptions as to the smallest minimum variation that were contained in the text of the SuperMAX and Enhanced SuperMAX rules, the CHX did not change the algorithms to reflect the additional price improvement opportunities that are available because of trading in sixteenths.[4] The purpose of the proposed rule change is to amend the existing programs to both simplify the price improvement algorithms and increase the number of orders that are eligible for price improvement due to the smaller minimum trading variation. Rather than amending the existing text of the SuperMAX and Enhanced SuperMAX rules, the text of the existing rule has been deleted and replaced with new language. This was done to permit the Exchange to re-write the rule, with non-substantive changes, to clarify some language in the old rule that may have been ambiguous.

Proposal. The existing SuperMAX and Enhanced SuperMAX programs are voluntary programs in which a specialist may choose to participate. Participation is on a security-by-security

[2] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (File No. SR–CHX–95–08).

[3] *See* Securities Exchange Act Release No. 32631 (July 14, 1993), 58 FR 39069 (July 21, 1993) (File No. SR–MSE–93–10) (Order approving SuperMAX on a permanent basis), Securities Exchange Act Release No. 38338 (February 26, 1997), 62 FR 10102 (March 5, 1997) (File No. SR–CHX–97–02) (Order approving Enhanced SuperMAX on a permanent basis).

[4] *See* Securities Exchange Act Release No. 38816 (July 3, 1997), 62 FR 37325 (July 11, 1997) (File No. SR–CHX–97–18).

basis and is currently limited to Dual Trading System issues (*i.e.*, issues traded on both the CHX and either the New York Stock Exchange or American Stock Exchange). A specialist can only activate and de-activate the program with respect to a given security once a month (a date determined by the specialist). Once activated with respect to a security, small agency market orders [5] in markets quoted with a spread of ¼ point or more are eligible for automated price improvement. Once eligible, the program runs through an algorithum that may provide price improvement under certain circumstances. The existing SuperMAX program provides price improvement to the order if executing the order at the ITS BBC [6] (the ITS best offer for a buy order, and the ITS best bid for a sell order) would create either a double uptick or double down tick based on the last primary market sale. The program also provides price improvement if such an execution would result in greater than a ⅛th point price change from the last primary market sale. Under the existing Enhanced SuperMAX program, rather than executing an order based on the last primary market sale, eligible orders are ''stopped'' at the ITS BBO and are executed with reference to the next primary market sale. The Enhanced SuperMAX program also includes a time-out feature whereby if there are no executions in the primary market after the order has been stopped for a designated time period, the order is executed at the stopped price at the end of such period. Such period, known as a time out period, is pre-selected by a specialist on a stock-by-stock basis on the size of the order, may be changed by a specialist no more frequently than once a month and may be no less than 30 seconds.

This proposed rule change simplifies the pricing algorithms used by SuperMAX and Enhanced SuperMAX and provides a greater opportunity for price improvement.

Under the new simplified algorithm for SuperMAX, small agency market orders [7] would now be eligible for price improvement if the market for the security is quoted with a spread of ⅛ of a point or greater (rather than the ¼ point spread that is required under the existing rule). In addition, the double-up/double down concept has been eliminated. The simplified algorithm will now provide 1¹⁄₁₆th of a point price improvement from the ITS BBO if an execution at the ITS BBO would be at least ⅛th point higher than (for a buy order) or lower than (for a sell order) the last primary market sale. Basically price improvement is given under certain circumstances when the security is trading between the spread. All other aspects of the existing algorithm, including operating time, timing of execution, applicability to odd-lots, and out of range situations, remain the same.

The Exchange has compared the proposed changes to SuperMAX with the existing SuperMAX algorithm and believes that the new algorithm will provide price improvement to a greater number of trades. Using data for January 1998, the Exchange determined that the proposed changes to the algorithm would have resulted in over 32,000 trades receiving price improvement (for a total savings of $329,000 to customers), as opposed to the 5800 trades that received price improvement (for a total savings of $126,000 to customers) under the existing SuperMAX program. This means that the changes to SuperMAX would have resulted in customers receiving 203,000 additional dollars of price improvement over the Exchange's existing SuperMAX algorithm.

With respect to Enhanced SuperMAX, the Exchange proposes to make this program an add-on feature for securities for which the SuperMAX program has already been activated, rather than a stand-alone program. As stated in the Exchange's Report on the operation of the Enhanced SuperMAX program that was provided to the Commission in advance of the Commission's permanent approval of Enhanced SuperMAX program, taken as a whole, the existing SuperMAX program provides more price improvement than the existing Enhanced SuperMAX program. The Exchange believes that interconnecting the two programs will encourage more specialists to enable the SuperMAX program, with greater resulting price improvement, since the Enhanced SuperMAX program will only be available when SuperMAX is enabled. Currently, some specialists have only turned on the Enhanced SuperMAX program without enabling the SuperMAX program.

Under the new simplified algorithm for Enhanced SuperMAX, small agency market orders [8] would be eligible for price improvement if the market for the security is quoted with a spread of ³⁄₁₆ᵗʰ of a point (rather than the ¼ point spread that is required under the existing rule). In addition, the double-up/double down concept currently in place to determine whether an order is stopped has been eliminated. The simplified algorithm will now ''stop'' an eligible order at the ITS BBO if an execution at the ITS BBO would be at least ¹⁄₁₈ᵗʰ point higher than (for a buy order) or lower than (for a sell order) the last primary market sale. (This stopping algorithm is identical to the new algorithm above for Super MAX.) Once stopped, an order would receive ¹⁄₁₆ᵗʰ price improvement over the stopped price if the next primary market sale occurs before the end of the Time Out Period and the sale is at least ⅛ᵗʰ of a point lower than (for a buy order) or higher than (for a sell order) the stopped price. As is the case for SuperMAX, all other aspects of the existing algorithm, including operating time, timing of execution, applicability to odd-lots, and out of range situations, remain the same.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change accomplishes these ends by increasing the number of trades that will be eligible for automated price improvement.

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.

[5] For SuperMAX, small agency market orders are orders from 100 shares to 599 shares (or a greater amount chosen by the specialist). For Enhanced SuperMAX these are orders from 100 shares to 1099 shares (or a greater amount chosen by the specialist).

[6] As used in the CHX rules, ITS BBO means the best bid or offer among the American, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia or the Intermarket Trading System/Computer Assisted Execution System quote. *See* CHX Art. XX, Rule 37(a)(2).

[7] Under the proposal, small agency market orders for SuperMAX would be orders from 100 shares to 499 shares (or a greater amount chosen by the specialist).

[8] Under the proposal, small agency market orders for Enhanced SuperMAX would be orders from 500 shares to 2099 shares (or a greater amount chosen by the specialist). Notwithstanding the 500 share minimum order size contained in the rule, the smallest size order eligible for Enhanced SuperMAX must always be at least one share greater than the largest size order in such security that is eligible for SuperMAX. In other words, if a specialist voluntarily increases the maximum order size for SuperMAX, the minimum order size for Enhanced SuperMAX must be increased accordingly.

III. 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 Exchange. All submissions should refer to File No. SR–CHX–98–09 and should be submitted by June 18, 1998.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of the notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that part of the Exchange's proposal modifying the price improvement algorithm amending SuperMAX is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[10] The Commission believes, in light of the industry's move to trading in finer increments last year, that CHX's modification to its price improvement algorithms will provide investors a meaningful opportunity for price improvement when securities trading in 1/16ths have a spread of 1/8 point or greater. In addition, the Commission finds that the new SuperMAX and Enhanced SuperMAX rules provide greater price improvement opportunities for investors because the criteria for when such opportunities are available has been simplified. The Commission believes that because the opportunity for price improvement is automatic and without any specialist intervention, SuperMAX[11] and Enhanced SuperMAX facilitate order interaction and enhance the execution of customer orders consistent with Section 6(b)(5) of the Act. The Commission notes that while SuperMAX and Enhanced SuperMAX are voluntary programs that specialists choose to participate in for Dual Trading Systems issues, providing a greater number of investors an opportunity to achieve price improvement is compatible with the view expressed in the Order Handling release.[12]

The Commission therefore finds good cause for granting partial approval to the proposed rule change (SR–CHX–98–09) with respect to the adoption of a new SuperMAX prior to the thirtieth day after date of publication of notice of filing thereof in the **Federal Register.** The Commission is granting this partial approval on a temporary basis, until August 20, 1998.

The Commission is therefore granting accelerated approval for the new SuperMAX algorithm on a temporary basis, until August 20, 1998.[13] The Commission is deferring action on the new Enhanced SuperMAX to provide interested parties an opportunity to comment on the proposal. In addition, the Commission and the CHX will have the opportunity to review the implementation of the new SuperMAX algorithm.

The changes to the SuperMAX algorithm will be phased in during the next month. Until the Enhanced SuperMAX proposal is adopted, the existing Enhanced SuperMAX algorithm will continue to apply. In those instances where a security is both on the new SuperMAX algorithm and the old Enhanced SuperMAX algorithm, the size of the order will determine which algorithm is used. The introductory paragraph of existing Rule 37(e) that describes the interaction between SuperMAX and Enhanced SuperMAX for a security on both systems shall be deemed to be amended such that if an order is for between 100 shares and 499 shares, the new SuperMAX algorithm shall apply, and if the order is for 500 shares or more (up to the 2099 shares or such greater amount specified by the specialist and approved by the Exchange), the old Enhanced SuperMAX algorithm shall apply.

It is Therefore *Ordered,* pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CHX–98–09) be, and hereby is, approved in part and on a temporary basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14113 Filed 5–27–98; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] The CHX presently has the ability to install the new SuperMAX algorithm.

[12] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[13] The proposal to permanently adopt the new SuperMAX will be considered with the proposal to approve the adoption of the new Enhanced SuperMAX.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(1)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40014; File No. SR–MSRB–98–1]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to Interpretation of Rule G–38 on Consultants Concerning Bank Affiliates and the Definition of Payment

May 20, 1998.

I. Introduction

On January 12, 1998,[1] the Municipal Securities Rulemaking Board (''Board''

[1] On November 13, 1997, the Board filed the same proposal as a Q&A under Section 19(b)(3)(A) of the Act, which rendered the proposal effective upon receipt of the filing by the Commission. *See* Securities Exchange Act Rel. No. 39391 (December

or ''MSRB'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to provide an interpretation of Rule G–38 on consultants relating to bank affiliates and the definition of payment. Notice of the proposed rule change appeared in the **Federal Register** on January 20, 1998.[4]

The Commission received five comment letters specifically addressing the proposed rule change.[5] The Commission, however, received ten comment letters in total which addressed either the proposed rule change or the proposed rule change that was withdrawn.[6] All commenters opposed this interpretation, citing discriminatory effect against banks and bank-affiliated municipal securities dealers and focusing on the MSRB's jurisdiction concerning the banking industry. On March 3, 1998, the Board submitted Amendment No. 1 to the proposed rule change.[7] This order approves the proposed rule change. Also, Amendment No. 1 is approved on an accelerated basis.

II. Description of the Proposal

Recently, the Board has received inquiries from market participants concerning the definition of payment, as used in Rule G–38, and whether bank affiliates and their employees may, under certain circumstances, be deemed consultants for purposes of the rule.[8] Specifically, a bank and its employees communicate with an issuer on behalf of an affiliated dealer to obtain municipal securities business. The affiliated dealer issues credits to identify, for internal purposes, the source of business referrals; however, these credits do not involve any direct or indirect cash payments from the dealer to the bank or its employees. The issue is whether the credits received by a bank and its employees from an affiliated dealer qualify as ''payment'' under Rule G–38, thus requiring the dealer to designate the bank or its employees as consultants and comply with the requirements of Rule G–38.

Rule G–38 defines a consultant as any person used by a dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on behalf of the dealer where the communication is undertaken by the person in exchange for, or with the understanding of receiving, payment from the dealer or any other person.[9] The term payment, as used in Rule G–38, means any gift, subscription, loan, advance, or deposit of money or anything of value.[10] Under the Board's interpretation of payment in this proposed rule change, the absence of an immediate transfer of funds or anything of value, such as credits, to an affiliate or individual employed by the affiliate would not exclude the credits from the definition of payment if such credits eventually (*e.g.*, at the end of the fiscal year) result in compensation to the affiliate or individual employed by the affiliate for referring municipal securities business to the dealer. In this regard, the compensation may be in the form of cash (*e.g.*, a bonus) or non-cash. In either case, if the dealer or any other person[11] eventually gives anything of value (*i.e.*, makes a ''payment'') to the affiliate or individual, based even in part on the referral, then the affiliate or individual is a consultant for purposes of Rule G–38 and the dealer must comply with the various requirements of the rule.

III. Summary of Comments

All of the comment letters addressing the proposed rule change opposed the proposed rule change, raising several issues.[12] At the Commission's request, the Board submitted a response which addresses these issues.[13]

Most commenters contend that the Board's interpretation is an impermissible extension of rule G–38 to banks' soft dollar compensation programs.[14] These commenters are concerned that this interpretation would infringe upon the most effective method used by financial institutions to cross-sell their various products and services to a wide range of customers.[15] According to the MSRB, this interpretation merely clarifies what is already required and is reasonably and fairly implied by the rule; it does not reflect a change in MSRB policy.[16] The rule requires disclosure of the ''compensation arrangement'' of any consultant used by a dealer to obtain or

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3, 1997), 62 FR 65114 (December 10, 1997) (SR–MSRB–97–8). The Commission received four comment letters on the filing. *See infra* note 6. To provide additional time to fully air the concerns raised by the commenters, the Board agreed to withdraw this filing and resubmit it, pursuant to Section 19(b)(2). *See* letter from Diane G. Klinke, General Counsel, Municipal Securities Rulemaking Board, to Katherine A. England, Assistant Director, Division of Market Regulation, dated January 9, 1998.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Rel. No. 39541 (January 12, 1998), 63 FR 3010.

[5] *See* letter from Sarah A. Miller, Senior Government Relations Counsel, Trust and Securities, American Bankers Association, to Jonathan G. Katz, Secretary, SEC, dated February 10, 1998 (''ABA Letter No. 2''); letter from Mae A. Cavoli, Senior Vice President, Senior Managing Counsel, KeyCorp Management Company, to Jonathan G. Katz, Secretary, SEC, dated February 10, 1998 (''KeyCorp Letter''); letter from William E. Marquis, Associate Counsel, Mellon Bank Corporation, to Jonathan G. Katz, Secretary, SEC, dated February 9, 1998 (''Mellon Bank Letter No. 2''); letter from Robert J. Nagy, Senior Counsel, NationsBank, to Jonathan G. Katz, Secretary, SEC, dated February 10, 1998 (''NationsBank Letter No. 2''); letter from Victor M. DiBattista, Chief Regional Counsel, PNC Bank, N.A., dated February 10, 1998 (''PNC Letter No. 2'').

[6] These letters were resubmitted; they were originally submitted to address SR–MSRB–97–8. Letter from Sarah A. Miller, Senior Government Relations Counsel, Trust and Securities, American Bankers Association, to Jonathan G. Katz, Secretary, SEC, dated December 30, 1997 (''ABA Letter No. 1''); letter from Michael E. Bleier, General Counsel, Mellon Bank Corporation, to Jonathan G. Katz, Secretary, SEC, dated January 12, 1998 (''Mellon Bank Letter No. 1''); letter from Robert J. Nagy, Senior Counsel, NationsBank, to Jonathan G. Katz, Secretary, SEC, dated December 31, 1997 (''NationsBank Letter No. 1''); letter from Victor M. DiBattista, Chief Regional Counsel, PNC Bank, N.A., to Jonathan G. Katz, Secretary, SEC, dated January 2, 1998 (''PNC Letter No. 1'').

This letter, which was also initially submitted to address SR–MSRB–97–8, was not resubmitted. Letter from Alan R. Leach, Senior Vice President and Manager, Dealer Bank Department, Deposit Guaranty National Bank, to Jonathan G. Katz, Secretary, SEC, dated January 5, 1998 (''Deposit Guaranty Letter'').

[7] *See infra* note 13. The Board's response to the comment letters also included an amendment to the interpretation. The amended language clarifies that the consultant may be either the affiliate itself or an individual employed by the affiliate.

[8] To assist brokers, dealers, and municipal securities dealers in understanding and complying with its rules, the Board publishes notices of interpretation, in question-and-answer format, when warranted. Two sets of Q&A's have previously been published providing the Board's interpretation of the application of Rule G–38. *See* Securities Exchange Act Release No. 36950 (March 11, 1996); 61 FR 10828 (March 15, 1996) and Securities Exchange Act Release No. 37997 (Nov. 29, 1996); 61 FR 64781 (Dec. 6, 1996).

See also MSRB Reports Vol. 16, No. 2 (June 1996) at 3–5; and Vol. 17, No. 1 (Jan. 1997) at 15.

[9] Municipal finance professionals and any person whose sole basis of compensation is the actual provision of legal, accounting or engineering advice, services or assistance are exempted from the definition of consultant.

[10] *MSRB Manual*, General Rules, Rule G–38(a)(v) (CCH) ¶ 3686.

[11] The Act defines the term ''person'' as a ''natural person, company, government, or political subdivision, agency, or instrumentality of a government.'' Board Rule D–1 provides that unless the context otherwise specifically requires, the terms used in Board rules shall have the same meanings as set forth in the Act.

[12] *See supra* notes 5 and 6.

[13] *See* letter from Diane G. Klinke, General Counsel, MSRB, to Katherine A. England, Esq., Assistant Director, Division of Market Regulation, SEC, dated March 2, 1998 (''MSRB Letter'' and ''Amendment No. 1'').

[14] ABA Letter No. 2, p. 1, Deposit Guaranty Letter, p. 2, Nationsbank Letter No. 2, p. 2, Mellon Bank Letter, p. 2, and PNC Letter No. 2, p. 2.

[15] *Id.*

[16] MSRB Letter, p. 2.

retain municipal securities business.[17] The Board is aware that consultants are sometimes paid in non-cash compensation, and thus specifically chose the term ''compensation arrangement'' because it did not want to limit the disclosure to cash payments.[18] Thus, the interpretation is not an unwarranted extension to soft dollar compensation arrangements, because the rule already applied to such arrangements.[19] The Commission agrees with the MSRB'S explanation that the dealer's disclosure requirements are specifically delineated in the rule, and that the interpretation is consonant with these requirements.

The commenters also suggest that the interpretation is unworkable when applied to non-traditional compensation programs, given the subjective nature of the calculations, and would significantly discourage traditional banking referral programs.[20] According to these commenters, most compensation programs are based on factors other than the initial credit allocation. Thus, translating credits allocated by the affiliated dealer into a specific dollar amount of the employees' compensation would be difficult because the reports are due quarterly; referral compensation, however, is usually awarded in the form of a year end bonus.[21] The MSRB notes that Rule G–38 requires, among other things, that each broker, dealer, and municipal securities dealer disclose to the Board certain information relating to each consultant used by the dealer during the reporting period to obtain or retain municipal securities business.[22] This definition also includes bank dealers.[23] Furthermore, the Board notes that based on a review of reports submitted, several bank dealers and bank-affiliated dealers have been disclosing the information required by Rule G–38.[24] These dealers have listed as consultants their bank affiliates and bank employees, and have disclosed the compensation arrangements for such consultants (either in dollar or as a formula), as well as dollar amounts paid to consultants.[25]

The commenters contend that rule G–38 should not apply to banks' referral programs because the intent of the rule is to capture traditional cash payments made by municipal dealers to independent consultants (*i.e.*, professionals in the municipal securities arena) whose primary activity is to obtain or retain municipal securities business for the dealer.[26] Moreover, they contend that, as the employee receives no ''payment'' or ''anything of value'' from the dealer, but rather from the financial institution itself, the employee cannot be deemed a consultant for purposes of the rule.[27] The MSRB states that these assertions are erroneous. Under Rule G–38, a consultant is defined as any person used by the dealer to obtain or retain municipal securities business through direct or indirect communication with an issuer on the dealer's behalf where the communication is undertaken by such person in exchange for, or with the understanding of receiving, payment from the dealer or any other person.[28] (emphasis added) The Board drafted the rule language in this manner to ensure that dealers could not circumvent the rule's disclosure requirements by claiming that another party compensated a consultant that referred municipal securities business to the dealer.[29] Furthermore, such compensation is not limited to cash payments; the term ''payment'' is defined as any gift, subscription, loan, advance, or deposit of money or anything of value.[30]

The Commission agrees with the MSRB's assessment. While these ''credits'' may not be initially transmitted in monetary form, they are a factor in the calculations made to determine eventual monetary compensation, which is something of value. Moreover, a previous interpretation published by the MSRB directly addresses this issue.[31] The MSRB has addressed Q&A No. 7, but Q&A No. 6 is also on point. If an employee of an affiliated company of a bank introduces one of its customers (*i.e.* a municipal issuer) to the bank's dealer department for purposes of engaging in municipal securities business, and that dealer pays the affiliated company for this activity, then that employee is considered a ''finder.'' Any person used by a dealer as a ''finder'' for municipal securities business would be considered a consultant under Rule G–38.

Several commenters stated that the MSRB's proposal unfairly discriminates against bank-affiliated dealers, because it does not apply equally to incentive programs established and operated by financial service firms not affiliated with a bank.[32] These commenters also contend that the MSRB's interpretation is an impermissible extension of its authority into an area exclusively reserved for bank regulators.[33] Moreover, because the MSRB lacks jurisdiction over bank's compensation programs, banks would have to consent to their municipal securities dealer affiliates filing proprietary information with the MSRB, an unlikely occurrence, given the public availability of this information once submitted.[34]

In its response, the MSRB notes that bank dealers, like securities firms, are subject to federal securities laws.[35] Further, all Board rules apply equally to bank dealers and securities firms. Prior Rule G–38 interpretations clearly state that the rule applies to both dealer affiliates and bank affiliates.[36] If a securities firm has an affiliate that refers municipal securities business to the dealer in exchange for ''credits,'' then the affiliate would be a consultant and the dealer must make the required disclosures under Rule G–38, including the consultant's compensation arrangement, even if the payment would be made by ''any other person'' and not by the dealer.[37] The Board disagrees with the argument that the proposal unfairly discriminates against bank-affiliated dealers.[38] In fact, if bank dealers were allowed an exemption from Rule G–38 for referrals by bank affiliates and their employees, the rule would unfairly discriminate against non-bank affiliated dealers.[39] The Commission agrees that the rule and its disclosure requirements apply equally to both dealer affiliates and bank

[17] MSRB Manual, General Rules, Rule G–38(c) (CCH) ¶3686.

[18] MSRB Letter, p. 2.

[19] *Id.*

[20] ABA Letter pp. 2–3, Deposit Guaranty Letter, p. 2, Nationsbank Letter No. 2, p. 2, Mellon Bank Letter No. 2, pp. 3–4 and PNC Letter No. 2, p. 1.

[21] *Id.*

[22] MSRB Letter, p. 2.

[23] *Id. See also* 15 U.S.C. 78c(a)(30) (defining the term ''municipal securities dealer'' pursuant to the Act).

[24] MSRB Letter, p. 3.

[25] *See, e.g.*, reports submitted by Sun Trust Bank, Atlanta (3Q 1997); SunTrust Capital Markets, Inc. (3Q 1997); and Norwest Investment Services, Inc. (2Q and 3Q '997) and available for public inspection at the Board's Public Access Facility in Alexandria, Virginia and on the Board's web site at www,msrb.org.

[26] ABA Letter No. 2, pp. 3–5, KeyCorp Letter, Deposit Guaranty Letter, p. 1, NationsBank Letter No. 2, pp. 1–2, Mellon Bank Letter No. 2, p. 1, and PNC Letter No. 2, pp. 1–2.

[27] *Id.*

[28] MSRB Letter, p. 3. *See supra* note 11 for the definition of the term ''person.''

[29] MSRB Letter, p. 3.

[30] Rule G–38(a)(v) states that the term ''payment'' has the same meaning as in Rule G–37(g)(viii).

[31] *See* Securities Exchange Act Release No. 36950 (March 11, 1996), 61 FR 10828 (March 15, 1996) (Q&A No.'s 6 and 7).

[32] ABA Letter No. 2, pp. 3–4, Deposit Guaranty Letter, p. 2, Mellon Bank Letter No. 2, p. 2, and PNC Letter, pp. 1–2.

[33] *Id.*

[34] *Id.*

[35] *See supra* note 23.

[36] *See supra* note 31.

[37] MSRB Letter, p. 4.

[38] *Id.*

[39] *Id.*

affiliates. As the MSRB explains, this proposal would also apply if the circumstance involved a securities firms and its affiliate. The Commission, therefore, supports the MSRB's assessment, as the interpretation ensures an evenhanded application of the rule.

In its letters, NationsBank suggests that the MSRB modify the proposal to clarify that a bank and its employees would only be consultants under circumstances where the bank receives credits for the referral of municipal securities business which are then allocated to employees based on a formulaic fashion.[40] The MSRB disagrees with this interpretation and has, therefore, declined to adopt it.[41] Alternatively, PNC Bank suggests that Rule G–38 be clarified to designate only the financial institution as the consultant in the case of soft dollar compensation programs.[42] In response, the MSRB has amended Rule G–38[43] to say that the consultant may be either the affiliate or an individual employee of the affiliate.[44] The dealer must make this determination and ensure proper compliance with the rule, including the contractual arrangements and requisite disclosures.[45] Thus, the Board has amended the language of the interpretation to clarify that the consultant may be either the affiliate itself or an individual employed by the affiliate.[46]

According to the MSRB, Amendment No. 1 clarifies who is deemed a consultant and the process of designation. The Commission agrees that the onus should be on the dealer to designate the consultant, whether affiliate or employee, and to ensure compliance with the rule. The Commission notes, however, that as amended, the dealer may designate either the bank affiliate or the employee as the consultant. As noted in their comments, most banks are reluctant to disclose what they deem to be proprietary information to the MSRB, and hence, the public.[47] The Commission notes that both the employee and the affiliate benefit from referrals facilitated by these soft dollar compensation programs.

IV. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[48] Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C)[49] of the Act. This interpretation clarifies the rule's applicability to all broker-dealers engaged in the municipal securities business. The interpretation is necessary to ensure that all persons hired by dealers to solicit municipal securities business will be covered by the rule. This interpretation will require that all consultant activity stemming from attendant soft dollar compensation arrangements, whether those of financial institutions or securities firms, be disclosed. The clarification of Rule G–38 regarding referrals by bank affiliates and their employees will improve the effectiveness of the rule by making explicit that it applies to all consultants and their political contribution activity.

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 1 clarifies who is deemed a consultant and the process of designation. The Commission agrees that the onus should be on the dealer to designate the consultant, whether bank affiliate or employee thereof, and to ensure compliance with the rule, including contractual arrangements and required disclosures. The dealer's payment of credits to the consultant creates a strong incentive for the consultant to solicit an issuer and refer their business to the dealer. The dealer, therefore, should have the responsibility of documenting its relationship with the consultant and any compensation arrangements that result from or facilitate this relationship. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. Any submissions should refer to File No. SR–MSRB–98–1 and should be submitted by June 18, 1998.

V. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[50] that the proposed rule change (SR–MSRB–98–1), be hereby approved including Amendment No. 1, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[51]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14119 Filed 5–27–98; 8:45 am]

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[40] NationsBank Letter No. 1 and NationsBank Letter No. 2, p. 2 and its attached modified interpretation.

[41] MSRB Letter, p. 4.

[42] PNC Letter No. 2, p. 3.

[43] *See supra* notes 8 and 13.

[44] MSRB Letter, p. 4 and Amendment No. 1.

[45] *Id.*

[46] *Id.*

[47] However, several banks are currently complying with Rule G–38. *See supra* note 25.

[48] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. The proposed rule change will add to the information available in the municipal securities market, and thus, competition, in the municipal securities markets because all municipal securities dealers will be required to disclose affiliations and compensation arrangements concerning their relationships with consultants. Efficiency and capital formation will be tangentially improved as enhanced disclosure will likely conserve both capital and personnel resources. 15 U.S.C. 78c(f).

[49] Section 15B(b)(2)(C) requires the Commission to determine that the Board's rules are 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40020; File No. SR–PCX–98–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Number of Option Issues Permitted To Be Traded Under the LMM Book Pilot Program

May 21, 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 May 1, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to remove the current cap on the number of issues traded under the Lead Market Maker (''LMM'') Book Pilot Program.

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

Purpose

On October 11, 1997, the Commission approved an Exchange proposal to adopt a one-year pilot program under which a limited number of LMMs would be able to assume operational responsibility for the options public limit order book (''Book'') in certain option issues.[3] On September 22, 1997, the Commission approved an Exchange proposal to extend the program for one year, so that it is currently set to expire on October 12, 1998.[4]

Under the pilot program, approved LMMs manage the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services.[5] Currently, both multiply-listed and non-multiply-listed option issues are eligible to be traded under the pilot program.[6] Initially, the program was limited by allowing no more than three LMMs to participate in the program and no more than 40 option symbols to be used. But on April 1, 1997, the Commission approved an Exchange proposal to expand the program so that up to nine LMMs may participate and up to 150 option symbols may be used.[7]

The Exchange is now proposing to expand the LMM Book Pilot Program to eliminate the cap on the number of symbols that may be used. The Exchange notes that the program has been in operation for approximately eighteen months and no significant problems have occurred. The program has been viable and effective, and has resulted in significant cost savings to customers in Book execution charges. The Exchange believes that it has adequate systems and operation capacity to expand the scope of the program beyond its current limits.

The Exchange believes that the proposed change will make the Exchange's LMM Program more competitive because it will allow LMM participants to reduce book execution charges in a greater number of issues than currently permitted. The Exchange notes that it is currently seeking to expand the number of LMMs who may participate in the program which is currently limited to nine.[8]

Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange does not believe that the proposal will affect the protection of investors or the public interest because the proposal will merely expand the ability of LMMs already participating in the program to reduce the rates charged to customers. The Exchange further believes that by allowing further reductions in rates charged to customers, the proposal encourages competition rather than placing any burdens on it.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change shall become operative 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (e)(6) of Rule 19b–4 thereunder.[12] Pursuant to Rule 19b–4(e)(6) a proposed rule change may become effective 30 days after filing with the Commission if it does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and by its terms does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. At any time within 60 days of the filing of such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 (October 18, 1996) (approving File No. SR–PSE–96–09).

[4] *See* Securities Exchange Act Release No. 39106 (September 22, 1997), 62 FR 51172 (September 30, 1997).

[5] *See* Securities Exchange Act Release No. 37874 (October 28, 1996), 61 FR 56597 (November 1, 1996) (approving SR–PSE–96–38, establishing a staffing charge for LMMs who participate in the pilot program). *See* also File No. SR–PCX–98–03 (proposal to modify the LMM Book Pilot staffing charge).

[6] *See* Securities Exchange Act Release No. 38273 (February 12, 1997), 62 FR 7489 (February 19, 1997) (approving File No. SR–PSE–96–45). *See also* Securities Exchange Act Release No. 39667 (February 13, 1998), 63 FR 9895 (February 26, 1998) (approving proposal to allow non-multiply-listed option issues to be traded under the program).

[7] *See* Securities Exchange Act Release No. 38462 (April 1, 1997), 62 FR 16886 (April 8, 1997).

[8] *See* File No. SR–PCX–98–17.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(e)(6).

proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance f 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 submission 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 betweeen the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–23 and should be submitted by June 18, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14114 Filed 5–27–98; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40007; File No. SR–PHLX–98–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Trade Options in Narrower Increments

May 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 22, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (e)(6) of Rule 19b–4 under the Act[2] which renders the proposal effective upon receipt of this filing by the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 17 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4(e)(6).

[3] The Exchange has represented that the proposed rule change: (i) Will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act. *Id.*

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to permit Phlx index and equity options to be traded in narrower increments. Specifically, Rule 1034 is proposed to be amended to give the Board of Governors the authority to establish the minimum trading increments for index and equity options contracts.

The text of the proposed rule change is available at the Office of the Secretary, Phlx 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 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

Currently, Rule 1034 provides that the minimum fractional change for options trading under $3.00 is one-sixteenth and for options trading at $3.00 or higher, one-eighth. In the case of LEAPS[4] on the Value Line Composite Index, Rule 1034 provides that the minimum fractional change is one-eighth point in option contracts trading at $5.00 per index option or higher, and one-sixteenth point in option contracts trading below $5.00 per index option. In response to recent industry events,[5] the Exchange has determined that Rule 1034 be changed to permit Phlx index and equity options to be traded in narrower increments. Specifically, Rule 1034 is proposed to be amended to give the Board of Governors the authority to establish the minimum trading increments for index and equity option contracts. Until such time as the Board of Governors determines to use its authority to establish the minimum fractional shares, current standards will apply.

The proposal is intended to achieve uniformity with the rules of other options exchanges.[6] The amendments should also improve the Exchange's ability to promptly response to market changes in trading increments. The proposal will allow the Exchange to revise its minimum fractional changes quickly in response to changes adopted in the minimum trading increments in the markets for securities underlying Phlx options or to changes in the minimum trading increments for one of the other options exchanges. When the Board of Governors determines to change the trading increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 1034 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Act and will file a rule change for immediate effectiveness upon filing with the Commission.

The Exchange notes that there has been a movement within the securities

[4] See Phlx Rule 1101A(b)(iii).

[5] See Securities Exchange Act Release Nos. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (Order approving SR–Amex–97–14, relating to trading equity securities in sixteenths); 38678 (May 27, 1997), 62 FR 30363 (June 3, 1997) (Order approving SR–NASD–97–27, relating to trading certain equity securities in sixteenths); 38897 (August 1, 1997), 62 FR 42847 (August 8, 1997) (Order approving SR–NYSE–97–21, relating to trading equity securities in sixteenths); and 38779 (June 26, 1997), 62 FR 36328 (July 7, 1997) (Order approving SR–Phylx–97–27, relating to trading equity securities in sixteenths).

[6] See Securities Exchange Act Release Nos. 39734 (March 9, 1998), 63 FR 12846 (March 16, 1998) (Order approving SR–Amex–97–41, relating to trading options in narrower increments); 39736 (March 9, 1998), 63 FR 12851 (March 16, 1998) (Order approving SR–CBOE–97–49, relating to trading options in narrower increments); and 39735 (March 9, 1998), 63 FR 12852 (March 16, 1998) (Order approving SR–PCX–97–39, relating to trading options in narrower increments).

industry to reduce the minimum trading and quotation increments for equity securities imposed by the various self-regulatory organizations.[7] As derivative securities, the price of options are determined in reference to the underlying securities. Consequently, the Exchange believes that where practicable, the Exchange should have minimum increments comparable to those applicable to the securities underlying the Phlx options.

The Exchange also believes that the proposed rule change would give the Exchange the flexibility to follow the suit of the principal exchanges for the underlying securities without having to update its rules continually, but at the same time would give the Exchange the flexibility it needs to deviate from the minimum increments established by the principal markets for the underlying securities in the event that the Phlx's systems were not immediately able to handle such increments. The Exchange, therefore, believes the quality of the market for Phlx options will be enhanced by allowing more accurate pricing of Phlx options.

Further, the Exchange is proposing to retitle Rule 1034 ''Minimum Trading Increments'' for consistency with other exchange's rules. The Exchange is also proposing to add express reference to index options for clarity, noting that Rule 1034 currently applies to index options pursuant to Rule 1000A(a). Lastly, the Exchange is proposing to delete Commentary .01 regarding the minimum trading increment for Value Line LEAPs. If needed, any such new product-specific trading increment could be adopted pursuant to the paragraph proposed to be renumbered as Rule 1034 (iii), which provides that different increments may be fixed by the Exchange. The proposal should extend the benefits of trading in a narrower increment to Phlx options, which should, in turn, promote more accurate pricing of options and tighter quotations.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6 of the Act[8] in general, and in particular, with Section 6(b)(5),[9] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, 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 by permitting narrower minimum trading increments in Phlx options. The proposal is also consistent with Section 11A of the Act,[10] in that it promotes competition among the exchanges and market makers.[11]

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(i) of the Act[12] and subparagraph (e)(6) of Rule 19b–4 thereunder.[13] Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until May 23, 1998, more than 30 days from April 22, 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 days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the act and Rule 19b–4(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR–PHLX–98–12 and should be submitted by June 18, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14023 Filed 5–27–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40006; File No. SR–PHLX–98–10]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Automatic Price Improvement for Certain PACE Orders

May 19, 1998.

I. Introduction

On February 10, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules relating to a new

[7] *Supra*, note 2.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1.

[11] In approving these rules, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(3)(A)(i).

[13] 17 CFR 240.19b–4(e)(6).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

automatic price improvement initiative for PACE orders.

In proposed rule change was published for comment in the **Federal Register** on March 17, 1998.[3] No comments were received on the proposal. This order approves the proposal as amended.

II. Description of the Proposal

PACE is the Exchange's automated order routing and execution system on the equity trading floor. PACE accepts orders for automatic or manual execution in accordance with the provisions of Rule 229, which governs the PACE System and defines its objectives and parameters. The PACE Rule establishes execution parameters for orders depending on type (market or limit), size and the guarantees offered by specialists.

Currently, paragraph (c)(i), Automatic Double-up/Double-down Price Improvement,[4] states that where the specialist voluntarily agrees to provide automatic double-up/double-down price improvement to all customers and all eligible orders in a security, in any instance where the bid/ask of the PACE Quote[5] is ¼ or greater, market and marketable limit orders in New York Stock Exchange or American Stock Exchange listed securities received through PACE in double-up/double-down situations for 599 shares or less shall be provided with automatic price improvement of ⅛, beginning at 9:45 a.m. A specialist may also voluntarily agree to provide automatic double-up/double-down price improvement to larger orders in a particular security to all customers under this provision.

As a further effort to champion the principle of best execution, the Exchange is proposing a more comprehensive automatic price improvement initiative. Specifically, specialists could choose to provide 1/16 automatic price improvement to eligible orders in ⅛ or greater markets, or 3/16 or greater markets. Thus, as compared to the current automatic price improvement feature for double-up/double-down situations which is limited to ¼ wide markets or greater, the universe of orders eligible for the proposed feature would be expanded. Further, the proposal involves automatic price improvement without requiring a double-up/double-down situation. This again expands the benefits of price improvement to a larger universe of eligible orders.

Second, where a buy order would be improved to the last sale price which is a down tick, or where a sell order would be improved to the last sale price which is an up tick, the order is also not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. The following are examples of the exception to automatic price improvement respecting improvement to the last sale:

23–23⅛
LS 1/16 −
Buy executed at ⅛
Sell improved to 1/16

23–23⅛
LS 1/16+
Buy improved to 1/16
Sell executed at 23

23–23 3/16
LS ⅛ −
Buy executed at 3/16
Sell improved to 1/16

23–23 3/16
LS ⅛+
Buy improved to ⅛
Sell improved to 1/16

23–23 3/16
LS 1/16 −
Buy improved to ⅛
Sell improved to 1/16

23–23 3/16
LS 1/16+
Buy improved to ⅛
Sell executed at 23

23–23¼
LS ⅛ + or −
Buy improved to 3/16
Sell improved to 1/16

These exceptions are intended to cover situations where automatic price improvement may not be appropriate in light of overall market conditions. In this regard, the Exchange does not believe it is customary or appropriate to provide price improvement over the last sale price, or, in every case, to the last sale price. Despite these exceptions to automatic price improvement under this proposal, the Exchange believes that automatic price improvement would be afforded in a meaningful way, considering the wider breadth of eligible orders.

Under the proposal, automatic price improvement would not occur in two situations. First, automatic price improvement would not occur to a price better than the last sale. More specifically, where a buy order would be improved to a price less than the last sale or a sell order would be improved to a price higher than the last sale, the order is not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. The following are examples[6] of this exception (not improving over the last sale):

23–23⅛
LS 23 + or −
Buy improved to 1/16
Sell executed at 23

23–23⅛
LS ⅛ + or −
Buy improved to ⅛
Sell improved to 1/16

23–23 3/16
LS 23 + or −
Buy improved to ⅛
Sell executed at 23

23–23 3/16
LS 3/16 + or −
Buy improved to 3/16
Sell executed at 1/16

This is similar to the current exception from automatic double-up/double-down price improvement;[7] however, currently where an improved price would be better than the last sale, the order would be stopped at the PACE Quote when received. Under this proposal, the order would be automatically executed at the PACE Quote when received.

This proposal would result in automatic price improvement of 1/16, as opposed to the current automatic double-up/double-down price improvement, which provides for ⅛ price improvement. Although the amount of automatic price improvement will be less under the proposal for a particular order, the number of orders receiving price improvement of 1/16 should increase, as explained above. Price improvement of 1/16 recognizes that 1/16 is the current minimum trading increment for PACE issues on the Exchange's equity trading floor.[8] Thus, it reflects the reality of today's

[3] Securities Exchange Act Release No. 39740 (March 10, 1998), 63 FR 13083 (March 17, 1998).

[4] For a more complete description of how the Exchange's Automatic Double-Up/Double-Down price improvement feature operates *see* Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998) (''Double-Up/Double-Down Order'').

[5] The PACE Quote consists of the best bid/offer among the American, Boston, Cincinnati, Chicago, New York, Pacific and Philadelphia Stock Exchanges as well as the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES''). *See* Phlx Rule 229.

[6] These examples consist of the PACE Quote, the last sale price with an up or down tick indicator, and the price at which a buy and sell order, respectively, would be executed.

[7] *See* Securities Exchange Act Release No. 39640 (February 10, 1998), 63 FR 8510 (February 19, 1998), which creates an exception where such price improvement would be better than the last sale price (for instance, a buy order would be improved to a price less than the last sale or a seller order would be improved to a price higher than the last sale); pursuant to this exception, such orders are stopped by the specialist at the PACE Quyote when received, meaning that the order is guaranteed to receive at least that price by the end of the trading day.

[8] *See* Phlx Rule 125.

marketplace, including other price improvement initiatives in the industry.

Because the proposal would provide automatic price improvement, no POES window would occur, similar to the current automatic double-up/double-down price improvement provision.[9] Instead, an automatic execution occurs at an improved price, with no window, timer or delay. Orders not eligible for automatic price improvement due to the two exceptions relating to the last sale price are automatically executed at the PACE Quote and not subject to the POES delay.

Automatic price improvement will not occur where the execution price before or after the application of automatic price improvement would be outside the primary market high/low range for the day, if so elected by the entering member organization. This limitation currently appears in Rule 229.07(c)(i)(C), and has applied to both automatic double-up/double-down price improvement and manual double-up/double-down price protection. Similarly, pursuant to paragraph (c)(iii), the provision that member organizations entering orders may elect to participate in manual double-up/double-down price protection continues to apply. However, member organizations will not have the ability to elect the proposed automatic price improvement feature.

Currently, both the automatic double-up/double-down price improvement and manual price protection features are jointly subject to the entering firm's election.[10] As a result, electing these features where the specialist has not chosen automatic double-up/double-down price improvement in that security may currently cause a firm's orders to be stopped. Thus, firms who do not want their orders stopped because they prefer a prompt execution can currently elect out of both features.

Once automatic price improvement is no longer limited to double-up/double-down situations, the election for automatic price improvement will end, because the reason for allowing a firm's choice will no longer exist. Under this proposal, firms electing out of manual price protection could nevertheless receive automatic price improvement. For instance, where a specialist switches from manual to automatic price improvement for a security, the automatic feature would be activated even for firms that elected out of the manual feature.

The Exchange notes that the *manual* double-up/double-down price protection provision, which is mandatory for specialists, will continue to be subject to an election by entering member organizations,[11] who may continue to prefer a prompt execution over the opportunity for price improvement. Failure to elect will result in the activation of the double-up/double-down feature for that User. Specialists continue to determine whether to provide automatic price improvement in a particular security.

The extraordinary circumstances provision currently in the Rule would also apply to the new feature, such that automatic price improvement may be disengaged in a security or floor-wide in extraordinary circumstances with the approval of two Floor Officials. In addition to fast market conditions, for purposes of this paragraphs, extraordinary circumstances also include systems malfunctions and other circumstances that limit the exchange's ability to receive, disseminate or update market quotations in a timely and accurate manner.

The Exchange has determined that, as with many PACE features and participation in the PACE System itself, automatic price improvement should be made available on a voluntary, symbol-by-symbol basis, so that specialists can determine which securities are suitable for the program.[12] The availability of a price improvement feature benefits the specialist function, especially in high-volume securities, where stopping orders and manual intervention are time-consuming, delay execution and do not necessarily result in price improvement.

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).[13] In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5)[14] requirements that the rules of an Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[15]

The Commission continues to recognize that the increased competition for order flow that results from permitting regional specialists to attract orders from other markets by providing price improvement opportunities and superior quotations enhances market making ability and the quality of customer order execution. The Commission has approved proposals by national securities exchanges to integrate price improvement opportunities, on both an automatic and manual basis, into their automatic execution systems. Approval of the Exchange's automatic price improvement initiative will allow small orders to receive an execution at a price that may be better than the PACE Quote according to certain predefined criteria. Accordingly, the Commission believes that the Exchange's present proposal may enhance both intermarket competition and order execution quality on the Exchange.

Under the proposal, specialists voluntarily may agree to provide automatic price improvement of 1/16 of a point from the PACE Quote to all customers and all market and marketable limit order of up to 599 shares (or higher, if elected by the specialist) in a particular security[16] on a stock-by-stock basis, in any instance where the bid/ask spread of the PACE Quote is either 1/8 or greater than 3/16 or greater. As explained above, this automatic price improvement feature is subject to two restrictions. First, no order may be improved to a price better than the last sale price; in this situation, the orders would be automatically executed at the PACE Quote. Second, where a buy order would be improved to the last sale price which is a down tick, or where a sell order would be improved to the last sale price which is an up tick, the order is also not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote.

The Commission believes that the adoption of this proposed automatic price improvement feature by the

[9] *See* Double-Up/Double-Down Order, *supra* note 4, at note 10; and Securities Exchange Act Release No. 39640 (February 10, 1998), 63 FR 8510 (February 9, 1998).

[10] This election must be made for all Phlx stocks, not security-by-security. *See* Double-Up/Double-Down Order, *supra* note 4, at note 22.

[11] A firm's election continues to apply to all Phlx stocks, not security-by-security.

[12] Some securities are not appropriate for automatic price improvement due to, for instance, liquidity, trading patterns and volatility situations rendering it unfair for specialists to afford price improvement automatically and then manage the resulting positions. *See* Double-Up/Double-Down Order, *supra* note 4, at note 11.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78f(b).

[16] Securities listed on the New York Stock Exchange or the American Stock Exchange are eligible for this feature. *See* Phlx Rule 229.07.

Exchange is appropriate in that its use by Phlx specialists should increase the likelihood that eligible customer orders, particularly marketable limit orders, will be executed at an improved price over the PACE Quote. With respect to the two conditions above that would cause an order to be automatically executed at the PACE Quote, the Commission believes that it is reasonable for the Exchange to automatically execute such orders at the PACE Quote rather than subjecting them to the POES window or stopping them at the PACE Quote. Overall, the Commission's Division of Market Regulation previously has noted that price improvement windows, such as POES, by themselves rarely provide an execution that betters the quoted market.[17] The Exchange's proposal should enhance the price improvement opportunities available for PACE orders since a greater number of orders will be eligible for automatic price improvement than afforded under the current Double-Up/Double-Down automatic price improvement feature.

In addition, the Commission believes that the Exchange's automatic price improvement initiative is consistent with the maintenance of fair and orderly auction markets on national securities exchanges. As the examples provided by the Exchange illustrate, the execution criteria of the automatic price improvement initiative should contribute to the maintenance of an orderly market by Phlx specialists because it helps to reduce price variations occurring from trade to trade on low volume. Finally, because automatic price improvement may be disengaged under extraordinary circumstances for an individual stock or floor-wide with the approval of two floor officials, the Exchange is able to increase overall systems capacity for systematized orders routed through PACE, as well as reduce the market risk exposure to specialists who participate in the automatic price improvement initiative. The Commission believes that both of these aspects of the automatic price improvement initiative are consistent with the maintenance of fair and orderly auction markets on national securities exchanges and the protection of investors.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–PHLX–98–10) is approved as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14120 Filed 5–27–98; 8:45 am]

BILLING CODE 8010–01–M

[17] *See*, Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments (January 1994), at Study V, n. 19.

[18] 15 U.S.C. 78s(b)(2).

[19] 17CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3873]

Prevention Through People

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Prevention Through People (PTP) is a Coast Guard initiated program to address marine safety and environmental protection through a focus on the human element. Since the program's inception in 1994, there has been a steady growth of support in the marine community. Current marine industry practices reflect the increased commitment to PTP. This notice informs the public of some of the major PTP efforts taking place within the Coast Guard and includes the response to comments from the four PTP public meetings held during the spring of 1997.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents, as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington DC 20590–0001, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You many electronically access the public docket for this rulemaking on the Internet at *http://dms.dot.gov.*

The Marine Board of the National Academy of Science study, *Advancing the Principles of the Prevention Through People Program*, was published in August 1997 and is available at the National Academy Press Bookstore 2001 Wisconsin Ave. NW., Washington, DC 20418–0005; phone 800–624–6242, or 202–334–3313.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9328. For questions on this notice, contact LT Duane Boniface, Human Element and Ship Design Division (G–MSE–1), 202–267–2997.

SUPPLEMENTARY INFORMATION:

Background of PTP

The PTP initiative began in 1994 with the chartering of a Quality Action Team (QAT) to develop a long-term strategy to address the role of human and organizational factors in marine safety and environmental protection. The QAT conducted an extensive literature review and analysis of marine casualty data, conducted mariner surveys, and examined operations from a maritime systems perspective that included an assessment of vessels, facilities, and waterways.

On July 15, 1995, the QAT generated a report, ''Prevention Through People Quality Action Team Report.'' This report provided the first step towards re-balancing prevention efforts between technical, human, and organizational issues related to marine safety. Subsequent focus on human and organizational factors in safety and environmental protection led to these issues becoming top priorities for many organizations, both within the government and industry.

After the report was published, the Coast Guard and industry pursued a host of initiatives. These initiatives include partnerships with industry, studies of fatigue and communications, and introductions of risk assessment and risk management approaches. The PTP Strategic Plan (available in the docket; or contact the person under **FOR FURTHER INFORMATION CONTACT**) exposed a wider audience to the PTP philosophy, while the PTP Implementation Plan set high goals with various PTP objectives and activities for the Coast Guard to accomplish.

Additionally, the Coast Guard held four public meetings that allowed it to hear valuable industry comments concerning safety in the marine community.

PTP Focus Plan

There are many projects and initiatives under the umbrella of PTP. A list of the current projects and initiatives under the umbrella of PTP can be found on the PTP web site at the following website: *http://www.uscg.mil/hq/g-sm/nmc/ptp/index.htm*. From the list of these projects and initiatives, the Coast Guard is focusing on five major initiatives during 1998 referred to as the PTP Focus Plan. These initiatives were chosen based on public comments, marine industry input, and the results of the Marine Board of the National

Academy of Science study entitled *Advancing the Principles of the Prevention Through People Program*. This study is available where indicated under **ADDRESSES**.

The general consensus of the comments received was that the Coast Guard should concentrate on completing several of the most significant human-element-related initiatives already in progress under PTP. The five projects identified in the 1998 PTP Focus Plan provide the Coast Guard with the best opportunities to maximize progress in the near term under the PTP approach. The Coast Guard has five PTP goals outlined in the strategic plan. Each initiative the Coast Guard addresses corresponds to one of these goals.

• *Development of National Maritime Safety Incident Reporting System*. Both Coast Guard and industry proposed the concept of a national maritime safety incident reporting system. The system would be designed to capture information on unsafe occurrences that involve near-accidents, near-collision situations, near-pollution events, and related precursor events. The system would be maintained by industry and supported by the Coast Guard. The Coast Guard held a public meeting on May 4, 1998 (announced in the **Federal Register**, 63 FR 17468; April 9, 1998) to investigate the possibility of industry implementing such a system. The results of that public meeting will be announced separately.

Information on these near-accidents and unsafe occurrences is an untapped source of data that would serve as leading indicators on the level of safety within the maritime community and would provide a greater level of data for analysis and safety improvement. A concerted effort will be made through industry's leadership to get a prototype system in place by the end of 1998, with the intent to formally establish a national system in the year 2000. This near-miss incident reporting system falls under the PTP goal of *Know More*. This goal is meant to significantly expand our knowledge and understanding of the human element and its role in maritime operations and accidents. The status and the latest details on the national maritime safety incident reporting system project can be found at the following website: *http://www.uscg.mil/hq/g-m/moa/maola.htm*.

• *Implementation of the International Conventions on the Standards of Training, Certification and Watchkeeping for Seafarers, 1978, (STCW), and its amendments.* A focus of the Coast Guard is the implementation of STCW. Significant changes to STCW in 1995, which became effective in 1997, require a substantial effort by the marine community. The Coast Guard published an interim final rule (62 FR 34505; June 26, 1997) to reflect the amendments to STCW. While much has been done, there are still many issues involved with implementing this convention. Some of these issues include finalization of regulations, development of enforcement policies, training, and outreach. The effort to implement STCW falls under the PTP goal *Train More*. This goal strives to give members of the marine community the necessary skills and knowledge to improve safety and prevent pollution. Training is always a point of interest since regulations, equipment, operating environment, and personnel are constantly changing. Projects under this goal will address human element issues related to the individual mariner.

• *Implementation of the International Safety Management (ISM) Code.* Implementation of the ISM Code is an important aspect of the PTP program. Deadlines for compliance with the ISM Code begin in 1998. The Coast Guard has published a final rule (62 FR 67492; Dec. 24, 1997) concerning this matter. The ISM Code helps establish a standard for national safety management and harmonizes U.S. regulations with the international standards. Beginning in 1998, these standards would apply to the following vessels in international trade:

• Vessels transporting more than 12 passengers;
• Tankers;
• Bulk freight vessels; and
• High speed freight vessels of at least 500 gross tons. Beginning in the year 2002, these standards would also apply to the following vessels in international trade:
• Self-propelled mobil offshore drilling units of at least 500 gross tons; and
• Freight vessels.

Implementation of the ISM Code falls under the goal of *Do More*. This goal strives to improve professional performance through practical application and open communication of human element knowledge within the marine community. Implementation of a quality management system, as envisioned by the ISM Code, is a critical step in establishing corporate cultures that encourage safe practices. Detailed information about the ISM Code can be found at the following website: *http://www.uscg.mil/hq/g-m/psc/ismmain.htm*.

• *Development of the Streamlined Inspection Program (SIP).* The Coast Guard is focusing on implementation of the Streamlined Inspection Program (SIP). The SIP provides an opportunity for the vessel owners and operators to have their own personnel periodically perform many of the tests and examinations currently conducted by the Coast Guard marine inspectors. As a result, participating vessel owners and operators will promote a more continuous level of safety. Information on SIP has been published in the **Federal Register** (62 FR 17008; April 8, 1997). Development of SIP falls under the goal of *Offer More*. This goal provides incentives for making improvements to safety management systems.

• *Development and Implementation of a PTP Communications Plan.* Working together with industry and the public, the Coast Guard plans to address the human element in transportation safety and pollution prevention. Public meetings and other feedback indicate that government-to-public communication is not as effective as it could or should be. The Coast Guard will focus on the development and implementation of a PTP Communications Plan. By focusing on this plan, the Coast Guard will create a partnership with industry and the public under the PTP goal of *Cooperate More*. This plan will address all forms of communication, from describing the results of research, to discussing lessons learned and best practices, and other PTP-related information. The PTP Communications Plan will include everyone from the boardroom to the deckplate. This will allow for increased communications and more effective interaction between the marine stakeholders and the Coast Guard.

PTP's Integration Into the Coast Guard "M" Business Plan

In addition to the current PTP focus items and the many other ongoing projects, PTP continues to be integrated into the Coast Guard's operating procedures; most noteworthy is the Coast Guard Marine Safety and Environmental Protection (G–M) Business Plan (Business Plan). The goals of the Business Plan comprise a significant portion of the Commandant's Annual Performance Agreement with the Secretary of Transportation. The Business Plan contains performance guidance and strategic direction for all Coast Guard commands charged with achieving the Coast Guard*s mission for marine safety and environmental protection. A key strategy for achieving the goals of the Business Plan is PTP.

The Coast Guard recognizes the importance of human and

organizational factors in marine safety and PTP has evolved from that philosophy. The Coast Guard will meet the goals of the Business Plan by using PTP as a tool to refocus prevention efforts.

PTP Public Meetings

The Coast Guard recognizes that the success of PTP depends on the marine industry. Its feedback is essential for continuous improvement to the program. To that end, the Coast Guard held four public meetings on PTP in the spring of 1997. These public meetings were held in:

- New Orleans, LA on February 25, 1997;
- Oakland, CA on February 28, 1997;
- St.Louis, MO on March 26, 1997; and
- Newport, RI on April 18, 1997.

(Notice of meetings with request for comments published in 62 FR 4567; January 30, 1997).

These meetings allowed the Coast Guard to explain PTP, discuss its anticipated role within the marine industry, and provide an opportunity for public feedback.

From these meetings, it is evident that safety is a top issue in the marine industry, and PTP has provided an effective forum for focusing on human and organizational aspects of marine safety. The feedback from the meetings has been instrumental in providing valuable insight about PTP and was used to help develop the 1998 PTP Focus Plan.

Discussion of Comments

The comments from the meetings have been grouped by subject and are discussed in the following paragraphs.

Partnerships

Partnership was the most frequently addressed issue. A number of comments specifically supported partnerships between the Coast Guard and industry, notably the formal PTP Quality Partnerships, and the Safety Advisory Committees/Councils (SAC). The SAC's are legislatively authorized groups that provide advice and ideas to the Coast Guard on regulatory and non-regulatory issues in specific areas, such as towing or chemical transportation. Each SAC has formed a PTP subcommittee to specifically address human element issues. To find out more information about the SAC's and their activities, look at the following website: *http://www.uscg.mil/hq/g-m/advisory/index.htm*.

Several speakers felt that partnerships were the most important part of PTP. According to one speaker, PTP articulates many of the concepts the marine industry already follows and allows industry to maintain them in a centralized place. In that sense, PTP is the umbrella for the various safety initiatives going on in the marine industry. PTP is not a new philosophy, but rather, it is an extension of an existing safety philosophy with a human element focus. The PTP umbrella simply allows people to share information more conveniently and provides the emphasis for those not already active in this area.

Partnerships can involve many modes of sharing. The Coast Guard and industry partnerships were acknowledged as important; however, speakers wanted to make sure the ship-to-shore partnerships within companies are valued also. One speaker, who supported partnership and its concept, cautioned that a true partnership needs work and attention.

The Coast Guard will continue efforts in this area. Before the public meetings, the Coast Guard had formal PTP Quality Partnerships established with (1) the American Waterways Operators; (2) the American Petroleum Institute; (3) the United States Chamber of Shipping; and (4) the Passenger Vessel Association. Since the public meetings, PTP Quality Partnerships have been established with the International Council of Cruise Lines (ICCL) and the Spill Control Association of America (SCAA). The Coast Guard continues to explore opportunities for partnerships with other sectors of the maritime community.

Recreational Boating

A comment questioned whether PTP should encompass the recreational boating community. Prevention Through People is an approach to safety for everyone; no group has been excluded. Since passage of the Federal Boating Safety Act of 1971, (Pub.L. 92–75, 85 Stat. 213) the Coast Guard has worked with the States and boating safety organizations to cooperatively promote safe operation of boats through its coordination of the National Boating Safety Program. In April 1996, members of the National Boating Safety Advisory Committee (NBSAC) and the Navigation Safety Advisory Committee (NAVSAC) met and discussed interactions between the boating public and commercial shipping. The committees identified education as the number one waterway safety issue. Subsequently, a NBSAC PTP Subcommittee looked at ways of increasing the safety of boaters by applying PTP principles.

The Coast Guard is accepting feedback on the need for, and alternatives to, Federal requirements or incentives for recreational boaters to take courses in boating safety (notice to reopen the comment period published in 63 FR 13585; March 20, 1998) and for boaters to wear personal flotation devices (notice to reopen the comment period published in 63 FR 13586; March 20, 1998).

Substandard Operators

Some comments discussed how to capture the small percentage of operators who are on the edge of, or below, safe operating practices. The Coast Guard intends to assist operators in improving their safety operations. Unsafe maritime practices are a cause for concern for both Coast Guard and industry. We must commit ourselves, our organizations, and our operations to producing a safer, more productive environment.

Communication

Communication was discussed at all four public meetings. The many speakers commenting on this issue addressed the Coast Guard's efforts to disseminate pertinent information to industry and individuals, the maritime industry's communication to the Coast Guard, and the companies' internal communications. Most speakers emphasized the need to foster better communication methods. They also stressed gaps in the various chains of marine industry communications, to include Coast Guard-to-industry, ship-to-shore, and captain-to-crew, among others. As an example of a common case of miscommunication, a speaker mentioned that too often specific messages do not get to the right people. The speaker noted that one of the reasons this occurs is because management neglects to pass information down the chain of command to the people who need it.

Some comments stated that ''letters of concern'' are a helpful method that the Coast Guard uses to communicate with industry. The Coast Guard may write a letter of concern to a company on a safety issue or concern, instead of a more punitive form of action (e.g., a citation or criminal charges). Then, the Coast Guard works with the company in a non-regulatory manner to solve the problem. Some speakers also mentioned that the company could encourage safety communication by providing anonymous forms to report issues of concern.

Many speakers recommended using different media, including the Internet, to convey information. In response to the many speakers who echoed this recommendation at the meetings, the

Coast Guard has published a PTP World Wide Web site. As previously discussed in this notice, under the PTP Focus Plan, the Coast Guard is developing the Communications Plan to provide direction to, and support for, personnel involved in the PTP program.

Speakers also discussed the role of Coast Guard Headquarters in Washington, DC, with respect to setting effective nationwide policy. Many safety issues, such as risk management, can be addressed at a local level. The broad policy and regulatory issues, though, are most effectively addressed at the headquarters-level.

Regulatory Process

Several speakers commented on the Coast Guard's regulatory process. The comments discussed:

- Problems with the way regulations are written and created;
- Solutions to some of the difficulties;
- The Coast Guard's solutions that are regulation oriented, even when the goal is to minimize new regulations; and
- A review of the required paperwork.

Regulations are a necessary aspect of safety within the marine industry under the Coast Guard's legislative mandate from Congress. However, seeking non-regulatory approaches to safety for people and the environment is one of the PTP Principles, which can be found in the Strategic Plan. Regulations establish minimum levels of safety as a part of an overall safety system. However, the Coast Guard continues to pursue regulatory reform including periodic reviews of paperwork and regulatory burdens as described in its semi-annual agenda of regulatory actions published in the **Federal Register** each fall and spring.

Several speakers commented that some mariners find it difficult to read and understand the technical and complex writing style of regulations. The Coast Guard has begun to implement Plain Language writing to make it easier to understand and comply with regulations. Plain Language writing includes simplifying acronyms, increasing use of conversational tone, and using questions and answer formats.

One speaker recommended that the Coast Guard hold more public outreach meetings (e.g., marine industry day) at the local Marine Safety Offices rather than at the Coast Guard Districts. The speaker noted that holding outreach meetings at the local level would provide greater access for small businesses and would enable the Coast Guard to better address issues specific to a community. The Coast Guard agrees. In several areas the Coast Guard participates in meetings convened by mariners on the local level. For example, current efforts where the Coast Guard joins with local community groups to solve local problems include:

- Privately convened Mariners' Advisory Committee of the Bay and River Delaware in Philadelphia, PA;
- The Puget Sound Marine Committee in Seattle, WA; and
- The Cuyahoga River Task Force in Cleveland, OH.

One speaker discussed the issue of using public meetings as part of the regulatory process. The speaker suggested using the format of the PTP public meetings, stating that its ''give and take'' format is a better model than the regulatory public meeting format. The Coast Guard continuously strives for open communications balanced with the requirements for the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) so that all members of the affected public, not just those present at a particular meeting, have equal and appropriate input to a fair and unbiased regulatory outcome.

Lessons Learned and Near Accidents

Some speakers commented on lessons learned and near accidents. A number of speakers gave information highlighting their experiences of best practices, while other speakers gave definitions of near accident and some of the obstacles encountered in the creation of a near accident reporting system. Several industry concerns need to be resolved to the satisfaction of all interested parties, before creating the new system. Some industry concerns include loss of insurance, safety awards, and exposure to legal liability. To create a functional reporting system, these factors must be addressed and answered to the satisfaction of all involved. As mentioned earlier in this notice, this issue is an item in the PTP Focus Plan.

Several speakers offered stories of various lessons learned and near accident efforts that their companies currently apply in the quest for safety improvements. Some projects that were mentioned include the following:

- Developing contingency plans.
- Providing means within companies to anonymously report issues of concern.
- Organizing safety meetings and lessons learned procedures followed up with shared analysis.
- Having key learning meetings for captains where each reports on a shared pertinent issue.

Another speaker suggested bringing representatives of vendors of mechanical systems to the workers who use them, thereby joining the people who make the equipment and the people who use the equipment.

Management

A number of speakers discussed aspects of management that affect marine safety. They highlighted best practices as performed by their firms, the problems they have with their companies, management losing their safety focus, and the management aspects of PTP.

Many speakers stated that they feel safety is often compromised by home office policies. For example, some masters are not allowed the independence to make decisions based on current conditions, but must operate within established parameters. Though this is an issue that must be addressed within individual companies, the Coast Guard recognizes the serious potential for accidents that such a practice causes. A speaker suggested allowing a management style that gives employees more power in decision making. The Coast Guard applauds this approach, which is consistent with the PTP Principle *Honor the Mariner.*

It remains the responsibility of the individual companies and management to use their influence appropriately and to make sure there is compliance from the boardroom to the deck plate level. This responsibility takes on the increased importance as the deadlines for compliance with the ISM Code approach. Implementation of the ISM Code will have a significant effect on marine safety from the organizational standpoint, and is being addressed as part of the PTP Focus Plan.

Two speakers commented that the human element provides the greatest impact on improving marine safety and that upper management must show consistent, not sporadic, support.

Several speakers expressed concern that PTP might encourage micromanagement when it should, instead, foster creativity. A speaker requested having the Coast Guard focus on its roles of encouragement, leadership, and examples, as opposed to regulations and management. As noted, PTP seeks non-regulatory approaches to safety for people and the environment.

Training

A number of speakers discussed training. The majority of comments shared best practices related to training of mariners on a day-to-day basis and of the crew as a whole. A few speakers identified some problems with Coast Guard procedures that affect training mariners.

The comments indicated that many companies are working to provide better, more accurate training with a focus on safety. The Coast Guard and the Los Angeles/Long Beach (LA/LB) Vessel Traffic Information System (VTIS) are currently working on a standard for training to be used primarily as a tool for mariners. Improved industry training methods also include training teams from the same vessel, so the mariners can practice with the people they work with. Another suggestion described a pocket-sized emergency response-training document for deckhands.

Some of the basic principles noted in the public meetings and in the Coast Guard's experience are worthy of note:

- Training needs to be a priority from the initial hiring process onwards.
- Training should encompass everything from lessons on managing stress to CPR and fire fighting.
- Supervisors should go through some of the training with the crew to see what they are learning.

Effective implementation of the STCW Convention is necessary. Noted previously as a 1998 Focus Plan item, the Coast Guard will continue to address the human element issues of the STCW that relate to the individual mariner.

A number of comments discussed course approvals. It was noted that it now appears more difficult to get mariners to meet the basic requirements. A course approval process Fast Action Team met in November 1997 to find ways to reduce the backlog of course applications waiting for approval and shorten the time needed to evaluate course approval applications. As a result of the team's recommendations, the following actions have been taken:

- The National Maritime Center (NMC) increased the course approval staff by two people and also filled a long vacant position.
- The NMC determined the processing time could be shortened if courses were sent directly to the NMC rather than to the REC's. NMC Policy Letter 7–98 announced this change, and the implementing regulatory change will be proposed in the Maritime Course Approval Procedure Notice of Proposed Rulemaking, CGD 97–074.
- The course approval database that lists all Coast Guard approved courses has been updated, as of January 15, 1998. The list of approved courses is published on the Internet and is updated monthly.
- The NMC has begun developing and updating course guidelines to standardize approved courses.

Standardizing approved courses would reduce the time needed to review course approval requests; provide consistency in courses being taught; and ensure courses, instead of exams, will more accurately reflect the job tasks and responsibilities of the license being sought.

As a result of these actions, the backlog has decreased from 95 courses waiting for approval in November of 1997 to less than 40 courses waiting for approval in March of 1998. The oldest course awaiting review has been reduced from December 1996 to February 1998.

Honor the Mariner

Several speakers applauded and supported the PTP philosophy *Honor the Mariner.* They noted that the most appreciated contribution of PTP has been the recognition of the mariner as a pivotal member of the safety equation. Recognition of mariners helps foster a shared working relationship with mariners and masters. The Coast Guard recognizes that mariners have working knowledge of projects and equipment and that their opinions are important.

One speaker recommended that the Coast Guard honor the mariner constantly, not just before the accident, but also during and after an incident. The Coast Guard continues to seek out and use the expertise of mariners in guiding safety and environmental protection efforts, and appreciates the time, effort, and insights of all who have provided assistance.

Fatigue

A few speakers addressed fatigue research, while others spoke of their fatigue experiences. Several speakers mentioned that their companies are devoting research to studying fatigue and attempting to curb it. One company developed alertness testing devices with the view that fatigue, stress, and illness are impairment factors just as hindering as drugs and alcohol. The Coast Guard Research and Development Center is also performing studies specifically to address fatigue.

The PTP goal, *Do More,* was also mentioned during a fatigue discussion. The speaker addressed the concern that people may construe the statement by literally doing more work, but with the same people and equipment. *Do More* is directed towards striving for increased quality and prioritization of work-do better-as opposed to an increased quantity of work. One speaker acknowledged that fatigue is often a contributing factor to many accidents. The speaker, however, expressed concern that fatigue is often an easy fallback explanation for accidents, when it may not be the causal factor in a particular accident.

Research

A representative from the Coast Guard Research and Development Center described the Fatigue Research Program and solicited participation from the towing industry for an alertness study. In addition, several speakers stated that their companies are devoting more research time to human safety and environmental issues. The Coast Guard applauds these efforts and encourages the sharing of this information for the benefit of the entire marine community. The Coast Guard Research and Development Center has developed a web site *http://www.rdc.uscg.mil/* to disseminate information about its projects. There is also a section on studies and reports related to human element issues on the PTP web site: *http://www.uscg.mil/hq/g-m/nmc/ptp/rands.htm*.

Streamlined Inspection Program (SIP)

Several comments discussed SIP. In general, they were supportive of the program. Speakers agreed with SIP, citing it as an example of true partnership. They pointed out many advantages to the program, noting its encouragement for companies to translate the Code of Federal Regulations for their employees. A speaker commented that the strength of SIP lies in changing the inspection from an annual snapshot by the Coast Guard to a Coast Guard audit of the organization's continuous inspection system. As a 1998 Focus Plan item, the Coast Guard will help companies increase ownership of their inspections and maintenance by implementing the SIP.

Some comments addressed the issue of SIP by creating two classes of operators or companies. They discussed the problem of the Coast Guard not issuing CG–835 forms, which require immediate repairs, to vessels that are part of the SIP. Some speakers felt that industry does not want to see two classes of operators or companies.

Manning

A few speakers addressed the problems of working with too few crew members. One speaker supported regulations on manning of barges because it is difficult to place someone aboard an unmanned barge in adverse weather conditions. The Coast Guard has proposed regulations seeking to enhance existing standards for anchoring or retrieving drifting tank barges (62 FR 52057, October 6, 1997;

and 63 FR 9980, February 27, 1998). These proposed rules present appropriate measures for reducing the likelihood of loss of control and grounding of a tank barge based on whether or not the barge is manned. As a result of reducing the likelihood of groundings, fire prevention measures and emergency control measures are also both part of the system to address tank barge safety.

Another speaker commented on the often insufficient manning on foreign flag vessels, which makes it harder to have safe operations. With certain exceptions, the vessel's Flag State establishes the manning level for each vessel. The Coast Guard is concerned about the safety of foreign vessels operating in U.S. waters and is working with the International Maritime Organization (IMO) to develop more up-to-date guidance on the principles of safe manning. The aim of this guidance is to have crew complements based on the actual crew workload, taking into account work hour limits and rest requirements. During Port State Control (PSC) boardings of foreign vessels, the Safe Manning Document is checked against the actual manning of the vessel. In addition, licenses, certificates, and rest requirements are checked to ensure compliance with the STCW. The Coast Guard will work with representatives of the Flag State to resolve any of the problems. The Coast Guard may detain the vessel in port pending the resolution of the problems to ensure the correction of unsafe conditions, which may include requiring additional crewmembers if insufficient personnel are onboard to safely operate the vessel.

Pilotage

One speaker discussed the need for First Class Pilot's licenses on the inland waterway system. The speaker indicated that the current certification of inland pilots on parts of the inland waterway, which does not specify a geographic area of expertise, is insufficient. The speaker stated that the Coast Guard Regional Examination Centers need to ensure capable people can get their license.

In 1994, the Coast Guard revised the pilot regulations in 46 CFR 15.812 to eliminate the requirement for a First Class Pilot's license on non-designated areas of pilotage waters. Due to this change in regulations, it is now the companies' responsibility to ensure that the pilot they hire has the necessary expertise.

Maintenance

One speaker commented on maintenance. The speaker highlighted problems with main propulsion failures due to the lack of proper maintenance of ships and equipment. Poor maintenance of ships and equipment has been noted in many casualties, including the December 1996 BRIGHT FIELD accident in New Orleans, LA, where poor maintenance was cited as a cause of the accident in the investigation report, which was published on October 31, 1997.

The speaker noted that the issue of maintenance should receive more attention than it has in the past. The Coast Guard is actively pursing these efforts through its PSC and SIP programs, which target foreign vessels and domestic that are not operated or maintained properly. Additionally, the ISM Code becomes mandatory for many vessels on July 1, 1998, and requires both the company and the vessel to have a safety management system in place. A properly implemented safety management system will help prevent occurrences such as the BRIGHT FIELD'S loss of propulsion.

Conclusion

The Coast Guard is committed to PTP as a long-term effort to address the root cause of many of these accidents—the human element. Through the continuing efforts of the Coast Guard and marine community, we can all reduce and perhaps, eventually, eliminate these types of accidents. The Coast Guard has an unwavering commitment to safety, and through PTP is undertaking many bold initiatives. The marine community is invited to join in this effort to improve marine safety and environmental protection. Visit one of the web sites listed in this notice to learn more.

Dated: May 18, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–14163 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air traffic issues.

DATES: The meeting will be held on June 16, 1998, 10:00 a.m.

ADDRESSES: The meeting will be held at the Air Traffic Control Association Headquarters, 2300 Clarendon Blvd., Suite 711, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Beth Allen, Transportation Regulations Analyst, Airmen and Airspace Rules Division, Office of Rulemaking (ARM–105), 800 Independence Avenue, SW, Washington, DC 20591. Telephone: (202) 267–8199, FAX: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–43; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee. This meeting will be held on June 16, 1998, at 10:00 a.m., at the Air Traffic Control Association Headquarters, 2300 Clarendon Blvd., Suite 711, Arlington, VA.

The agenda for this meeting will include a review of the Special Visual Flight Rules (SVFR) Working Group's activities.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC on May 21, 1998.

Reginald C. Matthews,

Assistant Executive Director for Air Traffic Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–14167 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration

Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on June 10, 1998, at 12:30 p.m.

ADDRESSES: The meeting will be held at Federal Aviation Administration, Conference Room 9c, 800 Independence Ave., SW, Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Dwonna Johnson, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on June 10, 1998. The agenda for this meeting will include status reports on the All Weather Operations Working Group, the Fatigue Countermeasures and Alertness Management Working Group, the initiation of the Airplane Performance Working Group, as well as a discussion of the task on flight crew reserve scheduling. Attendance is open to the interested public but may be limited by the space available. The Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on May 26, 1998.

Quentin J. Smith,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–14271 Filed 5–26–98; 1:41 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at San Diego International-Lindbergh Field, San Diego, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to use, and impose and use the revenue from a PFC at San Diego International-Lindbergh Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 as recodified by Title 49 U.S.C. 40117 (c)(3)) and 14 CFR, Part 158.

DATES: Comments must be received on or before June 29, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Thella F. Bowens, Senior Director, Aviation, San Diego Unified Port District, P.O. Box 488, San Diego, CA 92112–0488.

Air carriers and foreign air carriers may submit copies or written comments previously provided to the San Diego Unified Port District under section 158.23 of FAR Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor Standards Section, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, Telephone: (310) 725–3621. 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 to impose and use the revenue from a PFC at San Diego International-Lindbergh Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 as recodified by Title 49 U.S.C. 40117(c)(3)) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 26, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the San Diego Unified Port District 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 June 25, 1998.

The following is a brief overview of the application No. 98–02–C–00–SAN:

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2000.

Proposed charge expiration date: January 1, 2002.

Total estimated PFC revenue: $26,504,000.

Brief description of the proposed projects:

Impose and Use projects:

Replace passenger loading bridges; upgrade East and West Terminals; conduct airport long term study; upgrade electronic information display system; construct storm water/oil separator system; establish temporary commuter terminal; replace ARFF vehicle; install air cargo apron lighting; upgrade emergency alarm system; modify pedestrian access—West Terminal; construct East Terminal pedestrian bridge; construct high-speed exit taxiway B7; consolidate air cargo operations along Taxiway B7 including additional apron pads and lighting; pave Taxiway D fillets; install blast deflectors for Taxiways B2, B3, and D; establish an emergency operations center; and residential sound attenuation program.

Use projects:

Demolish former US Air hangar building; and upgrade Gates 20 and 22 in the West Terminal.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxis.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the San Diego Unified Port District Building.

Issued in Hawthorne, California, on May 21, 1998.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 98–14270 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory: Determination of Vision Impairment Among Locomotive Engineers

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of safety advisory.

SUMMARY: FRA is issuing Safety Advisory 98–1 addressing the vision standards of certified locomotive engineers in order to reduce the risk of accidents arising from vision impaired engineers.

FOR FURTHER INFORMATION CONTACT: John Conklin, Operating Practices Specialist, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street S.W., Mail Stop 25, Washington, D.C. 20590 (telephone: 202–632–3372); Alan H. Nagler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., RCC–11, Mail Stop 10, Washington, D.C. 20590 (telephone: 202–632–3187); or Mark H. McKeon, Regional Administrator, 55 Broadway, Cambridge, MA 02142 (telephone: 617–494–2243).

SUPPLEMENTARY INFORMATION: After a tragic 1987 accident and in response to the Rail Safety Improvement Act of 1988, FRA adopted rules establishing a program for qualifying locomotive engineers to assure the uniformity and adequacy of the qualifications standards. FRA's rule, which became effective in 1991, establishes requirements for testing the visual acuity of individuals who want to be certified as locomotive engineers. In the ongoing effort to monitor compliance with and the effectiveness of its existing regulatory program, FRA has been examining available data concerning administration of this aspect of the certification program. The data suggest that there is room for improving the rule's existing provisions concerning the testing and evaluation of visual acuity.

FRA also has received a number of recommendations for change to the rules concerning the qualification and certification of locomotive engineers. The most recent recommendation was received on May 14, 1998, when FRA was presented with a recommendation from the Railroad Safety Advisory Committee (RSAC) that FRA consider changes to the current provisions concerning the testing and evaluation of visual acuity.

RSAC was established to provide recommendations and advice to the Administrator on development of FRA's railroad safety regulatory program, including issuance of new regulations, review and revision of existing regulations, and identification of non-regulatory alternatives for improvement of railroad safety. RSAC recommendations carry considerable weight since RSAC is comprised of 48 representatives from 27 member organizations, including railroads, labor groups, equipment manufacturers, state government groups, public associations, and two associate non-voting representatives from Canada and Mexico.

The May 14 RSAC recommendation echoes an earlier recommendation from the National Transportation Safety Board (NTSB) based on the NTSB's March 25, 1997 report of its investigation into a fatal collision between two New Jersey transit commuter trains near Secaucus, New Jersey. See NTSB's Railroad Accident Report—Near Head-On Collision and Derailment of Two New Jersey Transit Commuter Trains near Secaucus, New Jersey, February 9, 1996 (NTSB/RAR–97/01).

Explanation of Current Requirements on Testing and Evaluation of Visual Acuity

FRA rules require each railroad to test the vision of every locomotive engineer when initially certified and at periodic intervals of no more than every three years. Each railroad's program must include criteria and procedures implementing how the railroad will ensure that each locomotive engineer will have adequate distant visual acuity and the ability to recognize and distinguish between the colors of signals. The rule requires that a railroad have written confirmation from a licensed medical doctor that the person being certified meets the FRA visual acuity standards. See 49 CFR part 240 at §§ 240.121, 240.207.

The rule gives railroad's and railroad medical examiners considerable latitude when conducting visual acuity testing and evaluation. During the period the rule has been in effect, the latitude permitted has generated questions about a number of matters. These include questions about the use of chromatic lenses; accounting for the variations in railroad signals when a signal is displaying the color yellow; the duty of engineers who rely on contact lenses to have a pair of corrective eyeglasses available when on duty; the obligation of certified locomotive engineers to alert the railroad when the engineer has reason to believe that his or her vision has deteriorated to the extent that the person may no longer meet the acuity requirements; the duty of each medical examiner to have a clearly articulated basis for his or her decision that a person who lacks the specified level of acuity can nonetheless safely operate a locomotive; and the ability to use a variety of testing methods, including whether it is proper to conduct color vision tests by displaying yarn or other fabrics.

Of these questions, the most vexing involves the issue of employing appropriate testing of persons to detect color vision impairment. FRA's expectation was that the physicians who would be designated as railroad medical examiners would be trained to competently administer color vision examinations. Thus, FRA did not anticipate that it would be necessary to specify for the medical examiners the test procedures to be employed when testing for whether a person meets the standards specified in this rule.

That assumption has been called into question under tragic circumstances. It appears that if the current rule had been implemented as FRA expected, the rule would have been adequate to prevent the NJT accident. For example, the NTSB report found that the medical history of the suspect engineer showed that he had been administered an acceptable test annually by the same NJT contract physician since at least 1985. For nine straight years, the engineer scored a perfect score on his color vision test. However, the NTSB report also found that beginning in 1994, the test results showed a deterioration of the engineer's ability to distinguish among some colors and, in February 1995, one year prior to the accident, the engineer's test scores caused him to be classified as having a moderate color vision handicap. As a consequence of this low test score, the physician said that he gave the engineer the Dvorine Nomenclature Test to further evaluate the engineer's color vision. NTSB reported that the testing protocol states that the nomenclature test is not a test of color discrimination ability, since many color blind individuals learn to name the colors correctly by their brightness instead of their hue. Reliance on this testing methodology suggests the physician failed to understand that the purpose of the Dvorine Nomenclature Test is to see whether the patient can identify the names of the colors—not to test color vision. In fact, the Dvorine Nomenclature Test is merely a preliminary step in conducting the Dvorine—Second edition color vision test and is often skipped because most patients are presumed to be able to identify the names of the colors. Thus, it is likely that this accident was preventable if the physician had responded differently to the pattern of deterioration and had used a sound approach to measuring the person's ability to distinguish colors.

RSAC'S Recommended Changes to FRA'S Rules on Testing and Evaluation of Visual Acuity

FRA's goal is to prevent train collisions such as the one that occurred at Secaucus. Amending the existing regulation, so that railroad medical examiners are limited to the application of prescribed acceptable tests, will help achieve this goal. While the RSAC has recommended modification of the

regulation, issuance of a final rule could take a substantial period of time during which it is possible that the circumstances surrounding the medical evaluation process of the Secaucus accident could be replicated. FRA has decided that the RSAC recommendations for change on this issue should be widely disseminated since these recommendations reflect the current best thinking of the regulated community. Broad sharing of information concerning the views of the advisory committee can be of assistance to medical examiners who are responsible for administering the existing regulation.

Based on past practice, FRA anticipates that the agency will accept the RSAC recommendation that FRA issue a notice of proposed rulemaking (NPRM) to revise the locomotive engineer certification regulation. The publication of this safety advisory should not be viewed as FRA endorsement of any particular aspect of the RSAC recommendations nor prejudging the eventual course of action which FRA may follow after carefully reviewing the RSAC recommendation. This safety advisory is intended to encourage all parties to carefully examine their current practices and, where appropriate, modify those practices to further reduce the risk of an accident or injury.

FRA anticipates that, when an NPRM may be issued, these and other RSAC recommendations addressing locomotive engineer certification will be the subject of public comment. These comments will be considered in the development of the final rule. As an example, even among members of the advisory committee who helped shape the consensus recommendations, FRA understands that some members would prefer to see that locomotive engineers be banned from wearing chromatic lenses during any color vision testing and any operation of a train or locomotive. This issue will be the subject of further discussion following completion of the public comment period.

Recommendation Details

RSAC Recommended That

a. FRA create an obligation for each certified locomotive engineer to notify his or her employing railroad's medical department or, if no such department exists, an appropriate railroad official, if the person's best correctable vision or hearing has deteriorated to the extent that the person no longer meets one or more of the prescribed vision or hearing standards or requirements of 49 CFR part 240;

b. Each railroad should ensure that all of their medical examiners have a current copy of 49 CFR part 240, including all appendices, and request that their medical examiners review the medical requirements;

c. Each railroad should remind all of their medical examiners who perform testing pursuant to 49 CFR 240.121 that the visual acuity tests should be conducted in accordance with the directions supplied by the manufacturer of the chosen test instruments and any American National Standards Institute (ANSI) standards that are applicable;

d. Each railroad should ensure that all of their medical examiners know that no person shall be allowed to wear chromatic lenses during an initial test of the person's color vision; the initial test is one conducted in accordance with one of the accepted tests. Chromatic lenses may be worn in accordance with any subsequent testing if permitted by the medical examiner and the railroad;

e. Each railroad should ensure that all of their medical examiners know that railroad signals do not always occur in the same sequence and that testing procedures must take that fact into account;

f. Each railroad should ensure that all of their medical examiners know that ''yellow signals'' do not always appear to be the same;

g. Each railroad should ensure that all of their medical examiners know that it is not acceptable to use ''yarn'' or other materials to conduct a simple test to determine whether the certification candidate has the requisite vision;

h. Each railroad should require that its medical examiners retest and further evaluate any locomotive engineer who reports a deteriorating vision condition or, upon request, an examinee who fails to meet the rule's articulated vision standards. The railroad's medical examiner will be expected to review all pertinent information and, under some circumstances, must condition certification on any special restrictions the medical examiner determines in writing to be necessary, e.g., restrict an examinee who does not meet the criteria from operating a locomotive or train at night, during adverse weather conditions, or outside of a yard. This decision should not be made until after consultation with one of the railroad's designated supervisors of locomotive engineers;

i. Each railroad should ensure that all of their medical examiners know that engineers who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty; and

j. Each railroad should ensure that when a person is tested pursuant to 49 CFR 240.121, the person has the ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests specified in the table below. Each railroad should clearly explain to the medical examiners conducting such tests that the key is being able to distinguish among railroad signals; without such a clarification, medical examiners unfamiliar with the railroad environment might focus their attention on colors that do not appear as railroad signals.

k. Each railroad should ensure that medical examiners conducting tests to determine visual acuity adhere to the following guidance when administering the vision acuity requirements of 49 CFR 240.121 and 240.207. Select a testing methodology only from the following testing protocols which are deemed acceptable testing methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. The acceptable test methods are shown in the left hand column and the criteria that should be employed to determine whether a person has failed the particular testing protocol are shown in the right hand column. Successful completion of one of these tests should be required, but requiring successful completion of multiple tests is discouraged since it would most likely be redundant.

Accepted tests	Failure criteria
Pseudoisochromatic Plate Tests	
American Optical Company 1965	5 or more errors on plates 1–15.
AOC—Hardy-Rand-Ritter plates—second edition	Any error on plates 1–6 (plates 1–4 are for demonstration—test plate 1 is actually plate 5 in book).
Dvorine—Second edition	3 or more errors on plates 1–15.

Accepted tests	Failure criteria
Ishihara (14 plate)	2 or more errors on plates 1–11.
Ishihara (16 plate)	2 or more errors on plates 1–8.
Ishihara (24 plate)	3 or more errors on plates 1–15.
Ishihara (38 plate)	4 or more errors on plates 1–21.
Richmond Plates 1983	5 or more errors on plates 1–15.
Multifunction Vision Tester	
Keystone Orthoscope	Any error.
OPTEC 2000	Any error.
Titmus Vision Tester	Any error.
Titmus II Vision Tester	Any error.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 98–14010 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–06–P

Corrections

Federal Register

Vol. 63, No. 102

Thursday, May 28, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. ER98–2770–000 and ER98–2786–000

American Electric Power Service Corporation, Central and South West Services, Inc.; Notice of Extension of Time

Correction

In notice document 98–12838 appearing on page 26791, in the issue of Thursday, May 14, 1998, the docket line should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1951–043]

Georgia Power Company; Notice of Availability of Environmental Assessment

Correction

In notice document 98–12925 appearing on page 27080, in the issue of Friday, May 15, 1998, the docket line should read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39851; File No. SR-PHLX-97-45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change to Amend its By-Law Article XII, Section 12-10, With Respect to the Eligibility of Persons to Serve as Inactive Nominees

April 10, 1998.

Correction

In notice document 98–10182 beginning on page 19282, in the issue of Friday, April 17, 1998, make the following corrections:

On page 19282, in the third column, the docket and date lines are corrected to read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39899; File No. SR-SCCP-98-01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to an Increase in the Number of Directors

Correction

In notice document 98–11212 beginning on page 23333, in the issue of Tuesday, April 28, 1998, make the following correction:

On page 23333, in the first column, the docket line is corrected to read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201, 240, 242, and 249

[Release No. 34-39884; File No. S7-12-98]

RIN 3235-AH41

Regulation of Exchanges and Alternative Trading Systems

Correction

In proposed rule document 98–10945 beginning on page 23504, in the issue of Wednesday, April 29, 1998, make the following correction:

On page 23583, under the table, in the first line, ‘‘Dated: April 21, 1998.’’ should read ‘‘ Dated: April 17, 1998.’’

BILLING CODE 1505-01-D

federal register

Thursday
May 28, 1998

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 272 and 273

Food Stamp Program: Food Stamp Recipient Claim Establishment and Collection Standards; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 377]

RIN 0584–AB88

Food Stamp Program: Food Stamp Recipient Claim Establishment and Collection Standards

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service (FNS) is proposing to revise Food Stamp Program (FSP) regulations that cover the establishment and collection of food stamp recipient claims, including collections at the Federal level. This rule aims to improve claims management in the FSP while providing State agencies with increased flexibility in their efforts to increase claims collections. The provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) affecting recipient claims are incorporated into this rulemaking and this action is consistent with the President's regulatory reform effort. This proposed rule also strives to achieve a balance between State agency flexibility and fiscal accountability.

Food stamp recipient claims are established against households that receive more benefits than they are entitled to receive. The last major revision to these regulations was in 1983. Recent legislation, technological advances and changes in Federal debt management regulations have rendered many portions of the current regulations obsolete. In addition, the current regulations place unnecessary burdens on State agencies. The proposed changes are intended to: incorporate changes mandated by PRWORA; simplify presentation of policy; incorporate Federal debt management regulations and statutory revisions into food stamp recipient claim management; and provide State agencies with additional tools to facilitate the establishment, collection and disposition of food stamp recipient claims.

DATES: Comments on this proposed rulemaking must be received by August 26, 1998 to be assured of consideration.

ADDRESSES: Comments should be submitted to James I. Porter, Recipient Claims Coordinator, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Only written comments will be accepted. All written comments will be open for public inspection during regular business hours (8:30am to 5:00pm, Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 905.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Mr. Porter at the above address or by telephone at (703) 305–2385.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The FSP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), the FSP is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Implementation'' section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Public Law 104–4

This proposed rule contains no Federal mandates under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, for State, local and tribal governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act: Recipient Claims and Reporting Format Redesign

The following constitutes a 60 day notice being issued by FNS, USDA.

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposal to consolidate several existing collection burdens by requesting a new burden.

Written comments must be submitted on or before July 27, 1998.

Send comments and requests for copies of this information collection to James I. Porter, Recipient Claims Coordinator, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 and to Wendy Taylor, FNS Desk Officer, Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503. For further information regarding this notice, Mr. Porter may be contacted at (703) 305–2385.

Comments regarding these burden estimates are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the 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 appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Title: Food Stamp Data Collection.

OMB Number: A new burden number is being requested This burden will consolidate burden associated with 0584–0069, 0584–0080, 0584–0009, 0584–0015, 0584–0081 and 0584–0025. The existing burden under 0584–0064 is not being changed.

Form Number: New request for FNS–695 which will consolidate the FNS–

209, FNS–46, FNS–250, FNS–259, FNS–388, FNS–388a and FNS–101 reports.

Type of Request: Consolidation of several collection and record keeping burdens into one burden.

Abstract: In accordance with the Paperwork Reduction Act of 1995, the reporting and recordkeeping burden associated with the Notice of Adverse Action, the demand letter for recipient claims and general case/claim recordkeeping has been approved by OMB under OMB number 0584–0064. The Department recognizes that, under this proposed rule, State agencies would be required to track claim referrals. The Department does not consider this to be an additional recordkeeping burden because tracking referrals is part of efficient and effective general case recordkeeping and management that has already been approved under OMB 0584–0064.

The burden associated with the reporting of claims under OMB number 0584–0069 consists of the submission of the *Status of Claims Against Households* (FNS–209) report. In an effort to reduce the number of reports and/or data elements to be reported, the Department is proposing to request OMB to combine and consolidate this reporting function with a number of other FNS reports with the result being one electronic reporting format. The reports with which the FNS–209 would be consolidated include the *Issuance Reconciliation Report* (FNS–46), *Food Stamp Accountability Report* (FNS–250), *Food Stamp Mail Issuance Report* (FNS–259), *State Issuance and Participation Estimates* (FNS–388), *Project Area Issuance and Participation Estimates* (FNS–388a) and *Participation in Food Programs—by Race* (FNS–101) as it pertains to the FSP. All of these reports, including the FNS–209, currently have assigned to them a unique OMB burden approval number: 0584–0069 for the FNS–209; 0584–0080 for the FNS–46; 0584–0009 for the FNS–250; 0584–0015 for the FNS–259; 0584–0081 for the FNS–388 and FNS–388a; and 0584–0025 for the FNS–101. To facilitate the report consolidation effort, the Department is requesting that OMB cancel all of the above approval numbers (with the exception of OMB number 0584–0025) and assign a single burden approval number for the new electronic reporting format. Since the burden associated with OMB number 0584–0025 also pertains to activity in the Food Distribution Program, the Department is not requesting that this number be canceled. However, the portion of this burden relating to the FSP would be removed and transferred to the newly assigned number.

The number of annual data reporting elements associated with this reporting burden will change dramatically. Currently, the forms proposed to be replaced have a cumulative total of 3,121,124 annual data reporting elements resulting in a reporting and recordkeeping burden of 110,122 hours. The proposed reporting format, on the other hand, would only have 15,300 annual data reporting elements.

Even though the number of data elements would be reduced significantly, the reporting and recordkeeping burden hours would increase by an average one hour per State agency per report submission. This is because much of the data proposed to be reported in the new reporting format is summational. Under the proposed reporting format, State agencies would need to retrieve and record the detailed data, compute the summational amounts and maintain the records necessary for audit purposes. Many States are already performing this consolidation function as part of their existing reporting procedures and therefore would experience no increase in burden. The one-hour increase in burden is to accommodate the remaining states who would need to perform some consolidation work to carry out this function.

Affected Public: State and local governments.

Estimated Number of Respondents: 37,973.

Estimated Time per Response: 2.90 hours.

Estimated Total Annual Burden: 110,758 hours.

Paperwork Reduction Act: Federal Collection Methods for Food Stamp Program Recipient Claims

The following constitutes a 60-day notice being issued by FNS, USDA.

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposal to change an information collection burden related to Federal claims collection methods (FCCM's).

Written comments must be submitted on or before July 27, 1998.

Send comments and requests for copies of this information collection to James I. Porter, Recipient Claims Coordinator, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 and to Wendy Taylor, FNS Desk Officer, Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503. For further information regarding this notice, Mr. Porter may be contacted at (703) 305–2385.

Comments regarding these burden estimates are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the 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 appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Title: Federal Collection Methods for Food Stamp Program Recipient Claims.

OMB Number: 5084–0446.

Expiration date: September 30, 1999.

Type of request: Revision to a currently approved collection.

Abstract: Changes to the collection burden would result from two changes proposed in this rule. One proposed change is the consolidation of the 60-day notice for Federal Income Tax Refund Offset Program (FTROP)(See 7 U.S.C. § 2022(b)(1)(C); 7 CFR 273.18(g)(5)) into an all inclusive 60-day notice for all types of Federal offsets. The other is the increased number of 60-day notices due to the proposed inclusion of agency error (AE) claims as a type of claim subject to collection under Federal offset.

Estimate of Burden: The proposed rule would increase the annual burden on State agencies from an average of 450 to 500 hours and for debtors would decrease from an average of 8 to 6 minutes.

Respondents: The collection would continue to impact two groups, State agencies that administer the FSP and certain individuals who are liable for overissued food stamp benefits.

Estimated Number of Respondents: The number of State agency respondents increase from 52 to 53. The number of debtor respondents would increase from 370,000 to 425,000.

Estimated Number of Responses per respondent: As under current rules, for State agencies the number of responses would vary from once for such activities

as certifying files to FNS to 380,000 for mailing out due process notices. For debtors the number of responses would continue to vary from once for such things as due process notices to three or four in the case of debtors making informal inquiries and requesting reviews.

Estimated Total Annual Burden on Respondents: Under this proposed rule the annual reporting and recordkeeping burden would decrease from 72,862 to 71,803 hours (1,059 hours).

Background

The tolerance of abuse, or even the perception of such, undermines the fundamental mission of the FSP. The efficient and effective establishment and collection of recipient claims is essential to program integrity. This rule aims to improve and increase claims establishment and also to increase the collection rate of established claims, while providing State agencies with increased flexibility in their efforts to increase claims collections.

The PRWORA (Pub. L. 104–193) amended the Food Stamp Act of 1977 (7 U.S.C. 2011–2032) (the FSA) in a number of ways. This rule proposes to implement the provisions of the PRWORA relating to recipient claims. This rule also proposes to incorporate certain provisions of the Federal Debt Collection Improvement Act of 1996 (DCIA)(Pub. L. 104–134, Chapter 10, signed April 26, 1996) as discussed later in this preamble in connection with Federal claim collection methods. The DCIA amended the Debt Collection Act of 1982 (31 U.S.C. 3701)(DCA).

In addition to the revisions mandated by the enactment of the PRWORA, the Department is proposing a number of significant changes in discretionary FSP policy regarding recipient claims. This rule also proposes certain changes in FTROP and the Federal Salary Offset Program, 7 U.S.C. 2022(b)(1)(C)(FSOP), in response to the amended DCA. Furthermore, this proposed rule would extensively reorganize the current regulations at 7 CFR 273.18. To assist in the regulatory reorganization and in the development of the discretionary policy changes being proposed, the Department, in an effort to maintain consistency with the treatment of other Federal debts, utilized the Federal Claims Collection Standards (FCCS) issued by the Department of Treasury (Treasury) (See 4 CFR Parts 101–105). The Department also drew upon a number of other sources including the policies and regulations of other social programs, private and public sector accounting standards, technological advances, recommendations by the Department's Office of the Inspector General (OIG) and Office of General Counsel, and suggestions from State agencies.

Responsibility for Recovering Overpayments

Current regulations at 7 CFR 273.18(a) discuss the State agency's responsibility for establishing claims as well as the household's liability for the amount of the claim. It also defines the three types of claims. The Department is proposing to revise the structure of this paragraph. The first structural revision would change the title of the paragraph from *Establishing claims against households* to *Responsibility for recovering overpayments.* This is being proposed because the new title more accurately portrays the purpose of the paragraph. In addition, the Department feels that keeping the current title would lead to confusion because other paragraphs of the proposed rule discuss ''establishing'' claims in much greater detail.

The second structural revision would involve the breakout of the single introductory paragraph into two paragraphs. The first paragraph of the proposed rule, § 273.18(a)(1), would establish household liability for overissuances. Section 273.18(a)(2) would establish State agency responsibility for establishing and recovering overissuances.

Even though the responsibility for establishment and collection of overpayments has been delegated to State agencies, food stamp recipient claims remain debts to the Federal government. Section 273.18(a)(2) of the proposed rule would specify this in detail. This proposal is not intended to change policy but simply to clarify existing policy. As Federal debts, unless superseded by this or other Departmental regulation, food stamp recipient claims are subject to the same debt collection processes and procedures as are all other Federal debts.

Claim Types and Definitions

In the current regulations, there are three claim types: intentional Program violation (IPV), inadvertent household error (IHE) and administrative error. The proposed rule would keep the same designations for IPV and IHE claims. Administrative error claims, on the other hand, would be renamed and referred to as agency error (AE) claims. This is being proposed to be consistent with the term most commonly used for this type of claim.

Paragraphs 7 CFR 273.18(a)(1), (a)(2) and (a)(3) of the current regulations provide the specific definitions for IPV, IHE and AE claims. As part of the regulatory reorganization, this rule proposes to split out these paragraphs from 7 CFR 273.18(a) into their own respective paragraphs: § 273.18(b) for IPV claims; § 273.18(c) for IHE claims; and § 273.18(d) for AE claims.

IPV Claims

Current regulations at 7 CFR 273.18(a)(3) provide the definition for an IPV claim. The paragraph contains specific instructions as to what must have occurred for an overissuance to be handled as an IPV claim. Since the basis for IPV claims is set by statute, this rule proposes no change in current policy about the basis for such claims. However, as part of the regulatory reorganization, the Department is proposing to list the criteria for defining an IPV claim in separate paragraphs, § § 273.18(b)(1) through 273.18(b)(4).

The proposed rule contains one change regarding IPV claims in an area in which the Department has discretion. Current regulations at 7 CFR 273.18(a)(3) mandate that prior to the determination of IPV the claim shall be handled as an IHE claim. The Department is proposing to delete this mandate thereby making this practice a State agency option on a case-by-case basis as long as the claim is established within the required timeframe (See the *Claim Referral and Backlog* section of this preamble for details on timeframe).

IHE Claims

Current regulations at 7 CFR 273.18(a)(1) provide the definition for an IHE claim. Under these regulations, an IHE claim generally results from an overissuance that was caused by a misunderstanding or unintended error on the part of the household. As part of the regulatory reorganization and in an effort to enhance FSP simplification, the Department is proposing to eliminate much of the definitional language in the current regulations and simply use the specific language at § 273.18(c) in the proposed rule.

AE Claims

Current regulations at 7 CFR 273.18(a)(2) define an AE claim. Under these current regulations, an AE claim results from an overissuance that was caused by a State agency action or failure to take action. As with the proposal regarding the definition of an IHE claim, the Department is proposing to eliminate unnecessary definitional language in this paragraph and simply use the specific language at § 273.18(d) in this proposed rule.

Section 844 of the PRWORA eliminated all legislative limitations on

the collection options available for AE claims. This ends a previous inconsistency wherein State agencies were required to collect AE claims but were precluded from using the most effective and efficient collection tool, involuntary allotment reduction.

Some groups maintain that, since the reason for the overissuance resulting in the AE claim was an error by the State agency, the household should not be responsible for the overissuance under laws in a number of States under the legal concept of equitable estoppel. The Department disagrees with this position. The FSP is administered under Federal law and the Department provides 100 percent of the value of the benefits. Section 13(a)(2) of the FSA (7 U.S.C. 2022(a)(2)), which was unchanged by the PRWORA, clearly and unconditionally provides that adult members of a household that receive any overissuance shall be jointly and severally liable for the value of the overissuance. Thus, Federal law permits no exception for equitable estoppel in the case of an overissuance caused by State agency error.

Claims for Recipient Trafficking

In a significant policy change, the Department is proposing, in § 273.18(a) of this rule, to provide for establishing a claim against a household for the value of benefits that are trafficked rather than redeemed for authorized food purchases.

Trafficking has long been an IPV subject to disqualification from FSP participation. However, the advent of electronic benefits transfer (EBT) has provided a source of data that makes it easier to identify both parties to trafficking transactions. The availability of EBT data has already increased the number of disqualifications for trafficking. In addition to disqualification penalties, the Department believes that trafficking can also be deterred by the development and use of additional enforcement tools. Assessing a claim for the amount of trafficked benefits offers such a tool.

The authority for this determination is found in section 13(a)(1) of the FSA (7 U.S.C. 2022(a)(1)) which states that the Department ''* * * shall have the power to determine the amount of and settle and adjust any claim * * * arising under the provisions of this Act or the regulations issued pursuant to this Act, including, *but not limited to,* claims arising from fraudulent and nonfraudulent overissuances to recipients * * * (emphasis added)'' Generally, a recipient claim is established when a household receives more coupons than the household is entitled to receive. However, as indicated above, section 13 of the FSA (7 U.S.C. 2022) does not limit the Department to establishing claims against individuals solely because of overissuances. Clearly, recipient misuse, such as trafficking, falls within the definition of an IPV as specified in 7 CFR 273.16(c)(2). The Department is thus proposing in this rule that claims would be established for all IPV's, including those caused by trafficking offenses.

The Department would like to clarify that this change in policy would have no effect on the current policy regarding the establishment and collection of fines and penalties from authorized retailers and unauthorized third parties who are found to have illegally obtained coupons via trafficking. (See 7 CFR 278.6). Retailer fines and claims act as a deterrent and punish retailers and unauthorized third parties for engaging in prohibited activity. The current regulations on retailer fines and claims at 7 CFR 278.6 provide for monetary penalties significantly larger than the amount trafficked. The proposed policy change providing for recipient trafficking claims, on the other hand, would directly correlate with the benefit amount that was trafficked. The procedure for calculating a recipient trafficking claim is discussed elsewhere in this preamble.

The Department also proposes to establish a second category of claims for trafficking that is analogous to the inadvertent household error claim established for household-caused overpayments that do not warrant IPV determinations. A State agency can assert an ''inadvertent'' misuse claim in situations where the State agency chooses not to obtain or cannot obtain a formal designation of trafficking through an administrative or court determination but can document the transaction sufficiently to sustain the claim. The Department is therefore proposing that instances of inadvertent recipient misuse be appropriately treated as IHE's as described in 7 CFR 273.18(a)(1)(i) of the current regulations and § 273.18(c) in the proposed rule. This rule would provide the authority for State agencies to specifically include trafficking and recipient misuse in benefit transactions as a basis for establishing a claim against a household.

Claim Calculation

Current regulations at 7 CFR 273.18(c)(1) and 7 CFR 273.18(c)(2) discuss the procedures for calculating the amount of a claim due to an overissuance. Under the proposed reorganization of 7 CFR 273.18, the paragraphs on calculating claims would be combined under § 273.18(e)(1). In addition, some policy revisions are being proposed in this area and are outlined below. The current paragraph also does not include a provision for calculating claims for trafficking. The proposed rule at § 273.18(e)(2) addresses this issue.

Calculating Recipient Trafficking Claims

The Department is proposing, in § 273.18(e)(2), to include a procedure for determining the value of a misused benefit caused by trafficking. The amount of the misused benefit would be the value of the trafficked benefit as determined by: the individual's admission; adjudication; or the documentation, such as detailed electronic benefits transfer (EBT) transaction listings, which forms the basis for the benefit misuse determination. Trafficking claims could be either an IPV or IHE claim depending on the nature of the procedure under which trafficking was established.

Calculating Overissuance Claims

For an IPV claim due to an overissuance, current regulations at 7 CFR 273.18(c)(2) provide the parameters for claim calculation. Current regulations at 7 CFR 273.18(c)(1) establish the procedures for calculating claims for IHE and AE overissuances. In an effort to provide a better structure, the Department is proposing to combine these paragraphs into a single procedure in § 273.18(e)(1)(i) through (vi) in this rule. As part of this reorganization and general streamlining effort, some unnecessary prescriptive language would also be removed. In addition to these structural and streamlining revisions, several policy changes are also being proposed in this rule.

The PRWORA included a change in the calculation of claims caused by unreported earned income. Section 809 of the PRWORA amended section 5 of the FSA (7 U.S.C. 2014) by specifying that the earned income deduction ''* * * shall not be allowed with respect to determining an overissuance due to the failure of a household to report earned income in a timely manner.'' This changed current policy by removing the stipulation that the failure to properly report income must be willful or fraudulent. As a result, the Department is proposing, in § 273.18(e)(1)(iii) of this rule, that, in calculating an IHE claim, the State agency would not apply the earned income deduction to that part of any earned income that the household failed

to report in a timely manner. This would be the same policy that the Department currently has for calculating IPV claims with unreported earned income.

In addition to the earned income revision necessitated by the PRWORA, the Department is proposing two additional policy changes related to claim calculation: (1) Under the proposed rule, a State agency would be able to waive up to 20 percent of any claim if the household cooperates with the establishment of the claim; and (2) the amount of the claim would be offset by the amount of any expunged EBT benefits. These two policy revisions are discussed in greater detail in other sections of this preamble.

Current regulations at 7 CFR 273.18(c)(1)(iii) and (c)(2)(iii) discuss offsetting the claim amount against any amount of lost benefits that have not yet been restored to the household. This proposed rule does not change this policy. However, as part of the regulatory reorganization and since this area applies more to collecting rather than calculating claims, the Department proposes to move this paragraph to the claims collection section of this rule.

Pre-Establishment Cost Effectiveness Determination Methodologies

Section 844 of the PRWORA amended section 13 of the FSA (7 U.S.C. 2022(b)) by stating that the collection of any overissuance does not apply ''* * * if the State agency demonstrates to the satisfaction of the Secretary * * *'' that it is not cost effective to collect that claim. This establishes that interest in program integrity must be tempered by administrative costs considerations. This provision implies that some test must be established to assess or demonstrate the degree of cost effectiveness for a claim. However, the Department strongly believes that this provision (as well as the implementing language in this rule) by no means implies that a household has an automatic ''right'' to an overpayment without fear of collection, even if the overpayment is not cost effective for the State agency to pursue collection. This rule addresses standards for determining which claims must be pursued. For smaller claims State agencies should continue to maintain some probability of collection. Knowledge that even small overpayments may be collected increases payment accuracy by holding households responsible for accurate reporting of their circumstances.

The Department believes that a cost effectiveness test can be applied both prior to and after establishing a claim. This section of the preamble discusses assessing cost effectiveness prior to establishment and the initiation of collection action. Assessing cost effectiveness subsequent to the initiation of collection action as a means to determine whether a claim should be terminated and written off is discussed elsewhere in this preamble.

In Federal fiscal year 1995 alone, over 775,000 recipient claims were established nationwide. The Department recognizes that this sheer volume negates any notion of a State agency demonstrating to FNS the degree of cost effectiveness for claims on an individual basis. Therefore, the Department is proposing in this rule that, in lieu of demonstrating cost-effectiveness to FNS on an individual claim basis, State agencies would use standards approved by FNS to assess the cost effectiveness of collecting claims.

In determining these standards, the Department is proposing to present State agencies with a choice. The first would be for a State agency to design its own standard (subject to FNS approval). The second option would be for a State agency to use an updated version of the existing FNS recipient claim threshold. Both options are discussed below.

State Agency-Developed Methodology for Cost Effectiveness Determination

The Department is proposing, in § 273.18(h)(2) of this rule, how a State agency could adopt its own procedure, threshold, and/or methodology for use in determining whether to pursue the establishment of any claim and subsequent collection of the overissuance. A State agency would need to submit a detailed analysis of costs over time and obtain prior approval from FNS for use of this procedure, threshold and/or methodology. Cost effectiveness should reflect total returns to the Federal and State government and the total cost of the State claims collection effort.

The concept of having a State agency develop its own methodology is an expansion of current policy. The reason for this policy expansion is twofold. First, this option would be consistent with the spirit of section 844 of the PRWORA which increases State agency control over its claims. The stipulation requiring prior FNS approval of the methodology to be utilized would be needed because the provision in the PRWORA requires that cost effectiveness be demonstrated to the satisfaction of FNS, thus reinforcing the Federal government's interest in State stewardship of FSP resources.

The second reason for this policy expansion is that cost effectiveness varies significantly from one State agency to another depending on factors such as the degree of automated processing, the amount of historical case record information, the degree of centralization, features of administrative structures, salaries, and the number and size of claims established. This observation is supported by a contracted study released by FNS in June 1996 entitled, ''Optimal Thresholds in the Collection of Food Stamp Program Claims.'' While State agencies have a responsibility to adopt cost-effective claims management systems, this proposal would allow a State agency to establish a cost-effectiveness methodology (subject to FNS approval) to reflect the State agency's own situation and expenses.

FNS Threshold for Establishing and Collecting Overissuances

Current regulations at 7 CFR 273.18(d)(1)(i)(A) require that, except for those IHE and AE claims which (1) are collected through offset of restored benefits or (2) are less than $35 and cannot be collected through allotment reduction, State agencies shall initiate collection action on all IHE and AE claims. This $35 exception represents the current FNS threshold for recipient claim collection.

Since 1982, 12 State agencies participating in the FSP have received waivers increasing the $35 FNS threshold. State agencies have maintained that the current threshold is too low because the cost of establishing and collecting claims exceeded the thresholds.

Administrative costs relating to claims actions are the cost of establishing a claim; calculating the claim; posting the claim into the State agency accounting and reporting system; initiating the various demand letters and notices; and managing collections. Economic factors, such as inflation, in addition to fluctuations in salary and staffing levels and automation start-up and maintenance costs cause changes (usually increases) in the amount of administrative funding expended for food stamp claim activity within each respective State agency over a given time period. In addition, the aforementioned contractor study on recipient claim collection thresholds found that the optimal thresholds in the State agencies surveyed were higher than the current collection threshold. The study also found that it was more appropriate to apply the threshold to the costs of the combined process of establishing and collecting claims. Including only the cost of collection led

to setting too low a threshold from an economic perspective.

As a result, the Department is proposing to increase the FNS threshold for collecting food stamp recipient IHE and AE claims. In addition, the Department is proposing to extend this threshold to IPV claims. The Department is also proposing utilizing the same threshold for both establishing and collecting claims. Current regulatory language refers only to the collection of claims and implies there is no threshold below which claims need not be established.

In its reorganization of 7 CFR 273.18, the Department is proposing to break out and expand the paragraph in the current regulations dealing with the threshold, 7 CFR 273.18(d)(1)(i)(A), into § 273.18(g)(2)(ii) of the proposed rule. In § 273.18(g)(2)(ii), the threshold would be defined as the maximum dollar amount of a claim or a claim referral that a State agency may decide not to pursue establishment and/or collection solely based on the amount of the referral. The purpose of the threshold is to maximize cost effectiveness in the establishment, pursuit and recovery of overissuances in the FSP. The Department originally considered proposing to raise this threshold from $35 to $100. Then the Department considered establishing a threshold that would change periodically depending on the rate of inflation or some similar economic factor. The Department decided to strike a balance between increased State costs and the uncertainty of a fluctuating threshold by proposing a fixed threshold of $125. This proposed threshold is reflected in § 273.18(g)(2)(ii) of this rule.

In addition, as noted earlier and reflected in § 273.18(g)(2)(ii) of the proposed rule, this threshold would also apply to IPV claims. The authority to include IPV's under the threshold is found in section 13(a)(1) of the FSA (7 U.S.C. 2022(a)(1)) which provides the Department with the authority to delegate to State agencies the power to ''* * * settle and adjust any [recipient] claim * * * if the [Department] determines that to do so would serve the purposes of this Act.'' The proposed inclusion of IPV claims under the threshold would increase the waiver authority delegated to State agencies.

Currently, procedures for establishing and pursuing IPV claims vary significantly from jurisdiction to jurisdiction. By including IPV claims under the threshold, the Department would like to reduce this degree of variability. However, the Department would like to emphasize that no jurisdiction would be prevented from establishing and/or pursuing the collection of any claim that falls under this threshold. State agencies are encouraged to pursue claims on selected bases which would act as a deterrent or be in the best interest of the FSP or agency to establish or collect.

Finally, the current regulations at 7 CFR 273.18(d)(1)(i)(A) do not allow the FNS threshold to be applied to claims that can be recovered by reducing the household's allotment. Since the utilization of this claim collection method incurs relatively little post-establishment costs, the Department is not proposing any changes to this policy.

The Department is interested in receiving comments on these proposals concerning the determination of cost effectiveness for the establishment and collection of recipient claims. In addition, the Department is particularly interested is receiving actual cost data from State agencies.

Claim Establishment

Claim Referral and Backlog

Under current regulations, no time frame exists for State agencies to follow for initiating collection action by establishing claims. This has resulted in a number of State agencies either not establishing or not enforcing internal time frames for addressing potential claims, thereby causing a backlog of claim referrals. These claim referral backlogs have been cited as deficiencies and problem areas in Federal and State-level management evaluations and audits conducted by the Department's OIG. Potential debts that are not timely developed into claims become less collectible the longer they remain undeveloped.

In an effort to reduce the number of claims which are not established in a timely manner, the Department believes that it is necessary to develop a minimum timeliness standard for establishing claims which incorporates a standardized methodology for measuring the length of time it takes to establish a claim after the potential overissuance is discovered. To accomplish this, the Department must initially set the parameters by defining the starting and ending points of the process.

The Department is proposing that the *starting point* for calculating the length of time that it takes to establish a claim would be the date the potential claim is initially detected. This would be known as the *date of discovery* and is being defined as such in § 273.18(f) of this proposed rule.

The Department considered and rejected one other alternative in its determination of the appropriate starting point. This alternative was to use the date of occurrence of the change that caused the overissuance. For example, if a household was overissued benefits because of a decrease in household size, the starting point would be the date that the individual(s) left the household. The Department decided not to propose this alternative because the State agency may not become aware of the change that caused the overissuance for some time.

In addition to proposing a starting point to gauge the length of time it takes to establish a claim after the potential overissuance is discovered, the Department is also proposing to define an ending point for tracking and reporting purposes. This would be the *date of establishment.* The Department is proposing, in § 273.18(f)(3) of this rule, to have the date of establishment be the date that the initial written claim notification or demand letter is issued to the household. This is being proposed because the Department feels that this is the final step in establishing a claim.

The Department considered one other alternative as the ending point. This alternative would define the date of establishment as the date that the claim is posted as a receivable in the State agency's claim collection and tracking system. However, while it is integral to the establishment of a receivable, this is not being proposed because the Department believes that a claim is not truly established until the demand letter is sent to the household.

The Department is proposing that the length of time it takes to establish the claim would simply be the number of days between the date of discovery (starting point) and the date of establishment (ending point).

Now that the mechanism for measuring the length of time it takes to establish a claim has been proposed, the Department is proposing a standard for the timely establishment of claims.

Originally, the Department considered a 90-day standard for establishing claims with an allowance for up to 180 days if the State agency needs to secure additional documentation from uncooperative sources. However, this was not considered feasible because it would be difficult to track and gauge its effectiveness given the additional time allowance that would be allotted for certain claim referrals. Instead, the Department is proposing in § 273.18(f) of this rule to conform with time frames used in other assistance programs. The proposed rule would have the same standard as one that was in place for

initiating collection action in the Aid to Families with Dependent Children (AFDC) Program in July of 1996. Specifically, claims would need to be established before the end of the quarter following the quarter of the discovery of the claim. As an example, if the date of discovery is in October, November or December, the last day for sending the demand letter in a timely manner would be March 31.

The Department is aware that a number of State agencies are either not establishing or not consistently enforcing internal time frames for addressing potential claims. This has resulted in what many State and Departmental officials perceive as a ''backlog'' of claim referrals. However, the measure of what actually constitutes a claim referral backlog has never been defined by the Department and State agencies have no clear regulatory guidance on this issue. With its proposed time frame for establishing claims, the Department feels that it now has the mechanism to propose clear guidance as to what would constitute a claim backlog.

The Department is proposing in § 273.18(f) of this rule to define a claim backlog as existing when more than 10 percent of the claim referrals are not established in a timely manner. The Department chose 10 percent because it feels that an absolute zero tolerance in this area would not account for the claims which would not be able to be timely established based on circumstances (such as uncooperative employers, etc.) which would be out of the State agency's control. The Department did not choose a percentage greater than 10 percent because it felt it would be too tolerant and condone inefficient and ineffective claim management.

The Department would like to emphasize that the purpose of establishing a standard for what is considered an acceptable as opposed to an excessive backlog is not to penalize a State agency with an excessive backlog but to provide a management tool for gauging the State agency's claim establishment efforts.

The Department is proposing in § 273.18(f) that State agencies, in order to assess the age of referrals, be required to record the date of discovery and the establishment date in the claim case file and/or referral tracking system. The Department feels that this is not placing an additional or unnecessary burden on a State agency as prudent claim management would dictate that the State agency would have a system to internally track referrals already in place.

Even though the Department is proposing a new standard for determining the existence of a claim backlog, the Department would not require State agencies to report this information to FNS. Monitoring would be achieved in the same manner that other areas of the FSP are reviewed and evaluated. The Department feels that the most effective way for State agencies to address a deficiency in this area would be to initially concentrate on preventing future backlogs by adhering to the standards proposed in this rule. Once this is accomplished, corrective action for the elimination of existing backlogs could be addressed.

The Department is interested in receiving comments on the proposed standard for establishing claims and measuring a claims backlog.

Initiating Collection Action When the Household Cannot Initially Be Located

The current regulations at 7 CFR 273.18(d)(1) contain the criteria for initiating collection action on IHE and AE claims. This criteria includes applying the dollar threshold for collecting claims, not taking action on households that cannot be located and postponing collection action on suspected IPV's. Proposed changes to the dollar threshold and the treatment of suspected IPV's are discussed in detail elsewhere in this preamble. In addition to these changes, the Department is also proposing a change in policy on initiating collection action if the household cannot be located.

The current regulations at 7 CFR 273.18(d)(1)(i)(B) provide that the State agency shall initiate collection action for IHE and AE claims unless the household cannot be located. The Department is proposing to delete this paragraph and have the State agency initiate collection action on these claims. The reason for this is that, with the advent of innovative collection methods such as Federal and State tax refund offset, it is much easier for State agencies to eventually locate the household and collect the claim. In addition, the household would be subject to allotment reduction if it returns to the FSP prior to the claim being terminated and written off. Terminating and writing off claims is discussed elsewhere in this preamble.

The current regulations at 7 CFR 273.18(d)(2) discuss the criteria for initiating collection action on IPV claims. This criteria includes making personal contact with the household. The Department is proposing to delete this clause. This is being proposed to increase the flexibility afforded State agencies in their collection efforts.

As with IHE and AE claims, the Department is also proposing to delete the clause in 7 CFR 273.18(d)(2) that allows State agencies not to pursue collection action against IPV claims if the household cannot be located. The reason for this being proposed is the same as with IHE and AE claims: the increased possibility of collection via Federal and State tax refund offset and the possibility of allotment reduction if the household returns to the FSP before the claim is terminated.

Household Notification

Requirements at Certification

In the Department's efforts to afford State agencies maximum flexibility, the Department is taking steps to ensure that household notification requirements (as required by the Privacy Act of 1964 at 5 U.S.C. 552a and the Debt Collection Act of 1982 (DCA), as amended by the DCIA at 31 U.S.C. 3716(a)) are not compromised. Proper notification involves informing the household of its rights regarding the claim and informing the household at the time of FSP application of the potential uses of information provided by the household to collect the claim.

Households initially provide identifying information (such as names, addresses and social security numbers) as well as other information regarding household circumstances at the time of application. This information is used by State agencies for program purposes including verification and eligibility and to refer delinquent claims to other agencies for various collection tools and methodologies such as tax refund, salary and administrative offset. The Department is proposing in this rule to require that State agencies inform households of this potential use of provided information at the time of application in a new paragraph, § 273.2(b)(4).

Demand Letter Requirements

Under the proposed rule at § 273.18(g)(3), a State agency would simply develop and use its own demand letter for claim notification and repayment solicitation. The Department is proposing several requirements to ensure that proper notification and due process conditions are met when the household is informed of the existence of the claim via the demand letter.

The first requirement being proposed by the Department in this rule is that the claim notification or initial demand letter would continue to contain a notice of adverse action (see § 273.18(g)(3)(v)). This notice of adverse action can either be an attachment or

contained in the body of the initial demand letter itself. This notice would also provide the household with the opportunity for a fair hearing on the validity and amount of the claim. At a fair hearing (or at an administrative disqualification hearing for some IPVs), the household currently is provided the opportunity to inspect and copy agency records and review with the agency the circumstances relating to the claim. This conforms with the information availability requirements in the DCA at 31 U.S.C. 3716(a)(2) and (a)(3). The current regulations regarding fair hearings (7 CFR 273.15) and administrative disqualification hearings (7 CFR 273.16) are not affected by this proposed rule.

In addition, to ensure proper notification per 31 U.S.C. 3716(a)(1) and (a)(4), the demand letter or accompanying notice of adverse action would contain information to provide the household with written notice of: (1) The type and amount of the claim, the intent to collect the claim, if not paid, by referral to other agencies, including private collection agencies, for various claims collection actions including, but not limited to, administrative offset, tax refund offset and salary offset; (2) the opportunity to inspect and copy the records related to the claim; (3) the opportunity for an administrative review (fair hearing) of the decision related to the claim; and (4) the opportunity to make a written agreement to repay the amount of the claim prior to the claim being referred for Federal collection methods. The Department is also proposing that the demand letter contain language specifying that, if the claim becomes delinquent, the household may be subject to additional delinquent and/or processing charges. Finally, the Department is proposing that the demand letter provide notification that all adult household members are equally liable for the claim and that the claim, if not otherwise collected, may be referred to the Department of Justice for litigation. These proposals are reflected in § 273.18(g)(3)(iii) and (g)(3)(iv) of this rule.

Elimination of Repayment Option Choice in the Demand Letter

Prior to the enactment of the PRWORA, section 13(b) of the FSA (7 U.S.C. 2022(a)(1)) contained the stipulation that the household had the option of selecting the method of payment. This resulted in the formulation of detailed regulations at 7 CFR 273.18(d)(3) implementing this legislative requirement. In section 844 of the PRWORA, Congress removed all references in section 13 of the FSA (7 U.S.C. 2022) which pertained to allowing the household to select the method of payment. In their place, Congress provided the State agency (and not the household) with the prerogative to select the appropriate payment method. In addition, section 844 of the PRWORA gave the State agency the authority to establish its own requirements for providing notice to a household with an overissuance. Although State agencies will have greater flexibility in providing notice, the Department is proposing the minimum due process notice requirements specified in the DCA, as discussed above, in order to assure that collection through Federal administrative offset and other methods are available to State agencies. These changes are reflected in § 273.18(g)(3) of this proposed rule.

In addition, other prescriptive language in 7 CFR 273.18(d)(3) regarding demand letter content unrelated to household notification rights discussed above would also be removed to conform to allow for greater State agency flexibility in this area.

Claim Management

Delinquency and Due Date

In most accounts receivable systems, certain actions beyond the original demand letter or claim notification generally occur when a receivable is not paid timely and becomes *delinquent.* These actions usually facilitate further collection action and/or disposition of the receivable. The Department believes that the processing of food stamp recipient claims should be no different from other receivables in this regard.

The Department is proposing in this rule to clearly define what constitutes *delinquency* in food stamp recipient claims. This is being proposed in an effort to increase consistency among State agencies in the treatment of food stamp claims with outstanding balances. This lack of consistency undermines the integrity of the aggregate receivable data compiled by the Department as part of its financial statement. The Department also feels that standardization is necessary in this instance because recipient claims are ultimately Federal debts and the individualized approach by State agencies results in inconsistent treatment. In addition, the proper aging of claims (which is a Treasury requirement for all Federal debts) facilitates optimal claim management from establishment through collection and final disposition. Therefore, the first step in effective and consistent post-establishment claims management requires a definition of delinquency that then triggers subsequent steps in the claims collection process.

The current regulations governing food stamp recipient claims at 7 CFR 273.18 do not define or even utilize the terms *delinquent* or *delinquency.* Delinquency, however, is defined at 4 CFR 101.2(b) in Treasury's FCCS as occurring when a claim ''* * * has not been paid by the date specified in the agency's initial written notification* * * unless other satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy obligations under a payment agreement with the creditor agency.'' The Department is planning to use this definition as a basis for defining delinquency for food stamp recipient claims.

Delinquency, in the FCCS's definition, is determined contingent upon the non-receipt of payment by the ''date specified'' in the notification unless other arrangements have been made. The ''date specified'' is commonly known as the *due date.* To have a delinquent claim based on the initial demand letter, according to the FCCS, the agency should have a due date specified in its initial demand letter. Therefore, in an effort to establish delinquency in conformance with the FCCS on this issue, the Department is proposing in § 273.18(g)(3)(v) to require that all initial demand letters contain a due date in their text. The due date would be up to 30 days after the date of the initial demand letter. This conforms with the response time frame established by the FCCS at 4 CFR 102.2(b).

The paragraph at 7 CFR 273.18(g)(2) in the current regulations governing recipient claims discusses the procedures when a household fails to make an installment payment in accordance with the established repayment schedule. This is the same situation as specified in the second part of the FCCS's definition of delinquency which states that a claim is considered delinquent when ''* * * the debtor fails to satisfy obligations under a payment agreement* * * '' In this instance, the due date would be the date that payment was to have been received in accordance with the installment agreement. The Department is therefore proposing, in § 273.18(g)(4) of this rule, that all repayment agreements specify when payments are to be due and that the claim will be considered delinquent and may be subject to involuntary collection actions if payment is not received by the due date.

The proposals in this rule to require a due date in both initial demand letters and installment agreements would give the Department the ability to define *delinquency* in a manner that is consistent with the FCCS's definition. While the Department recognizes that it has the authority to define terms and establish policy that differ from the FCCS, it feels that it would be in the best interest of the FSP to be consistent with the FCCS on this issue. Therefore, the Department, in § 273.18(g)(5) of this rule, is proposing to define a delinquent food stamp recipient claim as a claim: (1) Which has not been paid by the due date specified in the State agency's initial written demand letter and a satisfactory payment arrangement has not been made; or (2) if a satisfactory payment arrangement has been made, a claim for which a payment has not been paid by a date required payment in accordance with an established repayment schedule. A claim would remain delinquent under either of these criteria until payment is received in full, a satisfactory payment agreement is negotiated (or renegotiated), or allotment reduction is invoked.

The Department is proposing to have two exceptions to its definition of delinquency. The first exception involves multiple claims. The Department is proposing in § 273.18(g)(5)(iv) that a claim would not be considered delinquent if another claim or claims for the same household exists and the other claim(s) is currently being paid either through an installment agreement or allotment reduction. In addition, the State agency would have to expect to begin collection on the claim once the other claim(s) is settled. This is being proposed to ensure that claims that are collectible and simply ''waiting their turn'' would not be subjected to activities such as involuntary collection actions and termination.

The second exception to the definition of delinquency involves IPV claims where the collection is coordinated through the court system. The Department is proposing this exception in § 273.18(g)(5)(iv) because it recognizes that the State agency which is responsible for overall food stamp recipient claim collecting and reporting may be limited in its control over this type of claim. This exception to the definition would be optional depending upon the collection system and coordination between the court and State agency.

The Department is interested in receiving comments on this proposal to define delinquency.

Delinquency and Fair Hearing Requests

Current regulations governing fair hearing requests at 7 CFR 273.15(g) state that the ''* * * household shall be allowed to request a (fair) hearing on any action * * * which occurred in the prior 90 days.'' For food stamp recipient claims, the 90-day fair hearing standard is applicable to the initial demand letter. Therefore, the Department is proposing in § 273.18(g)(6) of this rule to specify that, once a household timely requests a fair hearing, all attempts to collect the claim would cease. This would be done to protect the rights of the household. If, when the hearing decision is rendered, it is determined that a claim does, in fact, exist against the household, the household would be sent another demand letter. This demand letter may be combined with the notice of the hearing decision. The determination of delinquency would then be based on whether payment is received or an agreement to pay is reached by the due date on this subsequent demand letter.

If, when the hearing decision is rendered, it is determined that a claim does not exist, the Department is proposing in § 273.18(g)(8) that the claim be terminated and written-off. This is discussed in greater detail in another section of this preamble.

Claim Termination and Write-off

Section 13(a)(1) of the FSA (7 U.S.C. 2022(a)(1)) authorizes the Department to settle and adjust all or part of any food stamp recipient claim if it serves the purposes of the FSP. Current regulations at 7 CFR 273.18(e) specify the conditions by which collection action on claims may be suspended and terminated. Suspended claims are claims in which no more collection action will be actively taken. A suspended claim may be terminated after it has been held in suspense for three years.

In many State agencies, claims that are currently under ''suspension'' are being or soon will be subjected to a variety of collection methods. These methods include such collection alternatives as salary offset and State and Federal tax refund offset. The Department feels that, with the introduction of these innovative collection methods, it would be unlikely in an effective claims collection environment for a claim to fall under the definition of a suspended claim as per 7 CFR 273.18(e) in the current regulations. Therefore, the Department is proposing in this rule to eliminate all references to the concept of *suspending* food stamp recipient claims. Having a designation for claims that will be inactive for three years without any subsequent collection action being planned serves no purpose, especially with the advent of the additional collection methods.

In the current regulations, there is no *requirement* to terminate claims and there is no clear definition of this term. The regulations at 7 CFR 273.18(e)(ii)(3) simply state that a ''* * * claim *may* be determined uncollectible after it is held in suspense for 3 years (emphasis added).'' The lack of a requirement or clear definition has resulted in a large number of uncollectible claims being included in reports submitted to FNS and sizable account receivables being unnecessarily maintained in State agencies' ledgers. In addition, efficient and effective claims management advocates timely and aggressive action on a debt but with a quick disposition through termination when the probability of collection proves low.

A study released by a Departmental contractor in August 1994 entitled, ''Standard Operating Principles and Detailed Standard Operating Procedures for Food Stamp Recipient Claims,'' recommended that terminating and writing-off claims be made a requirement if the claims meet certain criteria. The study compared the current approach to food stamp recipient claim accounting with generally accepted accounting principles. These generally accepted accounting principles included statements from the Federal Accounting Standards Advisory Board, Acts of Congress, Treasury regulations (including the FCCS), and other authoritative documents. Page 15 of the Departmental contractor study specified that an organization's termination and write-off policy should ''* * * include the collection agent's definition of an uncollectible claim specifying which circumstances *require* a claim to be written-off and under which circumstances a claim may be deemed uncollectible by the decision of management. The write-off policy * * * should be strictly applied.''

The Department, in § 273.18(g)(9) of this rule, is therefore proposing to define a *terminated* claim as one in which all collection action has ceased. Under the proposed rule, a terminated claim would be immediately *written-off*, that is, it would be no longer considered a receivable subject to continued Federal and State agency collection and reporting requirements. A claim would have to fit one of the five criteria listed below to be terminated and written-off.

In determining which criteria should be used to terminate a claim, the Department considered the

requirements found in 4 CFR 104.3 in the current FCCS published by Treasury. This paragraph of the FCCS contains five specific standards for terminating and writing-off claims: (a) The inability to collect any substantial amount; (b) the inability to locate the debtor; (c) the cost will exceed recovery; (d) the claim is legally without merit; or (e) the claim cannot be substantiated by evidence.

In determining the Department's termination and write-off policy, FCCS standard (a), *the inability to collect any substantial amount,* was considered as it is of fundamental concern when the debtors primarily consist of households which are currently participating or were recently eligible to participate in a means tested program such as the FSP.

FCCS standard (b), *the inability to locate the debtor,* was also considered in the development of the Department's proposed termination and write-off policy. The Department's termination and write-off policy being proposed in this rule takes into account the capabilities of the tax refund and other automated offset programs that are very effective in collecting from difficult-to-locate household members.

FCCS standard (c), *cost will exceed recovery,* is certainly a factor in the Department's proposal. Food stamp claims, by nature, are usually relatively small with the average claim established in Federal fiscal year 1995 being $464. This is also a predominant factor in a proposal discussed in another section of this preamble regarding cost effectiveness determination prior to claim establishment.

Food stamp recipient claim terminations and write-offs that may be applicable under FCCS standards (d), *claim legally without merit,* and (e), *claim cannot be substantiated by evidence,* are usually handled under the fair hearing process in the FSP. Administrative disqualification hearing and court determinations that specifically find that no overissuance occurred are also pertinent to these standards.

Taking into account FCCS standards (a) through (e), the Department is proposing in § 273.18(g)(9) to require State agencies to terminate and write-off a food stamp recipient claim if it meets any *one* of the following *five* criteria: (1) Any claim which is found to be invalid in a fair hearing, administrative disqualification hearing or court determination; (2) Any claim in which all adult household members are deceased and the State agency is not planning to pursue collection from the estate; (3) Any claim which has an outstanding balance of $25 or less and has been delinquent for 90 days or more; (4) Any claim that the State agency has determined is not cost effective to collect; or (5) Any claim that has been delinquent for three years.

The fourth Departmental criterion states that any claim that the State agency has determined not to be cost effective to collect shall be terminated and written off. To determine cost effectiveness, the Department believes that a State agency should use the standards already in use for food stamp recipient claims. If no standards currently exist, the State agency shall develop standards subject to FNS approval.

In the fifth Departmental criterion, a State agency would be required to terminate and write-off any claim that has been delinquent for three years. The decision to require termination and write-off after three years of delinquency is based on a recommendation in the aforementioned contractor study (August 1994). Page 16 of the study specifies that ''* * * three years of *delinquency* is a reasonable amount of time to collect on outstanding debts, and that debts exceeding this time limit will likely not be collected with additional effort or time and should be written-off.''

In addition, for the fifth criterion, the Department is proposing to add a qualifier that the State agency may opt not to terminate a claim which has been delinquent for three years or more if prior collections have been realized through Federal or state tax refund offset, salary offset or any other similar collection mechanism. This proposed qualifier was added because, even though these claims technically remain delinquent, the probability of collection via offset in the future may be relatively high because a portion of the claim has already been collected via this collection method.

An issue has been raised concerning the possible reinstatement of terminated claims if an additional collection methodology is introduced or an event (such as lottery winnings) occurs to substantially increase the likelihood of future collections. In such cases State agencies may reinstate the claim.

Compromising Claims

The areas in the current regulations at 7 CFR 273.18(g)(2) and (g)(4) concerning compromising claims would be consolidated into its own section, § 273.18(g)(7) in the proposed rule. The Department is proposing two revisions in this area to increase consistency with the FCCS at 4 CFR Part 103. The first proposed revision would limit the authority to compromise to claims under $20,000. The second proposed revision would provide that, if a claim becomes delinquent, any compromised portion of that claim would be reinstated to the claim balance.

Acceptable Forms of Payment

Current regulations at 7 CFR 273.18(g) indicate that payments for claims shall be accepted in various forms of cash, food coupons, offsets, intercepts and reductions to the household's allotment. The Department is proposing some policy clarifications and changes in this area.

''Cash'' Payments

The Department would like to clarify in § 273.18(h)(2)(i) of this rule that acceptable ''cash'' payments for food stamp claims actually take several forms. In addition to traditional forms of cash payments such as cash, check or money order, the Department also considers payments made via credit and/or debit cards as acceptable methods of payment if the State agency has the capability to accept such payments. Payment in these and other generally accepted formats are acceptable for both lump sum and installment payments. Offering alternative forms of payment increases the possibility of collection and State agencies are encouraged to explore these alternative payment methods.

Currently, no policy exists regarding the issue of crediting cash collections received as general lump sum or installment payments for joint food stamp/other social service program recipient claims. In an effort to ensure that each program receives its fair share in joint collections, the Department is proposing, in § 273.18(h)(2)(ii) of this rule, to require that each program receive its appropriate pro rata share of any installment collection. For example, under the proposed rule, if a $700 public assistance and $300 food stamp claim were combined into a $1,000 claim, 30 percent of an undesignated payment would be credited to the food stamp portion of the claim while 70 percent would be credited to the public assistance portion. This proposal would not pertain to any designated payment or agreement that includes the specific withholding of public assistance or food stamp benefits to satisfy a claim.

Coupon and EBT Payments

The Department is not proposing any changes to the current regulations regarding payments made using paper food coupons. The Department is also not proposing any changes regarding the handling of coupons or coupon books collected as payments. However, EBT

benefits are also included under the definition of coupon in the current regulations at 7 CFR 271.2. The Department believes that the distinctive characteristics of EBT, as opposed to those of the traditional paper food coupon system, warrant special attention in the area of recipient claims collection.

An active EBT benefit account is one in which benefits have been accessed within the last three months. The Department is proposing, in § 273.18(h)(4)(iii) of this rule, to make the policy concerning active EBT benefit accounts and claims collection consistent with the current policy regarding claim repayment via paper coupons. This would allow a household to voluntarily pay all or part of its outstanding claim with funds taken from its EBT benefit account. This would differ from allotment reduction in that the payment is being made subsequent to the allotment being issued and credited to the household's EBT benefit account.

The actual methodology and procedure to enact this transaction regarding the use of Point-of-Sale devices, administrative terminals or any other acceptable method to conduct these transactions would be determined by the State agency and included in its EBT system design.

In addition to the above, the Department is proposing an additional requirement to safeguard the rights of households by ensuring that involuntary payments would not be made from EBT benefit accounts. The proposed rule, in § 273.18(h)(4)(iii), would require that the State agency secure and retain a statement or document signed by a household member or representative authorizing the transaction. A signed document for each transaction would not be necessary, however, if each transaction was completed in accordance with a signed repayment agreement or similar document. The signed agreement would serve as adequate documentation.

The same policy that applies to active EBT benefit accounts also applies to inactive or stale EBT benefit accounts. Inactive or stale EBT benefit accounts are those accounts that have not been accessed for three months or longer and have yet to be expunged. The Department, in § 273.18(h)(4) of this rule, is proposing that voluntary payments from inactive or stale accounts be accepted once the account is reactivated at the request of the household in accordance with 7 CFR 274.12(f)(7).

The Department recognizes that some State agencies may have difficulty assimilating this change into already existing EBT environments. However, State agencies, by complying with the current requirements in 7 CFR 274.12(e)(1), should already have a system in place to administratively adjust amounts in EBT benefit accounts. Adapting this system for paying off claims may not be a major undertaking. The Department believes that, in addition to maintaining consistency with the current policy regarding paper coupons, cooperating households should be afforded maximum flexibility in their efforts to voluntarily repay a claim.

The Department would also like to take this opportunity to stress that the collection of claims using EBT benefits is considered a non-cash collection and corresponding funds should not be drawn from the Federal EBT benefit account by the State agency when this type of collection is made.

EBT benefit accounts that have not been accessed by the household for one year are expunged and households lose all entitlement to these benefits. These benefits are then returned to FNS in accordance with 7 CFR 274.12(f)(7) of the current regulations. The Department considered allowing State agencies to treat already expunged EBT benefits as a ''collection'' and therefore allow State agencies to retain their appropriate share of the collection. However, since the accounts were already expunged and returned to FNS, a complex system and reporting mechanism would need to be designed and implemented to ensure that these ''collected'' but expunged (and therefore essentially nonexistent) funds are properly accounted for in FNS and State agency reporting. The Department feels that this would be inefficient and not cost effective from both a Federal and State agency perspective.

However, the Department does recognize that these are benefits that the household never used. This presents the possibility that a household may have consciously not used its benefits because it was aware of the existence of an overissuance and, essentially placed these funds ''in escrow'' to make good on the error. The Department believes that including this amount in a claim to repay the overissuance is inappropriate. Therefore, the Department is proposing, in § 273.18(e), to allow a State agency to subtract the value of expunged EBT benefits from overissuances prior to the establishment of the claim. This would be the final step in the claim calculation process and would not be considered a ''collection'' for Federal reporting purposes. In instances where the claim is already established and benefits become expunged, the State would subtract the amount of the expunged benefits from the claim balance. This is reflected in § 273.18(h)(4)(v) of this proposed rule. Again, this adjustment would not be considered a ''collection'' for Federal reporting purposes.

The Department is interested in receiving comments on the use of funds from EBT benefit accounts to repay outstanding recipient claims.

Collection and Payment Methods

Section 844 of the PRWORA made significant changes to the FSA (7 U.S.C. 2011–2032) in the areas of collections and payments. One revision to section 13 of the FSA (7 U.S.C. 2022) states that a State agency shall collect a claim ''* * * in accordance with requirements established by the State agency for * * * electing a means of payment, and establishing a time schedule for payment.'' This change is significant in two areas. First, the State agency, and not the household, now determines the appropriate collection method, including whether to provide options to the household, when the claim is initially established. Second, this revision also provides the State agency with the ability to involuntarily subject all claims to all collection methods—including those such as allotment reduction for AE claims that, until the enactment of the PRWORA, could only be collected on a voluntary basis. These changes are reflected in each applicable paragraph in § 273.18(i) in this proposed rule.

The PRWORA addresses specific collection methodologies by stating that a claim shall be collected by ''* * * (A) reducing the allotment of the household; (B) withholding amounts from unemployment compensation * * *; (C) recovering from Federal pay or Federal income tax refund * * *; or (D) any other means.'' The PRWORA further states that these methods shall not be applicable if the State agency can demonstrate ''* * * that all of the means are not cost effective.'' This proposed rule includes a paragraph in § 273.18(i) for each of the collection methods (allotment reduction, unemployment compensation, and Federal salary and Federal income tax refund offsets) specified in the PRWORA. Federal salary and Federal income tax refund offsets are also discussed in much greater detail elsewhere in this preamble and in § 273.18(p). In addition, other means of payment, notably lump sum and via installments, are included in § 273.18(i). Cost effectiveness is addressed in the detailed discussion for each payment method as well as in the discussions in

this preamble regarding pre-establishment cost effectiveness determination and claim termination and write-off.

Allotment Reduction

A major change in section 13 of the FSA (7 U.S.C. 2022) brought about by section 844 of the PRWORA involves the use of allotment reduction to collect claims. Prior to the enactment of the PRWORA, a participating household with any type of claim could opt to pay its claim using a method other than allotment reduction. In addition, a State agency was statutorily prohibited from invoking involuntary allotment reduction against a household with an AE claim. Section 844 of the PRWORA removed the household's right to choose the payment option for any type of claim. As a result, this places allotment reduction, which is widely recognized by State and local agencies as the most cost effective and efficient food stamp recipient claim collection method, in the forefront as the primary collection method.

This is being reflected in this rule. The Department is proposing, in § 273.18(i)(1), to require that a State agency automatically collect payment from a participating household for any established claim, including an AE claim, through allotment reduction. There would only be two stipulations to this proposal. The first would be that the household would need to be initially notified of the existence of the claim. This is discussed in greater detail elsewhere in this preamble. The second stipulation would be that a household's initial allotment shall not be reduced to collect the claim. This stipulation is included because the initial allotment is usually pro rated and therefore has already been reduced. This is not a change from current policy.

Some may argue that it is unfair to a household to collect an AE claim through involuntary allotment reduction since the reason for the overissuance was not the fault of the household. The Department believes that, since Congress specifically removed the prohibition from the FSA, that it is clearly the intent of Congress to allow this type of collection.

In addition to the above, the Department is proposing to make three additional policy and several structural revisions to the paragraph governing allotment reduction at 7 CFR 273.18(g)(4) in the current regulations. The structural revisions are being proposed to avoid repetition by eliminating much of the language in the introductory paragraph that may be found elsewhere in the rule. This includes the notification procedures and the acceptance of lump sum payments.

Two of the three additional policy changes in allotment reduction being proposed concern the current benefit reduction procedures and IPV claims. The current regulations at 7 CFR 273.18(g)(4)(i) provide that benefit reduction for an IHE claim is to be computed from the monthly *allotment.* The allotment is the benefit level that the household is scheduled to receive. Benefit reduction (in current 7 CFR 273.18(g)(4)(iii)) for an IPV claim, on the other hand, is to be computed from the monthly *entitlement.* The entitlement is the benefit amount that the household would have received if the household member was not disqualified for committing the IPV. Several State agencies have obtained waivers to use the allotment rather than the entitlement as the basis for reducing the household's benefits. For the purposes of administrative efficiency, which was the basis for the Department approving the waivers, this rule, in § 273.18(i)(1)(ii), would allow all State agencies to determine the benefit reduction amount for IPV claims based on either the allotment or entitlement as long as all areas within the State handles the calculation of benefit reductions in the same manner.

Current regulations at 7 CFR 273.18(g)(4)(iii) limit the reduction amount for an IPV claim to the greater of 20 percent of a household's monthly entitlement or $10 per month. In the second policy change, the Department is proposing, in § 273.18(i)(1)(ii), to increase the maximum recoupment amount for an IPV claim to the greater of $20 per month or 20 percent of a household's monthly entitlement or allotment. This is being proposed as an effort to expedite the collection of claims stemming from intentional violations. The rule also proposes in § 273.18(i)(1)(i) to provide that individuals in households subject to allotment reduction are not subject to involuntary collection by any other methods.

The final policy change being proposed in this rule is to specifically include a paragraph (§ 273.18(i)(1)(v)) which would provide a State agency with the prerogative to pursue additional collection methods against individuals who are past household members and who are severally responsible for repayment of this claim. This is being proposed because of the dynamic nature of households in regard to make-up and participation in the FSP.

Intercept of Unemployment Compensation Benefits

Current regulations at 7 CFR 273.18(d)(3)(vi) state that a State agency may implement the intercept of unemployment compensation benefits as a voluntary payment option for IPV claims. In addition, the current regulations at 7 CFR 272.12 also discuss collecting claims via this method. In an effort to streamline this area of the regulations, the Department is proposing, in this rule, to remove the paragraph currently at 7 CFR 272.12.

In addition to the above streamlining effort, a change in policy, brought about by section 844 of the PRWORA, is being proposed regarding collection via an intercept of unemployment compensation benefits.

Currently, the intercept of unemployment benefits is allowed only for IPV claims. Section 273.18(i)(5) of the proposed rule would extend this collection method to any claim. This is being proposed to conform with the requirement in section 840 of the PRWORA that provides for a State agency to use any collection method to collect any type of claim.

Currently, unemployment compensation intercept is optional and State agencies are not mandated to use this collection method. The Department is not proposing to change this policy in this rule. The reason for the Department not proposing to mandate this collection method is that the intercept of unemployment compensation benefits is State-specific and therefore it may not be cost effective to implement in some State agencies. Even though this would remain an option under this proposed rule, the Department strongly urges State agencies to pursue this avenue of claims collection.

Coordination with Federal Claim Collection Methods

Current rules specify requirements for FTROP and FSOP at 7 CFR 273.18(g)(5) and (g)(6). This rule would include proposed requirements for these as well as other Federal collection programs such as the Treasury Offset Program (TOP) at § 273.18(p). To the extent that it is feasible, the Department wants State agencies to use these and other Federal collection methods concurrently with State agency methods. Accordingly, this rule proposes at § 273.18(i)(7) to authorize such concurrent collection.

Lump Sum Payments

Current regulations at 7 CFR 273.18(g)(1)(i) through (iii) allow for the full or partial collection of claims via a

lump sum cash or coupon payment. As part of the regulatory reorganization, these three paragraphs would be consolidated into one paragraph (§ 273.18(i)(3)) in the proposed rule. The proposed rule would also include using funds in an EBT benefit account as a lump sum payment. This is discussed in greater detail elsewhere in this preamble.

Installment Payments

Current regulations at 7 CFR 273.18(g)(2) provide the procedures for installment payments. The Department is not proposing to make any substantial change to the procedure found in the first paragraph (7 CFR 273.18(g)(2)(i)) of this section. Paragraphs (ii) through (iv) of 7 CFR 273.18(g)(2) in the current regulations provide detailed procedures for when the household fails to make a scheduled payment. These procedures currently call for providing a household with another notice and an opportunity to renegotiate its payment schedule if it fails to make a payment. The Department, in an effort to streamline this area of the regulations, is proposing to increase State agency flexibility by eliminating much of the language contained in these paragraphs.

The Department believes that installment payments should be made available but also should be at least as efficient and effective as allotment reduction and other collection methods. Consequently, the proposed rule at § 273.18(i) would permit a State agency to take whatever action it feels is appropriate if a household fails to make an installment payment provided the household was previously notified of a potential adverse action if payments are not made in accordance with the terms of the original repayment agreement.

Additional Collection Actions

The Department is proposing in § 273.18(i)(6) to add a paragraph stating that State agencies may employ any additional collection methods to collect claims. These actions would include, but would not be limited to, referral to a collection agency, state tax refund and lottery offsets, wage garnishments, property liens and small claims court. This is being proposed to clarify that State agencies are able to employ any other means of collection for all types of claims.

Retention Rates

The applicable retention rates in the current regulations at 7 CFR 273.18(h) for collections by a State agency are 50 percent for IPV claims and 25 percent for IHE claims. Section 844 of the PRWORA changes these rates by amending section 16(a) of the FSA (7 U.S.C. 2025(a)) to replace the current rates with 35 percent retention for IPV claims and 20 percent retention for IHE claims. In addition, as indicated in section 13 of the newly amended FSA (7 U.S.C. 2025), if an IHE claim is collected via unemployment compensation, that collection would also have a 35 percent retention rate. The Department is proposing, in § 273.18(m) of this rule to make the adjustments in the rates accordingly.

Submission of Payments

Current regulations at 7 CFR 273.18(i) discuss the procedures for the submission of State agency payments for claims collections to FNS and payments from FNS to the State agency. The only change that the Department is proposing in this area is to eliminate the State agency option of receiving a Federal check for payment of claims collection retention and replace it with electronic funds transfer. The Department is proposing this change to comply with the DCIA. The DCIA requires Federal agencies to convert from checks to electronic funds transfer. In addition, as part of the regulatory reorganization, much of the prescriptive language would be removed and this paragraph would be moved to § 273.18(n) in this proposed rule.

The current regulations at 7 CFR 273.18(i)(4) discuss providing refunds for overpaid claims. As part of the regulatory reorganization, this is broken out into its own paragraph, § 273.18(j), in the proposed rule.

Bankruptcy

Current regulations at 7 CFR 273.18(k) discuss the procedures for proceeding against households with claims which file for bankruptcy. The current policy authorizes State agencies to act on FNS's behalf to recover claims when households file for bankruptcy. The Department is not proposing to make any changes in policy regarding this area of the regulations. However, as part of the regulatory reorganization, this paragraph would be moved to § 273.18(l) in this rule.

Accounting Procedures

Current regulations at 7 CFR 273.18(l) discuss the accounting requirements and procedures to be maintained by State agencies. Further procedural clarification is being provided on this issue and this paragraph is being moved to in § 273.18(o) in this rule.

Interstate Claim Collection

Current regulations at 7 CFR 273.18(m) discuss the continuation of collection action against households that have an outstanding claim and move from one State agency's jurisdiction to another. The regulations state that a receiving State agency should initiate or continue collection action when it ascertains that the originating State agency does not intend to pursue collection. Feedback received from State agencies indicates that this policy has not been successful in recovering interstate claims and needs to be strengthened to assure cooperation among State agencies. A number of State agencies have entered into claim-transferring agreements among themselves on their own initiative but it has not been a nationwide effort. This has resulted in a household being able to avoid paying its claim simply by relocating to another State. Federal tax refund offset does address this issue to some extent by conducting a nationwide search and subsequently collecting claims against household members regardless of where they currently reside. However, Federal tax refund offset is limited to those households with members who file a Federal income tax return and are due a refund.

The Department believes that food stamp recipient claims, as Federal debts, should be more vigorously pursued by State agencies when households move across State borders. Therefore, the Department is proposing to amend 7 CFR 273.18(m) by breaking it out into separate paragraphs to specifically outline the responsibilities of the originating and receiving State agencies. This amendment is intended to maximize collection potential while maintaining State agency flexibility.

The Department is proposing that, unless an actual interstate transfer takes place, the originating State agency will continue to have the responsibility for collection action on any recipient claim regardless of whether the household remains in its jurisdiction. State agencies, however, would be able to formally transfer this responsibility for individual claims to receiving State agencies under certain circumstances. The types of interstate transfers being proposed are discussed in the succeeding paragraphs of this preamble.

To strengthen the interstate claim collection process for participating households, the Department is proposing to further amend 7 CFR 273.18(m) to require that a State agency must accept the transfer of the remaining balance of any claim from another State agency if it is discovered that the household is participating in the FSP in the receiving State. This ensures efficient claims collection since allotment reduction, a highly effective

collection tool, is available to the receiving State agency. Once the transfer takes place, the claim would then no longer be the responsibility of the originating State agency and the receiving State agency would be able to retain any applicable retention amounts for subsequent collections. The amended regulatory text being proposed is being designated as its own paragraph, § 273.18(k)(3) in the proposed rule.

In addition, to facilitate this process, the Department is proposing, in a new paragraph, § 273.18(k)(2), to require that State agencies timely respond to inquiries concerning household participation received from State agencies who have reason to believe that a household or adult members of a household with an outstanding claim have relocated to that State. A response would be considered timely if a determination is made within 30 days. If an examination of the receiving State agency's caseload does reveal that the household (or any of its adult members) are, in fact, receiving benefits in that State, the State agency would then accept the transfer of the claim balance from the originating State agency and continue collection action efforts including allotment reduction. The receiving State would keep any retention amounts for transferred claims.

The Department is also proposing to add another new paragraph, § 273.18(k)(4), to allow, but not require, receiving State agencies to accept the transfer of any claim if the household is not participating. This policy is being maintained to maximize flexibility as well as facilitate the new claim termination process being proposed in another section of this rule.

Federal Claim Collection Methods (FCCM's)

This rule proposes changes to current regulations on FTROP and FSOP. These changes are proposed to incorporate certain legislative changes and to implement certain other changes based on experience operating these programs. The Department believes that these changes will enhance the collection of recipient claims and will make that collection more efficient, especially for State agencies. In summary, these changes would:

—Require all State agencies to use FCCM's (unless the methods are shown to be not cost beneficial).
—Require that all claims that meet the criteria, including AE claims, be submitted for collection under FCCM.
—Provide that claims may be collected by FTROP and/or administrative offset (ADOP), or by FSOP and/or ADOP.
—Provide that FTROP 60-day notices and FSOP advance notices advise debtors that their claims are subject to ADOP.
—Comply with the hearing requirements for ADOP with the hearing opportunities currently provided under FTROP and FSOP.

Federal Claim Collection Methods (FCCM's)

This rule would introduce the phrase ''Federal claim collection methods'' and its acronym ''FCCM's'' at § 273.18(p)(1). Currently there are two such collection methods, FTROP and FSOP. As discussed later in this preamble, this rule is proposing an additional collection method that would be operated at the Federal level. The new method is ADOP. There are several policies and procedures that would become common to these three collection methods. As discussed in this preamble several paragraphs below, FNS plans to develop a single manual which for all three programs would contain such things as computer system record layout and production schedules and guidance on procedures for handling special cases and for fiscal and accounting matters. The rule would also specify that under FCCM's State agencies would retain their recipient claims responsibilities, that would provide certain information on claims subject to FCCM's and would receive amounts collected based on the currently authorized retention rates.

Mandated Participation

Section 844 of PRWORA amended section 13(b) of the FSA (7 U.S.C. 2022(b)) to require that, unless State agencies can demonstrate that the methods are not cost effective, they must collect overissued food coupons (recipient claims) from Federal pay or Federal income tax refunds.

Currently, these two collection methods, FTROP and FSOP are optional for State agencies. Regulations at 7 CFR 273.18(g)(5)(i) provide that State agencies which choose to implement FTROP must submit an amendment to their Plan of Operation stating that they will comply with FTROP regulations. Choosing to implement FTROP entails implementing FSOP because current regulations at 7 CFR 273.18(g)(6)(i) provide that all claims submitted for FTROP are also subject to FSOP. This rule proposes to delete the language on State agency option to implement FTROP. At § 273.18(p)(2)(i), the rule would require that all State agencies submit all claims which meet certain criteria for collection by FCCM's.

Mandatory implementation of FCCM's will affect few State agencies. In calendar year 1998, of the 52 State agencies who could use FCCM's, 47 are doing so. As discussed under the paragraph on Implementation at the end of this preamble, this rule would be required to be implemented 180 days after its publication is final. The Department expects that this implementation period would be sufficient for State agencies to implement FCCM's during calendar year 1999.

Consistent with mandatory implementation of FCCM's, this rule proposes deleting the requirement (in current rules at 7 CFR 272.2(a)(2) and (d)(1)(xii) and 7 CFR 273.18(g)(5)(i)(A)) that State agencies choosing to implement FTROP and FSOP submit an amendment to their Plan of Operations.

Administrative Offset

Prior to the DCIA, under administrative offset, debts owed by persons to the Federal government are collected from payments due those persons from the Federal government. The DCA at 31 U.S.C. 3716 as amended by the DCIA greatly expanded the Federal government's authority to collect Federal debts through ADOP.

The Department believes that implementing the DCIA's provisions relating to ADOP would significantly enhance collection of FSP recipient claims. First, the amended DCA at 31 U.S.C. 3716(c)(1)(A) requires that, with certain exceptions, disbursing officials of Federal government agencies must at least annually offset from Federal payments claims submitted by creditor agencies. Heretofore, while there has been general authority for administrative offset, there has not been a general requirement that Federal payments due to individuals be offset against debts those individuals owe the Federal Government. Second, the amended DCA at 31 U.S.C. 3716(c)(3)(A)(ii) provides that, except for a $9,000 annual exemption, all payments due a debtor under the Social Security Act are subject to ADOP. Third, the amended DCA at 31 U.S.C. 3716(c) centralized the ADOP procedures in a single Federal agency, the Department of the Treasury.

Accordingly, as discussed in detail later in this preamble, this rule proposes to add ADOP to FTROP and FSOP by modifying the required due process and privacy notices to notify the debtor that, in addition to being subject to collection from tax refunds and Federal wages, the claim in question is also subject to

collection from other payments due the debtor from the Federal government. The Department expects that there will be little work impact on State agencies related to referring claims for ADOP. FNS will refer for collection by ADOP claims submitted by State agencies. FSOP claims referred to FNS for notices of intent which are referred for collection from Federal salaries will also be referred for collection by ADOP. Funds collected through ADOP will be transferred to State agencies and reported with FTROP and FSOP collections. Current regulations on FTROP specify update requirements for State agencies, and FNS has provided State agencies update procedures for FSOP. This rule proposes a general requirement for updating records of claims submitted for collection through FCCM's.

Cross Servicing

The amended DCA at 31 U.S.C. 3711(g) requires that debt delinquent over 180 days be transferred to the Secretary of the Treasury for ''cross servicing.'' Under cross servicing, the Department of the Treasury (Treasury) would pursue a variety of claims collection actions such as referring the claim under FTROP and FSOP. Treasury would refer debts to debt collection centers (selected Federal agencies) which would pursue these actions.

The Department is currently working with Treasury to determine the best way to implement this collection strategy. As such, this rule does not propose adding procedures for cross servicing at this time.

Claims Subject to FCCM's

As part of administrative offset provisions, the amended DCA now requires at 31 U.S.C. 3716(c)(6) that any Federal agency that is owed a past due, legally enforceable nontax debt that is over 180 days delinquent, including nontax debt administered by a third party acting as an agent for the Federal Government, must notify the Secretary of the Treasury of *all* such debt for purposes of administrative offset (emphasis added). Currently, rules for FTROP and Salary Offset set criteria for claims which *may be* submitted for collection under these procedures. This rule proposes that, subject to two conditions discussed just below, all delinquent recipient claims be submitted for collection under FCCM's. The Department is proposing this requirement because FCCM's are extremely effective. For example, net dollar collections under FTROP (voluntary payments and collections from Federal tax refunds less offset fees and Treasury reversals) exceed 20 percent of the dollar value of claims submitted. FSOP offers the only way to locate and pursue collection against the salaries of Federal employees who are liable for overissued food stamp benefits. (The Internal Revenue Service (IRS) currently prohibits referral of debts for FTROP which can be collected from Federal employees' salaries.) Finally, and especially with the addition of ADOP, FCCM's provide State agencies access to sources of significant collections not otherwise available to them.

In addition, this rule proposes that, unless no liable individual can be located, State agencies must pursue one or more State agency claim collection method before submitting a claim for collection under FCCM's. The rule proposes to specify that demand letters sent to liable individuals at the most current address known to the State agency and returned as undeliverable would be sufficient to show that no liable individual could be located. The requirement for State agency collection initiative as a condition to the use of FCCM's is being proposed to make the procedures for the other components of FCCM consistent with the FTROP requirement that the (Federal) agency satisfy the Secretary of the Treasury that the agency has made reasonable efforts to obtain payment of the debt. (See 31 U.S.C. 3720A(b)(4).) In addition, the Department believes that it is most efficient for State agencies to attempt collection action with methods available to them and that if those methods are not successful relatively soon after initiation, debts should be referred for collection through FCCM's.

As stated above, the amended DCA at 31 U.S.C. 3711(c)(6) requires that claims 180 days delinquent be submitted for ADOP. State agencies are establishing claims at a rate of over 775,000 per year. To have a State agency submit each claim for FCCM's as soon as that claim is 180 days delinquent is not administratively or logistically possible at this time. Therefore, the Department is proposing that State agencies be required to submit claims for FCCM's at intervals to be determined by the Department. The Department will continue to work with Treasury to fine tune this process to implement this aspect of the DCIA.

Accordingly, this rule proposes at § 273.18(p)(1)(i) that all claims would be subject to collection by FCCM's only after the State agency has initiated one or more State agency collection methods. The rule also proposes that the requirement for a State agency collection effort will not apply when no liable individual can be located as indicated by such evidence as demand letters returned as undeliverable. Finally, in this regard, the rule proposes that State agencies must submit all delinquent claims for collection by FCCM's.

Procedures and Schedules

Current rules at 7 CFR 273.18(g)(5)(i)(B) specify that State agencies submit data for FTROP to FNS in the record formats specified by FNS and/or Treasury, and according to schedules and by means of magnetic tape, electronic data transmission or other method specified by FNS. This rule proposes to apply these procedures to FCCM's in general.

This rule would require that, in addition to following computer data-related guidance, State agencies follow other technical and procedural guidelines as specified by FNS. During the testing of FTROP and FSOP, FNS conducted several national training sessions during which FNS provided substantial guidance on computer system operations, policy requirements and the financial reporting and funds processing for FTROP and FSOP. Following the training sessions, FNS provided packages of written responses to questions raised during the sessions. On an ongoing basis, FNS responds to numerous questions from State agencies concerning how to handle particular cases with respect to computer systems, collection policies and financial and accounting procedures. FNS sees a need to continue to provide this material so that all staff, Federal and State agency, involved with different aspects of FCCM's, have a single, consolidated operations manual.

This manual will be called the ''Manual for Federal Claims Collection Methods for the Food Stamp Program'' (the FCCM manual). The basis of the FCCM manual would be the current manual used for FTROP and FSOP data management (the Federal Debt Collection Program Revenue Procedure Manual 1997). As is the case with the current manual, the FCCM manual would be a vehicle for providing technical guidance for complying with established regulatory requirements. (See § 273.18(p)(1)(ii).)

Identification of Type of Claims

Currently State agencies are not required to identify the type of claim submitted for FTROP and FSOP. This rule proposes to require that claims submitted for collection under an FCCM be identified as an IPV, IHE or AE claim. Instructions on how to make such identification will be provided in the

FCCM Manual. The new information would be included in currently required data submissions and record formats. The rule proposes this new requirement because, effective with implementation of this rule, for collection made under FCCM's, FNS intends to transfer to State agencies the dollar amount of each collection to which the State agency is entitled based on current retention rates for each type of claim. Currently, FNS transfers gross collections net of IRS fees from FTROP and FSOP to State agencies. State agencies then report these collections to FNS on the FNS–209, Status of Claims Against Households, retain the percentage of the collections to which they are entitled under section 16(a) of the FSA (7 U.S.C. 2025(a)) and transfer appropriate amounts back to FNS. With annual FTROP collections of about $40 million, this process results in significant amounts of Federal funds not being as promptly transferred to Treasury as they could be.

Current rules allow State agencies to combine claims for an individual into one claim in order to try to collect on all of the claims through FTROP or FSOP. This rule would require that for any claim submitted for collection under FCCM's which is a combination of more than one type of claim, the State agency must specify the dollar amounts due to each type of claim.

File Updates

Current rules at 7 CFR 273.18(5)(ix)(A) require that for FTROP purposes State agencies update Treasury files. As discussed above, this rule proposes to make that requirement apply to FCCM's in general. Accordingly, this rule at § 273.18(p)(1)(iv) proposes to require that, as instructed in the FCCM manual, State agencies must update files by reducing the amounts of and deleting claims to reflect payments received, and by deleting claims which for other reasons are no longer subject to collection.

Hierarchy of Collection Methods

The mechanisms for ADOP are currently being developed. Consequently, the Department expects that until those mechanisms are in place, claims submitted for collection under FTROP and FSOP will be collected through those methods before any remaining debt is collected through ADOP from other Federal payments. Once ADOP is operational, a debt submitted under FTROP, for example, might be collected from another Federal payment if that payment was identified and available before the tax refund was offset. Accordingly, this rule proposes to state at § 273.18(p)(2)(v) that claims submitted under FCCM's would be offset from Federal payments due to debtors as such payments are identified and are available for offset.

Federal Income Tax Refund Offset Program (FTROP)

Among other things, this rule proposes to simplify the statement of criteria for claims subject to collection under FTROP, shorten and restructure the 60-day notice to eliminate unnecessary material, and to clarify that the 60-day notice is a demand for payment of a debt.

Limitation to IPV and IHE Claims

Current rules at 7 CFR 273.18(g)(5)(ii)(A)(*1*) limit the types of claims subject to FTROP to IPV and IHE claims. As discussed earlier in this preamble, section 844(a) of the PRWORA amended the FSA to provide that, subject to a State agency's demonstration that the collection method is not cost effective, all claims collection methods must be applied to all types of claims. Accordingly, this rule proposes to remove the limitation of FTROP to IPV and IHE claims.

Properly Established Claims

The regulatory paragraph cited just above also specifies that claims submitted under FTROP must be properly established no later than the date the State agency transmits its final request for Treasury addresses for the particular offset year. This requirement was made to assure that claims are not referred for collection under FTROP unless and until an individual has had an opportunity for a fair hearing and any fair hearing decision is reached. As discussed above, this rule proposes at § 273.18(g)(6) to require that State agencies cease any collection action upon timely receipt of a fair hearing request. Accordingly, this rule proposes not to reiterate the proposed requirement with respect to FTROP.

Required Documentation

The same regulatory paragraph cited above also elaborates on the records required for properly established claims. The Department believes that this language is unnecessary. State agencies will develop and retain appropriate records of their claims activities as a result of the various requirements for those activities proposed in this rule. In addition, the current regulations at 7 CFR 272.1(f) already require state agencies to retain fiscal records and accountable documents for 3 years from the date of fiscal or administrative closure. This rule does not propose any changes to this policy. Accordingly, this rule proposes not to state a records requirement specifically for FTROP or any other FCCM.

Collection From All Liable Parties

Current rules at 7 CFR 273.18(g)(5)(ii)(A)(*2*) specify that for a claim to be subject to FTROP the State agency must have verified that no individual who is jointly and severally liable for the claim is also currently participating in the FSP in the State. Since claims owed by participating households must be recouped from the monthly allotment, this requirement prohibited the simultaneous collection of a claim from a participating household through recoupment and from nonparticipating household members through FTROP.

State agencies objected to this restriction. They argued that with the restriction the entire burden of paying the claim fell on participants. State agencies also objected to the restriction because collection solely by recoupment meant that claims were often paid more slowly than they could be when there were liable, nonparticipating individuals with Federal tax refunds. This rule proposes at § 273.18(i)(1)(v) to allow simultaneous collection through recoupment from liable, participating households and through other means from liable, nonparticipating individuals. In addition, this rule proposes at § 273.18(i)(1)(i) to prohibit additional involuntary collection from individuals who are in households subject to allotment reduction. Accordingly, the rule proposes to delete from current rules the requirement that for a claim to be subject to FTROP the State agency must have verified that no individual who is jointly and severally liable for the claim is also currently participating in the FSP in the State.

Concurrent Collection Efforts

Current rules at 7 CFR 273.18(g)(5)(ii)(A)(*5*) state that claims are not subject to FTROP if the State agency is receiving either regular voluntary payments or involuntary payments such as wage garnishment. In addition, the rule specifies that claims for which a State agency has been receiving regular payments (either voluntary or involuntary) are considered past due and legally enforceable (and so are subject to FTROP) if the individual does not respond to a notice of default.

As discussed earlier in this preamble, this rule proposes at 7 CFR 273.18(i)(7) that State agencies may continue (State-based) collection efforts on claims after submitting them for collection under

FCCM's. Accordingly, this rule proposes to eliminate the requirement that claims cannot be submitted for FTROP if the State agency is receiving voluntary or involuntary payments such as wage garnishment.

Under provisions related to voluntary payments which this rule proposes at 7 CFR 273.18(i)(4), there would no longer be a requirement that State agencies send households which fail to make scheduled payments a notice and an opportunity to renegotiate the payment agreement.

No Reduction in the Dollar Amounts Submitted

Current rules at 7 CFR 273.18(g)(5)(ii)(B)(*1*) require that all claims submitted for collection under FTROP must be reduced by any amounts subject to collection from State income tax refunds or from other sources which may result in collections during the offset year. This rule proposes to eliminate this provision because, as discussed above, this rule proposes to allow State agencies to continue to pursue State agency collection efforts on claims submitted for collection under FCCM's. State agencies will have an increased responsibility to maintain adequate records of collections in order to minimize over collections and to promptly refund any which might occur.

Claims Apportioned Among Two or More Individuals

Current rules at 7 CFR 273.18(g)(5)(ii)(B)(*3*) provide that if a claim submitted under FTROP is apportioned between two or more individuals who are jointly and severally liable for the claim, the sum of the amounts submitted cannot exceed the total amount of the claim. This rule proposes to eliminate this provision. The apportioning of a claim as prescribed in this provision was required to conform to an informal IRS policy. The Department believes that the provision for joint and several liability established by section 13(a)(2) of the FSA (7 U.S.C. 2022(a)(2)) establishes the Department's authority to pursue a claim's full amount from all liable adults until the claim is paid. Debtors are protected by the requirement for State agencies to promptly post records and provide refunds of any over collections as this rule proposes at § 273.18(j).

All Delinquent Claims

Current rules at 7 CFR 273.18(g)(5)(ii) provide that State agencies *may* submit claims for collection under FTROP recipient claims which are past due and legally enforceable. As discussed above, this rule would require that *all* claims which are delinquent and have been subject to one or more State agency collection methods are subject to collection under FCCM's. Accordingly, this rule proposes to state at § 273.18(p)(2)(i) that State agencies must submit for collection all recipient claims which are delinquent, which are legally enforceable and which meet the criteria specified in the subsequent subparagraphs.

Minimum Dollar Value

Current rules at 7 CFR 273.18(g)(5)(ii)(A)(*3*) require that claims submitted under FTROP must meet at least the minimum dollar amount established by Treasury. This minimum continues to be $25. This rule would make no change in this requirement. FNS would advise State agencies if the Treasury minimum changes. The requirement is stated at § 273.18(p)(2)(i)(A) in this proposed rule.

10-year Limit

Current rules at 7 CFR 273.18(g)(5)(ii)(A)(*4*) require that claims submitted under FTROP must be claims for which the date of the initial demand letter is within 10 years of January 31 of the offset year, except that claims reduced to final court judgments ordering individuals to pay the debt are not subject to this 10-year limitation. This rule proposes no changes in this requirement, which is stated at § 273.18(p)(2)(i)(B).

Voluntary Payments

As discussed above, this rule proposes to state at 7 CFR 273.18(i)(1)(i) that individuals in households subject to allotment reduction are not subject to involuntary collection by any other means. As also discussed above, this rule proposes at § 273.18(i)(1)(v) that collection via allotment reduction does not preclude additional collection methods being pursued against other liable individuals not currently members of a participating household. The Department wants to make clear how these policies apply to collection under FTROP. Accordingly, this rule proposes at § 273.18(p)(2)(i)(C) that claims submitted under FTROP cannot include any claim which is submitted for collection from an individual in a household which is subject to allotment reduction.

Bankruptcy

The current rule at 7 CFR 273.18(g)(5)(ii)(A)(*6*) specifies that claims for which collection is barred by a bankruptcy are not subject to FTROP. With the exception of redesignating this paragraph as § 273.18(p)(2)(i)(D), this rule proposes no change to this provision.

All Required Notices

The current rule at 7 CFR 273.18(g)(5)(ii)(A)(*7*) requires that for a claim to be subject to FTROP the State agency must have provided the individual all the notices required. FNS, not the State agency, provides one of those notices after the FNS decision on a request for a hearing. Accordingly, this rule would remove the reference to the State agency in the current criteria. Further this rule proposes that the criterion for referral under FTROP and FCCM would be that claims are subject to referral for which individuals have been provided the opportunities for review and the notifications specified in paragraphs (p)(2)(iii), (p)(2)(iv), and (p)(2)(v). (See § 273.18(p)(2)(i)(E).)

Combined Claims

Current rules at 7 CFR 273.18(g)(5)(ii)(B)(*2*) provide that if a claim to be submitted for collection under FTROP is a combination of two or more recipient claims, the date of the initial demand letter for each claim combined must be within the 10-year range and that claims reduced to judgment shall not be combined with claims which are not reduced to judgment. This rule proposes to retain this provision. (See § 273.18(p)(2)(ii).)

Proposed Changes in the General Requirements and Contents of the 60-day Notice

The proposed rule would combine the general requirements for 60-day notices and the requirements for contents of the notices (currently in paragraphs 7 CFR 273.18(g)(5) (iii) and (iv)) into a single paragraph, § 273.18(p)(2)(iii). The overall goal in this proposed rule is to enable a single 60-day notice to serve as notification for FTROP, FSOP, ADOP and any other FCCM. In addition, the rule proposes to delete several provisions which are obsolete or extraneous, and proposes to change certain provisions. These proposed deletions and changes are discussed in the following paragraphs. The Department believes that the 60-day notice will be most effective if State agency notices present the proposed required contents in the order they appear in the regulation.

Implementing Guidelines for 60-day Notices

Current rules at 7 CFR 273.18(g)(5)(iii)(A) specify requirements for 60-day notices related to implementing the current rule. That material is obsolete, and this rule proposes to delete it. For the same reason, this rule proposes to delete the last sentence of 7 CFR 273.18(g)(5)(iii)(B), and the introductory clause of 7 CFR 273.18(g)(5)(iv).

State Agency Records

Current rules at 7 CFR 273.18(g)(5)(iv)(A) require that the 60-day notice state that the State agency has records documenting that the individual, identified by name (and Social Security Number), is liable for a specified unpaid balance of a recipient claim resulting from overissued food stamp benefits. The Department believes that it is unnecessary for the 60-day notice to state that the State agency has records which they are required to develop in the course of establishing and acting on recipient claims. The Department presumes that State agencies have the necessary records to support their claims. Accordingly, the rule proposes to delete the language on this matter in the just cited paragraph.

One of the requirements in the amended DCA at 31 U.S.C. 3716(a) for collecting a claim by ADOP provides the debtor with the right to inspect and copy agency records relating to the claim. This right is covered under the fair hearing and administrative disqualification hearing procedures and is available to the debtor when the claim is initially established. Moreover, the debtor would be provided notice of this right under the notice requirements for demand letters as discussed previously in this proposed rule. The current regulations regarding fair hearings (7 CFR 273.15) and administrative disqualification hearings (7 CFR 273.16) are not affected by this proposed rule.

Previous Actions Taken

In the second sentence of 7 CFR 273.18(g)(5)(iv)(A), current rules require that the 60-day notice state that the State agency has previously mailed or otherwise delivered demand letters notifying the individual about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts. This requirement was made to comply with the requirement in DEFRA that the (Federal) agency satisfy the Secretary of the Treasury that the agency has made reasonable efforts to obtain payment of the debt. (See 31 U.S.C. 3720A(b)(4).) The Department believes that this requirement is met by the requirement proposed in this rule and discussed above under which State agencies must pursue State agency collection methods before referring claims for collection through FCCM's. In addition, the Department does not believe that debtors need the information since they would have already received demand letters and other billing actions. Accordingly, this rule proposes to delete the language in question.

Statement on Joint Liability

Current rules at 7 CFR 273.18(g)(5)(iv)(D) require that the 60-day notice advise individuals that all adults who were household members when excess food stamp benefits were issued to the household are jointly and severally liable for the value of those benefits, and collection of claims for such benefits may be pursued against all such individuals. The Department believes that questions about this policy are being effectively answered in telephone conversations between debtors and State agencies and that inclusion of the statement of the subject policy unnecessarily lengthens the 60-day notice. In addition, the initial notification of claim or demand letter would already include the jointly and severally language. Accordingly, this rule proposes to delete the currently required language on this matter from the 60-day notice.

Statement on Voluntary and Involuntary Payments

Current rules at 7 CFR 273.18(g)(5)(iv)(E) require that the 60-day notice state that State agency records do not show that the claim is being paid according to either a voluntary agreement or through scheduled, involuntary payments. The language in question was added to the 60-day notice in the rulemaking at 60 FR 45990–46001, dated September 1, 1995. The language was added in response to a public interest group's concern that debtors be informed of this policy.

As discussed above, this rule proposes allowing State agencies to pursue collection through FTROP, FSOP, ADOP and other FCCM's while pursuing other collection efforts except against individuals in households subject to allotment reduction. In addition, at § 273.18(p)(2)(i)(C) the rule would prohibit referring claims for FTROP collection from individuals subject to allotment reduction. Furthermore, in operating FSOP the Department has found that, in response to notices of intent issued under that collection procedure, debtors who are paying the claim call and advise FNS of that fact. The Department believes that the same issue can be resolved over the telephone between debtors and State agencies under FTROP. Accordingly, this rule proposes not to require the language currently required at 7 CFR 273.18(g)(5)(iv)(E).

Summary of Criteria

Current rules in paragraphs 7 CFR 273.18(g)(5)(iv)(I), (J) and (K) require that the 60-day notice include information intended to inform individuals about the criteria for claims which are subject to FTROP and what information they should provide to request a hearing on the intended collection action. These requirements were made in order to both assist individuals in understanding the intended collection action and to reduce State agency workload associated with telephone calls in response to 60-day notices. The Department does not believe that either of these purposes were achieved by the additional information, that individuals' continued to telephone State agencies and that their concerns were adequately dealt with through that form of communication. Accordingly, this rule proposes deleting the just cited paragraphs.

The Notice Would Advise

Current rules at 7 CFR 273.18(g)(5)(iii)(B) require that with the exception of such State-specific information as names and job titles and information required for State agency contacts, a State agency's 60-day notice must contain only the information specified in paragraph (g)(5)(iv). The Department believes that it is adequate to require that State agencies *advise* individuals of the required information. This approach should also provide State agencies flexibility in the design of 60-day notices and also facilitate their production. Accordingly, § 273.18(p)(2)(iii)(B) requires that the 60-day notice *advise* debtors of the matters listed in that paragraph.

Intent to Collect by Various Federal Collection Methodologies

The rule proposes at § 273.18(p)(2)(iii)(B)(*3*) to include in the 60-day notice ADOP, as one of the methodologies to which the debt is to be referred. The other methodologies which would utilize the same 60-day notice are FTROP, FSOP and any other FCCM.

Collection of the Federal Offset Fee

Current rules at 7 CFR 273.18(g)(5)(iv)(C) require that the 60-day notice state that if the State agency refers the claim to the IRS, a charge for the administrative cost of collection will be added to the claim and that amount will also be deducted if the claim, or any portion of the claim, is deducted from the debtor's tax refund. This rule proposes to modify this language to include the cost of any Federally imposed processing fee. (See § 273.18(p)(2)(iii)(B)(5).)

Citation of Authorities

The rule proposes to require language to the effect that collection through ADOP is authorized by the Debt Collection Act of 1982, as amended 31 U.S.C. 3701, and that the 60-day notice meets that statute's requirements for notice to debtors about ADOP. (See § 273.18(p)(2)(iii)(B)(*7*).)

Advice on Joint Tax Returns

Current rules at 7 CFR 273.18(g)(5)(iv)(H) require that the 60-day notice provide substantial guidance concerning jointly filed Federal income tax returns and offsets from tax refunds. The Department is concerned that some of the language may be inappropriately providing information about filing income tax returns. In addition, the Department wants to point out that IRS rules concerning FTROP at 26 CFR 301.6402–6(i) state that the IRS will advise non-debtor spouses of steps to take to protect their share of tax refunds and will refund to such persons such shares that are offset. Consequently, the Department believes that the proposed changes will not adversely affect spouses of debtors who are not liable for the overissued food stamp benefits. Accordingly, the rule proposes to require that 60-day notices advise debtors that, if they are filing a joint Federal income tax return, they may want to contact their local office of the IRS. (See § 273.18(p)(2)(iii)(B)(9).) In addition, this rule proposes to delete from the current required language the sentence discussing spousal liability. The rule also proposes to delete the sentence concerning liability for Treasury offset fees. The Department believes that the paragraph already required on Treasury offset fees information provides adequate information on this matter.

Statement of Compliance

Current rules at 7 CFR 273.18(g)(5)(iii)(B) require that in their annual certification letters State agencies include a statement that their 60-day notices conform to the content requirements of that paragraph. This rule proposes to require that State agencies include in their annual certification letter a statement that their 60-day notices comply with the requirements of § 273.18(p)(2)(iii)(B). (See § 273.18(p)(2)(iii)(C).)

Mailing Schedule

Current rules at 7 CFR 273.18(g)(5)(iii)(C) require that unless otherwise notified by FNS, the State agency must mail 60-day notices for claims to be referred for collection through FTROP no later than October 1 preceding the offset year during which the claims would be offset. The date for such mailings in 1996 was September 1. The Department expects that September 1 will continue to be the mailing date for 60-day notices. Nonetheless, to avoid confusion on this point, the rule proposes to state that unless otherwise notified by FNS, the State agency shall mail 60-day notices for claims to be referred for collection through FTROP, FSOP, ADOP and other FCCM's according to the schedule provided by FNS. (See § 273.18(p)(2)(iii)(D).)

Deletion of October 31 Cutoff for Reviews

Current rules at 7 CFR 273.18(g)(5)(v)(E) provide that State agencies may not refer claims for which timely review requests are received unless by October 31 they have completed the review and notified the individual that the claim is past due and legally enforceable. This provision was necessary when 60-day notices were mailed on October 1 because of the length of time necessary to offer the opportunity for both State agency and FNS reviews during an annual processing cycle. Since 60-day notices are now mailed on September 1, and in the future may be mailed more frequently than annually, this requirement is now obsolete. This rule proposes to delete this requirement.

Incorporation of Administrative Offset

Current rules at 7 CFR 273.18(g)(5)(v) state the requirements for State agency action in response to debtor requests for review of intended collection action under FTROP. The Department believes that these requirements exceed the requirements for such action under ADOP. Accordingly, with the exception of appropriate references, this rule proposes no additional review procedures for ADOP or any other FCCM.

Notice of Potential Administrative Offset

Current rules at 7 CFR 273.18(g)(5)(v)(C)(2) require that when the State agency determines that a debt is past due and legally enforceable the State agency notice to the debtor advise the debtor that the State agency intends to refer the claim to Treasury for offset. This rule proposes to require that the notice of the State agency's decision state that the State agency intends to refer the claim for collection from the debtor's Federal income tax refund and/or from other payments which may be payable to the debtor by the Federal government.

No Referral for Federal Collection Pending FNS Review

Under current rules at 7 CFR 273.18(g)(5)(iv)(F), the 60-day notice provides debtors a 60-day period to request that the State agency review whether the claim in question is past due and legally enforceable. The State agency notice of its decision that a claim is past due and legally enforceable must advise the debtor that the debtor has 30 days to request that FNS review that decision. The notice must also advise the debtor that, pending FNS review, the debt will not be referred to Treasury for offset. The rule proposes to also require that such notices advise debtors that, pending the FNS decision, the claim will not be referred for collection from other payments which may be payable to the debtor by the Federal government.

Regional Office Address

Current rules at 7 CFR 273.18(g)(5)(v)(C)(4) require that the State agency notice to the debtor provide the appropriate FNS regional office address, including the phrase ''Tax Offset Review.'' To reflect that the review may pertain to ADOP situations, this rule proposes to change that phrase to ''Offset Review.''

FNS Action on Appeals of State Agency Reviews

Current rules at 7 CFR 273.18(g)(5)(vi) specify the actions which FNS will take in response to appeals of State agency review decisions. In several places in this section, this rule proposes to conform regulation citations to the proposed rule. In addition, this rule proposes to delete the clause in 7 CFR 273.18(g)(5)(v)(B) which sets the condition that the State agency's decision be dated on or before October 31, and to delete paragraph (g)(5)(v)(C). That paragraph currently provides that for timely requests for FNS review of State agency decisions made after

October 31, FNS will complete its review but the claim cannot be referred under FTROP. The clause and the paragraph coordinated with the October 31 cut-off discussed just above are also obsolete because, under an annual processing cycle, the 60-day notices are being mailed September 1. All review requests which FNS receives on State agency decisions will be acted on. Current rules provide at 7 CFR 273.18(g)(5)(v)(B)(*2*) that FNS will advise the State agency if it does not complete its review and the claim must be deleted from the certified files. This rule would not change that provision.

Referral of Claims for Offset

Current rules at 7 CFR 273.18(g)(5)(vii) specify requirements for State agency submission of claims under FTROP and the requirements for the letter certifying that the claims submitted meet the criteria for collection under FTROP. This rule proposes several changes in this paragraph, which is § 273.18(p)(2)(vi) in the proposed rule.

The rule proposes to add to the first sentence of the current 7 CFR 273.18(g)(5)(vii)(A) a reference to administrative offset and to change the paragraph reference to conform to the paragraph in the proposed rule.

The rest of current rules at 7 CFR 273.18(g)(5)(vii)(A) relate to the certification letter. The proposed rule would put this material in a new paragraph, itemize the required contents as subparts of that paragraph, change the references to conform to the paragraphs in the proposed rule, and make editorial changes.

Section 273.18(g)(5)(vii)(A) requires State agencies to submit certification letters to FNS regional offices. State agencies have found this instruction confusing, some sending the letter with their data files, some sending it to regional offices. The rule proposes to require that State agencies submit the letter according to FNS instructions. FNS plans to direct that the certification letters be sent to FNS headquarters with, or at the same time as certified files and to provide in those instructions a specific address for the letter. Also, the requirement for the statement on the conformance of the 60-day notice would be changed to reflect the new requirement discussed earlier in this preamble. Finally, the requirement currently at 7 CFR 273.18(g)(5)(vii)(B) that State agencies include in their certification letter how they determined that the information about the State agency contact for debtors is accurate would be included in the list of required contents for the certification letter.

Current rules at 7 CFR 273.18(g)(5)(vii)(B) require that the State agency provide to FNS the name, address and toll-free or collect telephone numbers of State agency contacts to be included in Treasury notices of offset, and provide FNS updates of that information if and when that information changes. The rule proposes to modify this requirement with a reference to FNS instructions. FNS intends to include such instructions in the expanded Revenue Manual.

State Agency Actions on Offsets Made

Current rules at 7 CFR 273.18(g)(5)(viii)(A) specify requirements for State agency actions on offsets made. For the reasons discussed in the following paragraph, this rule proposes to delete this section because its contents repeat requirements which this rule proposes to make elsewhere.

First, current rules at 7 CFR 273.18(g)(5)(viii)(A) require that State agencies notify debtors about offsets. This rule proposes at § 273.18(o)(4) to require that State agencies keep debtors advised of the status of their claims. Also, the Federal agency from whose payment the debt is offset would advise the debtor of the offset.

Second, current rules at 7 CFR 273.18(g)(5)(viii)(B) require prompt refunds for over collections due to offsets from Federal income tax refunds. As already discussed, this rule proposes at § 273.18(j) to require that State agencies promptly refund all over collections of recipient claims regardless of the source of the over collection.

Third, current rules at 7 CFR 273.18(g)(5)(viii)(C) address several matters relating to over collection and refund situations due to State agency error and Treasury reversals of offsets. FNS periodically issues procedural guidelines on these and related matters and plans to continue to address such matters in the FCCM Manual discussed above in this preamble.

Monitoring and Reporting Offset Activities

Current rules at 7 CFR 273.18(g)(5)(ix) specify several requirements for State agency reporting on offset activities. As discussed in the following paragraphs, this rule proposes to delete several of those requirements because this rule would state the requirements elsewhere. The section would be renamed ''Reporting FTROP and ADOP activities.''

As already discussed, this rule proposes to make a general requirement for the updating of files for FCCM's. Accordingly, this rule proposes to delete paragraph (g)(5)(ix)(A). Paragraph (B) of the section in question repeats the requirement for prompt refunds of over collections. This rule proposes to delete it for reasons discussed earlier in this preamble. Paragraph (E) of the section in question reiterates the requirement that State agencies report collections as required for all recipient claims collection. The rule proposes to delete this restatement.

Current rules at 7 CFR 273.18(g)(5)(ix)(C) require that State agencies annually report on 60-day notices no later than the tenth of October. This rule proposes to require that State agencies make that report no later than the ten days after mailing 60-day notices. In paragraph (g)(5)(ix)(D), this rule proposes to delete the reference to the IRS. The rule proposes to require that State agencies report on 60-day notices, data security and voluntary payments according to instructions in the FCCM manual.

Federal Salary Offset Program (FSOP)

In addition to proposing changes in the requirements for FSOP which are intended to reduce workload on State agencies and to eliminate provisions of the current rule which are extraneous, this rule proposes to reorder several paragraphs of this regulations pertaining to FSOP. Also, whenever possible, the Department's goal is to allow State agencies to combine FSOP activities with FTROP, ADOP, and other FCCM activities.

Claims Subject to FSOP

Current rules at 7 CFR 273.18(g)(6)(i) state that all claims submitted under FTROP are subject to the salary offset match and that all individuals identified in the match are subject to FSOP procedures. As discussed earlier in this preamble, this rule proposes to require that State agencies submit all appropriate claims for collection under FCCM's thereby combining the FSOP advance notice with the FTROP and ADOP 60-day notice. Accordingly, this rule proposes to delete this paragraph as redundant.

Supplemental Information

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*1*) specify certain information which State agencies are encouraged to include in their advance notices. The Department believes that including such information may improve the credibility of the advance notice, but since the Department does not want to require that the information be included in the advance notice, this

rule proposes to delete the subject language.

Notice of Review Decision

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*5*) require that the advance notice state that the State agency will notify debtors in writing when, due to a review decision, claims will not be referred for collection from salaries. The Department does not believe that the advance notice needs to advise debtors about the requirements for State agency notification of review decisions. Accordingly, this rule proposes to delete the requirement for language on this matter from the advance notice.

Notice of Right to a Federal-level Hearing

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*5*) also require that the advance notice state: (1) that debtors have the right to a formal appeal to FNS; and (2) that notification about how to make such appeals is required and will be provided to debtors before any collection action from salaries is taken. The Department believes that the notice of intent which is provided to debtors prior to referral of claims for collection from Federal salaries provides adequate notice of the right to a hearing and related matters. Accordingly, this rule proposes to delete the requirement that the advance notice provide information about such matters.

Reporting

Current rules at 7 CFR 273.18(g)(6)(iv)(A) specify requirements for State agency retention of collections, reporting and about how FNS will report and transfer collections to State agencies. For the reasons discussed earlier in this preamble in relation to the proposed deletion of these same requirements for FTROP, this rule proposes to delete this paragraph.

FNS Recipient Claims Matching Procedures

Current rules at 7 CFR 273.18(g)(6)(ii)(A) describe certain FNS recipient claims matching procedures. This rule would include this material unchanged at § 273.18(p)(3)(i).

Security and Confidentiality

Current rules at 7 CFR 273.18(g)(6)(ii)(B) require that State agencies return security and confidentiality agreements prior to receiving information about Federal employees identified as subject to FSOP. This rule would include this material unchanged at § 273.18(p)(3)(ii).

Except for conforming references to this proposed rule, no changes are proposed for current rules requiring security and confidentiality agreements from State agencies as a condition for receiving FSOP debt information currently at 7 CFR 273.18(g)(6)(iii)(A). (See § 273.18(p)(3)(iii).)

Review of Claim Status

Current rules at 7 CFR 273.18(g)(6)(ii)(D) require that prior to taking any action to collect recipient claims under FSOP, State agencies must review records to verify the amount owed, and to remove claims which have been paid, which are being paid according to an agreed to schedule, or which for other reasons are not collectible. This requirement remains essentially unchanged in this proposed rule. (See § 273.18(p)(3)(iv).)

Advance Notices

Current rules at 7 CFR 273.18(g)(6)(iii) specify the requirements for State agency advance notices to Federal employees. This rule proposes to modify those requirements based on the requirements of DCIA and combine the FSOP advance notice with 60-day notice proposed in this rule, and to conform references to the proposed rule.

Current rules at 7 CFR 273.18(g)(6)(iii)(B) prescribe procedures for referring salary offset claims to FNS following State agency efforts to collect them through advance notices. This rule proposes to place this material after the requirements for the contents of the notice. This rule proposes to reduce the documentation required for FSOP claims referred to FNS. The rule also proposes to move the requirements for referring defaulted claims and to specify that such referrals must include the same documentation as claims referred to FNS because of no timely or adequate response to the advance notice. (See § 273.18(p)(3)(vii).)

Current rules at 7 CFR 273.18(g)(6)(iii)(C) state the requirements for the contents of the advance notice. This rule proposes to require that the notice *advise* debtors of certain matters.

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*1*) require that the advance notice state that according to State agency records the debtor is liable for a claim for a specified dollar amount due to receiving excess food stamp benefits. This rule proposes to require that the notice advise debtors of what State agency records indicate is their name and SSN and that they are liable for a specified unpaid balance of a recipient claim resulting from overissued food stamp benefits. (See § 273.18(p)(3)(v)(B)(*1*) and (*2*).)

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*2*) and the first sentence of 7 CFR 273.18(g)(6)(iii)(C)(*3*) discuss procedure and authorities related to FSOP. This rule proposes to modify this material and add the citation of the authority for collection through ADOP. (See § 273.18(p)(3)(v)(B)(*7*).)

Voluntary Payment

Current rules in the second sentence of 7 CFR 273.18(g)(6)(iii)(C)(*3*) and in the rest of that paragraph specify that the advance notice must state that the claim will be referred to FNS for collection from the debtor's Federal salary unless it is paid in full within 30 days or in installments of $50 if the claim was greater than $50. The Department specified an installment structure for FSOP claims with the intent to relieve State agencies of the need to negotiate with debtors. Experience with FSOP indicates that the installment structure did not help in this regard. State agencies often preferred to have the discretion to negotiate a payment schedule with debtors. Accordingly, this rule proposes to provide this flexibility and to incorporate a notice that the claim is subject to administrative offset. Accordingly, § 273.18(p)(3)(v)(B)(*3*) would require that the advance notice advise the debtor that unless the debtor pays the claim within 30 days of the date of the notice or makes other repayment arrangements acceptable to the State agency, the State agency intends to refer the claim for collection from his or her salary and/or by administrative offset from other Federal payments which may be payable to the debtor.

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*4*) require that the advance notice include the name, address and a toll-free or collect telephone number of a State agency contact (an individual or unit) for repayment and/or discussion of the claim. As in the case of the FTROP 60-day notice, this rule proposes to require that the advance notice advise debtors that to pay the claim voluntarily or to discuss it, the debtor should contact the State agency. The advance notice would also be required to include the name of the State agency contact for this purpose (such as an office, administrative unit and/or individual), the contact's street address or post office box, and a toll-free or collect telephone number for that contact.

Current rules at 7 CFR 273.18(g)(6)(iii)(C)(*5*) state the required

contents for the advance notice with respect to the debtors' rights for review of the intended collection action under FSOP. The second sentence of that paragraph requires that the advance notice state that unless the State agency receives documentation that the claim is not collectible within 30 calendar days the State agency will refer the claim to FNS for collection from the debtor's salary. This rule proposes to replace that sentence with the requirement that the advance notice advise debtors that the State agency must receive the documentation within 30 days at the address provided in the notice, that the debtor should provide his or her SSN and that the claim will not be referred for collection from the debtor's Federal salary of other Federal payments pending the State agency's review of that documentation. This rule also proposes to add the requirement that the advance notice advise debtors that a claim is not collectible if a bankruptcy filing prevents collection of the claim. (See § 273.18(p)(3)(v)(B)(*5*).)

The Department believes that State agencies should notify debtors of their decision either to refer or not to refer the claim for collection. Accordingly, this rule proposes to require at § 273.18(p)(3)(vi) that State agencies notify debtors in writing of decisions on documentation submitted concerning payments and other matters relating to the collection of claims under FSOP and ADOP.

FNS Action on Claims Referred by State Agencies

Current rules at 7 CFR 273.18(g)(6)(v) specify pertinent matters relating to FNS actions on FSOP claims referred by State agencies. This rule proposes no change in that paragraph except to conform the references in the introductory sentence of 7 CFR 273.18(g)(6)(v) to the paragraphs in this proposed rule and to specify that the notice of intent would advise debtors that their recipient claim is subject to collection through administrative offset as well as from their Federal salary, and to cite the authority for that collection action, the DCA, as amended, 31 U.S.C. 3701.

Administrative Offset Program (ADOP)

As discussed in several places earlier in this preamble, this rule proposes that claims submitted under FTROP and FSOP, but not collected under those programs, would be subject to collection through ADOP from other Federal payments otherwise due debtors. Due process notices for ADOP would have been provided through separate FTROP and FSOP notices or through a combined notice which would include FTROP, FSOP, ADOP or any other FCCM. State agencies would not need to re-submit those claims for ADOP. State agencies would need to keep their balances updated to avoid over-collections. (See § 273.18(p)(4).)

Implementation

The PRWORA set the date of enactment, August 22, 1996, as the effective date for the provisions of the law relating to recipient claims. In response, the Department, on August 26, 1996, issued an implementation memorandum stating that these provisions are to be implemented no later than September 22, 1996.

The Department proposes that State agencies implement the discretionary aspects of these regulations no later than the first day of the month 180 days after the publication of the final rule. This should provide sufficient time to amend food stamp handbooks, demand letters and forms, make any necessary changes in data processing systems and administrative procedures, and train affected State and local agency staff.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Employment, Food stamps, Fraud, Government employees, Grant programs—social programs, Income taxes, Penalties, Reporting and recordkeeping requirements, Social security, Students, Supplemental Security Income (SSI), Wages.

Accordingly, 7 CFR Parts 272 and 273 are proposed to be amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

§ 272.2 [Amended]

2. In § 272.2:

a. Paragraph (a)(2) is amended by removing the last sentence; and

b. Paragraph (d)(1)(xii) is removed.

§ 272.12 [Removed]

3. § 272.12 is removed.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.2, paragraph (b)(4) is added to read as follows:

§ 273.2 Application processing.

* * * * *

(b) *Food stamp application form.*

* * *

(4) *Privacy Act statement.* At the time of application and at each recertification through a written statement on or provided with the application form, all applicants for food stamp benefits shall be notified of the following:

(i) The collection of this information, including the social security number (SSN) of each household member, is authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) The information will be used to determine whether your household is eligible or continually eligible to participate in the Food Stamp Program and may be subject to verification through computer matching programs. This information will also be used to monitor compliance with program regulations and for program management.

(ii) This information may be disclosed to other Federal assistance programs or federally assisted State programs, to the Comptroller General of the United States for authorized audit and examination purposes and to Federal, State and local law enforcement officials for the purpose of apprehending persons fleeing to avoid prosecution, custody or confinement or to a court, magistrate, or administrative tribunal when required in civil or criminal proceedings.

(iii) If a claim arises against your household as a result of participation in the Food Stamp Program, the information you provide, including the SSN of each member of your household, may be referred to Federal and State agencies, as well as private claims collection agencies, for claims collection action, including but not limited to administrative offset, and to the Department of Justice for litigation.

(iv) The providing of the requested information, including the SSN of each household member, is voluntary. However, failure to provide this information will result in the denial of food stamp benefits to your household.

* * * * *

5. § 273.18 is revised to read as follows:

§ 273.18 Claims against households.

(a) *Responsibility for recovering overpayments*—(1) *Household and individual liability.* (i) All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. All adult household members shall also be responsible for the amount of any claim established for the trafficking of benefits.

(ii) Any sponsor of an alien and the alien's household shall be jointly and severally liable for the value of any benefits overissued as a result of incorrect information being provided by the sponsor. However, if the alien's sponsor had good cause or was without fault, the alien's household shall be solely liable for repayment of the overissuance.

(2) *State agency responsibility.* (i) Unless specified under paragraph (g)(2) of this section, the State agency shall establish a claim against:

(A) Any participating household (including former adult members) or non-participating household that has trafficked benefits or received more food stamp benefits than it was entitled to receive; and

(B) Any household which contains an adult member who was an adult member of another household that trafficked benefits or received more food stamp benefits than it was entitled to receive.

(ii) Even though the establishment and collection of food stamp recipient claims are delegated to State agencies, these debts shall remain Federal debts subject only to this and other regulations governing Federal debts.

(b) *Intentional program violation (IPV) claims.* An IPV is defined in § 273.16(c). A claim shall be handled as an IPV claim only if one of the following occurs:

(1) A court of appropriate jurisdiction has determined that a household member has committed an IPV.

(2) A household member was determined at an administrative disqualification hearing to have committed an IPV.

(3) A household member signs a disqualification consent agreement for a suspected IPV referred for prosecution.

(4) A household member signs a waiver of his/her right to an administrative disqualification hearing.

(c) *Inadvertent household error (IHE) claims.* A claim shall be handled as an IHE claim if the overissuance or recipient misuse incident was caused by a misunderstanding or unintended error on the part of the household. In addition, at the option of the State agency, a potential IPV may be handled as an IHE claim prior to the determination of IPV.

(d) *Agency error (AE) claims.* (1) A claim shall be handled as an AE claim if the overissuance was caused by an action or failure to take action by the State agency.

(2) The State agency shall take action to establish a claim against any household that received an overissuance due to a State agency error. No recipient claim shall be established if an overissuance occurred as a result of the household transacting an expired Authorization to Participate card (ATP), unless the household altered its ATP.

(e) *Calculating the claim amount*—(1) *Non-trafficking claims.* A claim that is not related to trafficking shall be calculated incorporating all of the following:

(i) For each month that a household received an overissuance, the State agency shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive.

(ii) The amount of correct benefits, if any, and the resulting claim shall be, at a minimum, calculated back to twelve months prior to the date of discovery. For an IPV claim, the resulting claim shall be calculated back to the month the act of IPV occurred. However, for any claim, the State agency shall not include in its calculation any amount of the overissuance that occurred in a month more than six years from the discovery date. The discovery date is defined in paragraph (g)(2) of this section.

(iii) In calculating an IPV or IHE claim involving unreported earned income, the State agency shall not apply the earned income deduction to that part of any earned income which the household failed to report in a timely manner when this act was the basis for the claim.

(iv) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household as follows:

(A) The allotment that the household should have received is subtracted from the allotment the household actually received.

(B) This amount is then reduced by any EBT benefits expunged from the household's EBT benefit account (up to the amount of the claim) that have not previously been applied to any other claim. The difference is the amount of the claim.

(v) For categorically eligible households, an IHE or AE claim shall only be calculated and established when it can be computed on the basis of a change in net income and/or household size.

(2) *Trafficking-related claims.* Claims arising from trafficking-related offenses shall be the value of the trafficked benefits as determined by: the individual's admission; adjudication; or the documentation which forms the basis for the trafficking determination.

(f) *Claim referral, establishment and backlog prevention.* (1) State agencies shall establish a claim before the last day of the quarter following the quarter in which the overissuance was discovered. For example, if the date of discovery, as defined in paragraph (f)(2) of this section, is in October, November, or December, the last day to timely establish the claim shall be March 31 of the following calendar year.

(2) The ''date of discovery,'' for the purposes of this section, shall be the date the potential claim is initially detected as a possible overissuance by the State agency. The State agency shall annotate the date of discovery for each claim referral in the appropriate case/claim file or claim tracking system.

(3) The ''date of establishment,'' for the purposes of this section, shall be the date that the initial claim notification or demand letter, as described in paragraph (g)(3) of this section, is sent to the household. The State agency shall annotate the date of establishment for each claim referral in the appropriate case/claim file or claim tracking system.

(4) State agencies shall ensure that no less than 90 percent of all claim referrals are either established or, if warranted, disposed of within the time frame established in paragraph (f)(1) of this section.

(g) *Initiating collection action and managing claims*—(1) *Applicability.* State agencies shall initiate collection action on all claims unless the conditions under paragraph (g)(2) of this section apply.

(2) *Pre-establishment cost effectiveness determination.* A State agency may opt not to pursue the establishment of any claim and subsequent collection of the overissuance if the pursuit is determined not to be cost effective by using either of the following methodologies:

(i) *State-agency developed methodology for cost-effectiveness determination.* A State agency may adopt its own procedure, threshold, and/or methodology for use in determining whether to pursue the establishment of any claim and subsequent collection of the overissuance. State agencies shall obtain prior approval from FNS for use of this procedure, threshold, and/or methodology.

(ii) *FNS threshold for establishing and collecting overissuances.* (A) Unless prohibited by paragraph (g)(2)(ii)(C) of this section, a State agency may utilize the claims threshold as defined in paragraph (g)(2)(ii)(B) of this section in determining whether to pursue the establishment of any claim and collection of the subsequent overissuance.

(B) The FNS threshold for establishing a claim and pursuing collection from an

overissuance is the maximum dollar amount of a claim or claim referral that a State agency may decide not to pursue solely based on the amount of the referral. The threshold is equal to $125.

(C) A State agency shall not apply this threshold to overissuances which may be collected by reducing the allotment of the household. This threshold also does not apply to overissuances which have already been established as claims.

(3) *Notification of Claim.* (i) Each State agency shall develop and mail or otherwise deliver to the household written notification to initiate collection action on any claim. The written notification or demand letter shall contain the information required by paragraphs (g)(3)(iii), (g)(3)(iv) and (g)(3)(v) of this section. Subsequent demand letters or notices may be sent at periodic intervals at the discretion of the State agency.

(ii) The claim shall be considered established for tracking and reporting purposes as of the date of the initial written notification or demand letter.

(iii) If the claim or the amount of the claim was not established at a hearing, the State agency shall provide the household with a one-time notice of adverse action as part of or along with the initial demand letter/notification of claim. The notice of adverse action shall contain a statement that informs the household that it has 90 days to request a fair hearing on the claim.

(iv) The demand letter or accompanying notice of adverse action shall inform the household of the following:

(A) The type and amount of the claim, the intent to collect the claim from all adults in the household when the claim occurred; the intent to collect the claim, if not paid, by referral to other agencies, including private collection agencies, for the purposes of various claim collection methods;

(B) The opportunity to inspect and copy records related to the claim;

(C) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim;

(D) The opportunity to make a written agreement to repay the amount of the claim prior to the claim being referred to Federal tax refund offset, Federal salary offset, Federal administrative offset or other Federal claims collection actions; and

(E) That, if the claim becomes delinquent, the household may be subject to additional processing charges and the claim may be referred to the Department of Justice for litigation.

(v) The demand letter for any claim shall contain a due date for the submission of full repayment of the claim unless the State agency determines that allotment reduction will be invoked to repay the claim of a participating household. The due date shall be not later than 30 days after the date of the initial written notification or demand letter.

(4) *Due dates for repayment agreements.* (i) Any repayment agreement for any claim shall contain due dates for the periodic submission of payments.

(ii) The agreement shall specify that the household shall be subject to involuntary collection action(s) if payment is not received by the due date and the claim becomes delinquent.

(5) *Time frames and delinquency.* (i) Unless specified in either paragraph (g)(6)(iv) or (g)(7)(i) of this section, any claim shall be considered delinquent if either of the following occurs:

(A) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made.

(B) A satisfactory payment arrangement has been made for the claim and payment has not been received by the due date specified in the established repayment schedule.

(ii) The date of delinquency for a claim covered under paragraph (g)(5)(i)(A) of this section is the due date on the initial written notification/demand letter. The claim shall remain delinquent until payment is received in full, a satisfactory payment agreement is negotiated, or allotment reduction is invoked.

(iii) The date of delinquency for a claim covered under paragraph (g)(5)(i)(B) of this section is the due date of the missed installment payment. The claim shall remain delinquent until payment is received in full, allotment reduction is invoked, or, at the State agency's option, a new repayment schedule is negotiated.

(iv) A claim shall not be considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction and the State agency expects to begin collection on the claim once the prior claim(s) is settled. A claim may also not be considered delinquent if it is an IPV where collection is coordinated through the court system and the State agency has limited control over collection action.

(6) *Fair hearings and claims.* (i) Once a household timely requests a fair hearing on the existence or amount of the claim, all attempts by the State agency to collect the claim shall cease. A claim awaiting a fair hearing decision shall not be considered delinquent.

(ii) If the hearing official determines that a claim does, in fact, exist against the household, the household shall be sent another demand letter. The State agency may combine the demand letter with the notice of the hearing decision. Delinquency, as determined in paragraph (g)(6) of this section, shall be based on the due date of this subsequent demand letter and not on the initial pre-hearing demand letter sent to the household.

(iii) If the hearing official determines that a claim does not exist, the claim is disposed of in accordance with paragraph (g)(8) of this section.

(7) *Compromising claims.* (i) A State agency may compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be settled in three years.

(ii) The authority to compromise is limited to claims under $20,000.

(iii) A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17.

(iv) If the claim becomes delinquent, any compromised portion of that claim shall be reinstated to the claim balance.

(8) *Terminating and writing-off claims*—(i) A ''terminated claim'' is a claim in which all collection action has ceased. A ''written-off claim'' is a claim which is no longer considered a receivable subject to continued Federal and State agency collection and reporting requirements. All claims that are terminated shall be immediately written-off. If additional collection methodologies are developed in the future, State agencies may reinstate terminated claims.

(ii) State agencies shall terminate any claim if the claim meets one of the following criteria:

(A) The claim is found to be invalid in a fair hearing, administrative disqualification hearing or court determination. Collection efforts shall be pursued, however, if it is established at the hearing or in court that an overissuance did, in fact, occur. In instances where the court or hearing official determines that the act causing the overissuance was not intentional, the claim would continue to be pursued as an IHE or AE claim.

(B) It is discovered that all adult household members have died and the State agency is not planning to pursue collection from the estate.

(C) The claim has an outstanding balance of $25 or less and has been delinquent for 90 days or more.

(D) Any claim which the State agency has determined is not cost effective to pursue further collection activity. The

State cost-effectiveness criteria is subject to prior FNS approval.

(E) The claim has been delinquent for three years or more. The State agency may opt not to terminate the claim if prior collections have been realized through Federal or state tax refund offset, salary offset or any other similar collection mechanism.

(h) *Acceptable forms of payment*—(1) *Allotment reduction.* State agencies may collect claims as specified in paragraph (i)(1) of this section by reducing a household's benefits prior to issuance.

(2) *Cash and its equivalents.* (i) A State agency may accept payment for claims in cash or in any of its generally accepted equivalents. This includes check and money order. In addition, a State agency may accept payments with credit and/or debit cards if the State agency has the capability to accept such payments. Collections made using intercepts such as wage garnishment and tax offset are considered ''cash'' for FNS claim accounting and reporting purposes.

(ii) When an unspecified joint collection is received for a combined public assistance/food stamp recipient claim, each program shall receive its pro rata share of the amount collected.

(3) *Paper food coupons.* Households may pay claims using paper food coupons. If coupon books collected from households as payment for claims are returned intact and in usable form, the State agency may return them to coupon inventory. The State agency shall destroy any coupons or coupon books which are not returned to inventory and document as appropriate.

(4) *Benefits from electronic benefit transfer (EBT) accounts.* (i) State agencies shall allow a household to pay its claim using benefits from its active food stamp EBT benefit account.

(ii) Payments shall be accepted from inactive or stale EBT benefit accounts once the account is reactivated at the request of the household.

(iii) The State agency shall secure and retain documentation from the household authorizing a collection from an active or reactivated EBT benefit account.

(iv) A collection using EBT benefits shall be considered a non-cash collection and corresponding funds shall not be drawn from the Federal EBT benefit account by the State agency when this type of collection is made.

(v) In instances where the benefits are expunged and the State agency was unable to make the adjustment as outlined in paragraph (e)(1)(iv)(B) of this section when calculating the claim, the State agency shall adjust the amount of the claim by subtracting the amount expunged from the claim balance. These adjustments shall not be considered collections and the retention amounts in paragraph (m) of this section shall not apply to these transactions.

(i) *Collection methods*—(1) *Allotment reduction.* (i) Except as specified in paragraph (i)(1)(iv) of this section and upon notification as specified in paragraph (g)(3) of this section, the State agency shall automatically collect payments for any claim by reducing the amount of monthly benefits that a household receives from any participating household that contains an individual liable for that claim. Individuals in households which are subject to allotment reduction shall not be subject to involuntary collection by any other means.

(ii) For IPV claims, unless the household agrees to a higher amount, the amount of benefits to be recovered each month through allotment reduction shall be the greater of 20 percent of the household's monthly allotment/entitlement or $20 per month. The State agency has the option to base this amount on either the actual allotment or entitlement as long as this calculation is handled the same in all areas of the State.

(iii) For IHE and AE claims, unless the household agrees to a higher amount, the amount of benefits to be recovered each month through allotment reduction shall be the greater of 10 percent of the household's monthly allotment or $10 per month.

(iv) At the time the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset a claim.

(v) Collection via allotment reduction does not preclude the State agency from pursuing additional collections methods against any individual severely liable for payment of the claim who is not currently a member of a participating household.

(2) *Offsets to restored benefits.* State agencies shall immediately offset any restored benefits owed to the household by the amount of any outstanding claim. This is to be accomplished at any time during the claim establishment and collection process.

(3) *Lump sum payments.* State agencies shall accept any payment for a claim whether it represents full or partial payment. State agencies may accept payments in any of the acceptable formats.

(4) *Installment payments.* (i) State agencies may accept installment payments made for a claim as part of a negotiated repayment agreement.

(ii) Households failing to submit payment in accordance with the terms of the negotiated repayment schedule are considered delinquent and shall be subject to additional collection actions.

(5) *Intercept of unemployment compensation benefits.* (i) A State agency may, at its option, arrange for the intercept of unemployment compensation benefits for the collection of any claim.

(ii) A State agency may also attempt to recover claims from liable individuals by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from unemployment compensation.

(iii) Collections made by this method shall be treated as ''cash'' payments as described in paragraph (h)(2) of this section. This collection option may be included as part of a repayment agreement.

(6) *Other collection actions.* State agencies may employ any other collection actions to collect claims. These actions include, but are not limited to, referrals to collection and/or other similar private and public sector agencies, state tax refund and lottery offsets, wage garnishments, property liens and small claims court.

(7) *Coordination with Federal claims collection methods.* State agencies may continue collection efforts on claims as specified in this paragraph (i) after submitting such claims for collection as specified in paragraph (p) of this section.

(j) *Overpaid claims.* If a household has overpaid a claim, the State agency shall provide a refund for the overpaid amount as soon as possible after the overpayment becomes known. The household shall be paid by whatever method the State agency deems appropriate considering the household's circumstances.

(k) *Interstate claims collection.* (1) Unless a transfer occurs as outlined in paragraphs (k)(3) and (k)(4) of this section, a State agency remains responsible for initiating and continuing collection action on any food stamp claim regardless of whether the household remains in its jurisdiction.

(2) A State agency must respond within 30 days to inquiries concerning household participation received from another State agency if the agency has reason to believe that a household with an outstanding claim has relocated to that State.

(3) A State agency must accept the responsibility for collecting the remaining balance of any claim from another State agency if it is discovered that a relocated household with a claim

is receiving food stamp benefits in the receiving State agency's jurisdiction.

(4) A State agency may, but is not required to, accept the responsibility for collecting the remaining balance of any claim from another State agency if it is discovered that the relocated household is residing in but not receiving food stamp benefits in the receiving State agency's jurisdiction.

(l) *Claims discharged through bankruptcy.* State agencies shall act on behalf of, and as, FNS in any bankruptcy proceeding against bankrupt households with outstanding recipient claims. State agencies shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distribution of assets, to the same extent as FNS. Acting as FNS, State agencies shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which are appropriate under the circumstances. Any amounts collected under this authority shall be transmitted to FNS as provided in paragraph (n) of this section.

(m) *Retention rates.* (1) The State agency shall retain 20 percent of the value of IHE claims collected and 35 percent of the value of IPV claims collected. In addition, the State agency shall retain a total of 35 percent of the value of IHE claims collected via unemployment compensation benefit withholdings. These retention rates shall apply for claims and delinquent claims collection charges collected by the State agency, including the value of allotment reductions for the purpose of collecting claims but not reductions in benefits due to disqualification.

(2) The State agency shall not retain any percentage of the value of AE claims collected.

(n) *Submission of payments to FNS.* The State agency shall submit the value of funds collected for IHE, IPV or AE claims in accordance with instructions issued by FNS. Any payment to State agencies for claims collection retention must be made by electronic funds transfer.

(o) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for monitoring recipient claims against households. This accounting system shall consist of both the system of records maintained for individual debtors and the accounts receivable summary data maintained for these debts. At a minimum, the accounting system shall readily accomplish the following:

(1) Document the date of discovery, the circumstances which resulted in a claim, the procedures used to calculate the claim, the date of establishment, the methods used to collect the claim, delinquent claim collection charges, and the circumstances which resulted in the final disposition of the claim.

(2) Identify those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household.

(3) Identify those households whose claims have become delinquent either by not responding to the demand letter or failing to make an installment payment on their claim.

(4) Document how much money was collected in payment of a claim and periodically advise households of the status of their claim balances.

(5) Identify at certification households with outstanding claims.

(6) Produce and accurately support balances in collections and outstanding liabilities for the recipient claims established.

(7) At an interval determined by FNS, produce summary reports of the funds collected, the amount submitted to FNS, the claims established and terminated, the delinquent claims collection charges, the uncollected balance and the delinquency of the unpaid debt.

(8) On a quarterly basis, unless otherwise directed by FNS, reconcile summary balances reported to individual supporting records.

(p) *Federal claim collection methods (FCCM's)*—(1) *General.* Federal claim collection methods (FCCM's) include the Federal Income Tax Refund Offset Program (FTROP), the Federal Salary Offset Program (FSOP) and the Administrative Offset Program (ADOP) specified in this paragraph (p). Under procedures for FCCM's, State agencies are responsible for the recipient claim actions required in § 273.18, including the due process and related actions specified in this paragraph (p). For claims offset under FCCM's, State agencies receive the percentage of such collections specified in paragraph (m) of this section.

(i) *Claims subject to FCCM's.* (A) All claims shall be subject to collection by FCCM's only after the State agency has initiated one or more collection methods specified in paragraph (i) of this section. The requirement for a prior collection effort shall not apply when, as indicated by such evidence as demand letters returned as undeliverable, no liable individual can be located.

(B) State agencies shall submit all claims subject to collection by FCCM's as required in paragraph (p) of this section.

(ii) *Procedures and schedules.* State agencies shall submit data on claims subject to FCCM's in record formats, according to schedules, and by transmission methods as specified by FNS, and follow other technical and procedural guidelines as specified by FNS in the Manual for Federal Claims Collection Methods for the FSP (the FCCM manual).

(iii) *Identification of types of claim.* For each claim submitted under FCCM's, State agencies shall identify whether the claim is due to an inadvertent household error, intentional Program violation or a State agency administrative error. For any claim which is submitted for collection under FCCM's and which is a combination of more than one type of claim, State agencies shall specify the dollar amounts due to each type of claim.

(iv) *Updating claim records.* As instructed in the FCCM manual, State agencies shall update records of claims submitted under FCCM's by reducing the amounts of and deleting claims to reflect payments received, and by deleting claims which for other reasons are no longer subject to collection under FCCM's.

(v) *Hierarchy of collection methods.* Claims submitted under paragraph (p) of this section will be offset from Federal payments due to debtors as such payments are identified and are available for offset.

(2) *Federal Tax Refund Offset Program (FTROP)*—(i) *Criteria for claims subject to FTROP.* State agencies shall submit for collection from Federal income tax refunds all recipient claims which are delinquent as specified in paragraph (p)(1)(i) of this section and which are legally enforceable. Such claims must:

(A) Be claims with a dollar value which is at least the minimum dollar amount established by the Department of Treasury. (B) Be claims for which the date of the initial demand letter is within 10 years of January 31 of the offset year, except that claims reduced to final court judgments ordering individuals to pay the debt are not subject to this 10-year limitation.

(C) Not include any claim submitted for collection from an individual in a household which, as specified in paragraph (i)(1) of this section, is subject to allotment reduction

(D) Not include any claim for which collection is barred by a bankruptcy.

(E) Be claims for which individuals have been provided all of the opportunities for review and the notifications specified in paragraphs

(p)(2)(iii), (p)(2)(iv), and (p)(2)(v) of this section.

(ii) *Combined claims.* If a claim which is otherwise subject to collection under FTROP is a combination of two or more recipient claims, the date of the initial demand letter for each claim combined shall be within the 10-year range specified in paragraph (p)(2)(i)(B) of this section. Claims reduced to judgment shall not be combined with claims which are not reduced to judgment.

(iii) *60-Day notice to individuals.* (A) Prior to referring claims for collection under FTROP, the State agency shall provide individuals from whom it seeks to collect such claims with a notice, called a 60-day notice.

(B) The 60-day notice shall advise the debtor:

(*1*) What, according to State agency records, is the debtor's name and Social Security Number (SSN).

(*2*) That the debtor is liable for a specified unpaid balance of a recipient claim resulting from overissued food stamp benefits.

(*3*) That unless the debtor pays the claim within 60 days of the date of the notice or makes other repayment arrangements acceptable to the State agency, the State agency intends to refer the claim for deduction from the debtor's Federal income tax refund and/or collection by administrative offset from other Federal payments which may be payable to the debtor.

(*4*) That to pay the claim voluntarily or to discuss it, the debtor should contact the State agency. The 60-day notice shall include the name of the State agency contact for this purpose (such as an office, administrative unit and/or individual), the contact's street address or post office box, and a toll-free or collect telephone number for the State agency contact.

(*5*) That if the debtor's claim is referred for Federal collection, a charge for the administrative cost of collection will be added to the claim and that amount will also be deducted if the claim, or any portion of it, is deducted from the debtor's tax refund or other Federal payment.

(*6*) That the debtor is entitled to request a review of the intended collection action and that the State agency must receive such a request within 60 days of the date of the 60-day notice. Such a request must be written, must be submitted to the address provided in this notice and should contain the debtor's SSN. The claim will not be referred for offset from the debtor's tax refund or for collection from other Federal payments while the State agency's review is pending.

(*7*) That the Debt Collection Act of 1982, as amended (31 U.S.C. 3701), authorizes collection of claims by administrative offset after giving the debtor notice of that intended action and advising the debtor of the debtor's rights under that statute. This notice meets the requirements for providing such notice and advice.

(*8*) That the claim is not legally enforceable if a bankruptcy prevents collection of the claim.

(*9*) That the debtor may want to contact the debtor's local office of the Internal Revenue Service if the debtor is filing a joint Federal income tax return.

(C) In the certification letter required in paragraph (p)(2)(vi)(B)(*4*) of this section, the State agency shall include a statement that its 60-day notice complies with the requirements of paragraph (p)(2)(iii)(B) of this section.

(D) The State agency shall mail 60-day notices for claims to be referred for collection through FTROP and administrative offset according to the schedule provided by FNS.

(E) The State agency shall mail 60-day notices using the address information provided by Treasury unless the State agency receives clear and concise notification from the taxpayer that notices from the State agency are to be sent to an address different from the address obtained from Treasury. Such clear and concise notification shall mean that the taxpayer has provided the State agency with written notification including the taxpayer's name and identifying number (which is generally the taxpayer's SSN), the taxpayer's new address, and the taxpayer's intent to have notices from the State agency sent to the new address. Claims for which 60-day notices addressed as required in this paragraph (p)(2)(iii)(E) and are returned as undeliverable may be referred for collection.

(iv) *State agency action on requests for review.* (A) For all written requests for review received within 60 days of the date of the 60-day notice, the State agency shall determine whether or not the subject claims are past due and legally enforceable, and shall notify individuals in writing of the result of such determinations.

(B) The State agency shall determine whether or not claims are past due and legally enforceable based on a review of its records, and of documentation, evidence or other information the individual may submit.

(C) If the State agency decides that a claim for which a review request is received is past due and legally enforceable, it shall notify the individual that:

(*1*) The claim was determined past due and legally enforceable, and the reason for that determination. Acceptable reasons for such a determination include the individual's failure to provide adequate documentation that the claim is not past due or legally enforceable.

(*2*) The State agency intends to refer the claim for collection from the debtor's Federal income tax refund and/or collection from other payments which may be payable to the debtor by the Federal Government.

(*3*) The individual may ask FNS to review the State agency decision. FNS must receive the request for review within 30 days of the date of the State agency decision. FNS will provide the individual a written response to such a request stating its decision and the reasons for its decision. Pending the FNS decision, the claim will not be referred for collection from the debtor's Federal income tax refund and/or from other payments which may be payable to the debtor by the Federal Government.

(*4*) A request for an FNS review must include the individual's SSN and must be sent to the appropriate FNS regional office. The State agency decision shall provide the address of that regional office, including in that address the phrase ''Offset Review.''

(D) If the State agency determines that the claim is not past due or legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency shall take any actions required by food stamp regulations with respect to establishing the claim, including holding appropriate hearings and initiating collection action.

(E) The State agency shall not refer for offset a claim for which a timely State agency review request is received unless the State agency determines the claim past due and legally enforceable, and notifies the individual of that decision as specified in paragraphs (p)(2)(iv)(C)(*1*), (p)(2)(iv)(C)(*2*) and (p)(2)(iv)(C)(*3*) of this section.

(v) *FNS action on appeals of State agency reviews.* (A) FNS shall act on all timely requests for FNS reviews of State agency review decisions as specified in paragraph (p)(2)(iv)(C) of this section. A request for FNS review is timely if it is received by FNS within 30 days of the date of the State agency's review decision.

(B) If a timely request for FNS review is received, FNS shall:

(*1*) Complete a review and notification as specified in paragraphs (p)(2)(v)(C) and (p)(2)(v)(D) of this section, including providing State agencies and

individuals the required notification of its decision; or

(*2*) Notify the State agency that it has not completed its review and that the State agency must delete the claims in question from files to be certified to FNS according to paragraph (p)(2)(vi) of this section. If FNS fails to timely notify the State agency and because of that failure a claim is offset which FNS later finds does not meet the criteria specified in paragraph (p)(2)(i) of this section, FNS will provide funds to the State agency for refunding the charge for the offset fee.

(C) When FNS receives an individual's request to review a State agency decision, FNS shall:

(*1*) Request pertinent documentation from the State agency about the claim. Such documentation shall include such things as printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, 60-day notices, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations; and

(*2*) Decide whether the State agency correctly determined the claim in question is past due and legally enforceable.

(D) If FNS finds that the State agency correctly determined that the claim is past due and legally enforceable, FNS will notify the State agency and individual of its decision, and the reason(s) for that decision, including notice to the individual that any further appeal must be made through the courts.

(E) If FNS finds that the State agency incorrectly determined that the claim is past due and legally enforceable, FNS will notify the State agency and individual of its decision, and the reason(s) for that decision. FNS will also notify the State agency about any corrective action the State agency must take with respect to the claim and related procedures.

(vi) *Referral of claims for offset.* (A) State agencies shall submit to FNS a certified file of claims for collection through FTROP and administrative offset by the date specified by FNS in schedules which FNS will provide as stated in paragraph (p)(2)(ii) of this section.

(B) At the same time they submit the certified file required in paragraph (p)(2)(vi)(A) of this section, according to instructions which FNS will provide as stated in paragraph (p)(2)(ii) of this section, State agencies shall submit a letter which specifically certifies that:

(*1*) All claims contained in the certified file meet the criteria for claims referable for FTROP as specified in paragraph (p)(2)(i) of this section.

(*2*) For all claims on the certified file individuals have been provided all the opportunities for review and the notifications required in paragraphs (p)(2)(iii), (p)(2)(iv), and (p)(2)(v) of this section.

(*3*) The State agency has not included in the certified file of claims any claim which, as provided in paragraph (p)(2)(v) of this section, FNS notified the State agency is not past due or is not legally enforceable, any claim for which FNS notified the State agency that it has not completed a timely requested review, or any claim for which the State agency has not completed a timely requested review.

(*4*) The State agency's 60-day notice complies with the requirements of paragraph (p)(2)(iii)(B) of this section.

(*5*) How the State agency determined that the State agency contact information required in paragraph (p)(2)(vi)(C) of this section is accurate.

(C) The State agency shall provide to FNS according to FNS instructions, the name, address and toll-free or collect telephone numbers of State agency contacts to be included in IRS notices of offset, and shall provide FNS updates of that information if and when that information changes.

(vii) *Reporting FTROP and administrative offset activities.* As specified in the FCCM manual, State agencies shall:

(A) No later than the ten days after mailing 60-day notices, report the number of 60-day notices mailed and the total dollar value of the claims associated with those notices.

(B) Submit data security and voluntary payment reports.

(3) *Federal salary offset program (FSOP)*—(i) *Identification of recipient claims owed by Federal employees.* FNS will match all recipient claims submitted by State agencies under paragraph (p)(2) of this section against Federal employment records maintained by the Department of Defense and the United States Postal Service. FNS will identify recipient claims matched during this procedure with the list of recipient claims to be referred to the Department of Treasury for collection under paragraph (p)(2) of this section.

(ii) *Security and confidentiality agreements.* When FNS receives a list of Federal employees matched against recipient claims for a particular State agency, it will notify the State agency in writing accompanied by a data security and confidentiality agreement containing the requirements specified in paragraph (p)(3)(iii) of this section for the State agency to sign and return. When that agreement is returned, signed by an appropriate official of the State agency, FNS will provide the list of matched Federal employees to the State agency.

(iii) *Security and confidentiality of information.* State agencies which receive lists of Federal employees who have been identified as owing recipient claims shall take the actions specified in this paragraph (p)(3)(iii) to ensure the security and confidentiality of information about those employees and their apparent debts. In addition, those State agencies shall ensure that any contractors or other non-State agency entities to which the records may be disclosed also take these actions:

(A) By such means as card keys, identification badges and security personnel, limit access to computer facilities handling the data to persons who need to perform official duties related to the salary offset procedures. By means of a security package, limit access to the computer system itself to such persons;

(B) During off-duty hours, keep magnetic tapes and other hard copy records of data in locked cabinets in locked rooms. During on-duty hours, maintain those records under conditions that restrict access to persons who need them in connection with official duties related to salary offset procedures;

(C) Use the data solely for salary offset purposes as specified in this paragraph (p)(3), including not extracting, duplicating or disseminating the data except for salary offset purposes;

(D) Retain the data only as long as needed for FSOP purposes as specified in this paragraph (p)(3), or as otherwise required by FNS;

(E) Destroy the data by shredding, burning or electronic erasure; and

(F) Advise all personnel having access to the data about the confidential nature of the data and their responsibility to abide by the security and confidentiality provisions stated in this paragraph (p)(3)(iii).

(iv) *Record review.* State agencies shall review the claims records of matched Federal employees identified as owing recipient claims to determine the correct amount owed, and to remove from the list of claims any recipient claims which have been paid, which are being paid as specified in paragraph (i)(4) of this section, or which for other reasons are not collectible.

(v) *State agency advance notice of salary offset.* (A) Following the review specified in paragraph (p)(3)(iv) of this section, State agencies shall provide each Federal employee verified as

owing a recipient claim (debtor) with an advance notice of salary offset (advance notice). This advance notice shall be mailed to the debtor at the address provided by FNS, or shall be otherwise provided, within 60 days of State agency receipt of files of salary offset claims. This notice may be combined with the notice referred to under paragraph (p)(2) of this section.

(B) The advance notice shall advise debtors that:

(*1*) State agency records indicate that the debtor's Social Security Number (SSN) is [the number]. The advance notice shall also advise the debtor what the debtor's name is according to State agency records.

(*2*) The debtor is liable for a specified unpaid balance of a recipient claim resulting from overissued food stamp benefits.

(*3*) Unless the debtor pays the claim within 30 days of the date of the notice or makes other repayment arrangements acceptable to the State agency, the State agency intends to refer the claim for collection from the debtor's Federal salary and/or by administrative offset from other Federal payments which may be payable to the debtor.

(*4*) To pay the claim voluntarily or to discuss it, the debtor should contact the State agency. The advance notice shall include the name of the State agency contact for this purpose (such as an office, administrative unit and/or individual), the contact's street address or post office box, and a toll-free or collect telephone number for that contact.

(*5*) Debtors may submit documentation to State agencies showing such things as payments of claims or other circumstances which would prevent collection of claims. A claim is not collectible if a bankruptcy filing prevents collection of the claim. The State agency must receive the documentation within 30 days at the address provided in the notice. The debtor should provide his or her SSN with the documentation. The claim will not be referred for collection pending the State agency's review.

(*6*) The debtor was found to be employed by a Federal agency through a computer match. That match was conducted under the authority of and according to procedures required by the Privacy Act of 1974, as amended (5 U.S.C. 552a)

(*7*) Collection from the wages of Federal employees, including United States Postal Service employees, for debts such as claims for overissued food stamp benefits is authorized by the Debt Collection Act of 1982, as amended (31 U.S.C. 3701). That statute also authorizes collection of such debts by administrative offset from other Federal payments which may be payable to the debtor.

(vi) *State agency notice of review decisions.* The State agency shall notify debtors in writing of the State agency's decision on documentation submitted concerning payments and on other matters relating to the collection of claims under FSOP and administrative offset.

(vii) *Referral of claims to FNS.* (A) Within 90 days of the date of the advance notice, the State agency shall refer to FNS all claims for which the State agency does not receive timely and adequate response as specified in the advance notice. Such referrals shall consist of:

(*1*) For each claim, a copy of the advance notice, a copy of the initial demand letter, a record of payments received and the current balance of the claim; or

(*2*) If not previously provided to FNS, one copy each of the State agency's language for advance notices and demand letters, and for each claim the dates of the advance notice and the original demand letter, the amount of the claim cited in each of those two notices, the type of claim, a record of payments received and the current balance of the claim.

(B) If a debtor fails to make an installment payment within 60 days of the date the payment was due, State agencies shall refer the claim to FNS, reporting the default, and including the documentation specified in paragraph (p)(3)(v)(A) of this section.

(viii) *FNS actions on claims referred by State agencies.* Departmental procedures at 7 CFR 3.51–3.68 shall apply to claims referred by State agencies to FNS as required by paragraph (p)(3)(v) of this section subject to the following modifications:

(A) In addition to the definitions set forth at 7 CFR 3.52, the term ''debts'' shall further be defined to include recipient claims established according to this section; and the terms ''State agency'' and ''FNS'' shall be defined as set forth in § 271.2 of this chapter.

(B) In addition to providing the right to inspect and copy Departmental records as specified at 7 CFR 3.60(a), the Secretary shall provide copies of records relating to the debt in response to timely requests. For a request to be timely, FNS must receive it within 30 calendar days of the date of the notice of intent.

(C) Pursuant to 5 CFR 550.1104(d)(6), an opportunity to establish a written repayment agreement provided at 7 CFR 3.61 shall not be provided.

(D) The notice of intent for FSP salary offset shall comply with the requirements of the Departmental notice of intent which are set forth at 7 CFR 3.55, subject to the following modifications:

(*1*) In addition to the statement that the debtor has the right to inspect and copy Departmental records relating to the debt, the notice of intent shall state that if timely requested by the debtor, the Secretary shall provide the debtor copies of such records. It shall further advise, as required by 7 CFR 3.60(a), that to be timely such requests must be received within 30 days of the date of the notice of intent.

(*2*) The statement of the right to enter a written repayment agreement provided by 7 CFR 3.55(f) shall not be included.

(*3*) The notice of intent shall advise the debtor that, in addition to being subject to collection from the debtor's Federal salary, the recipient claim is subject to collection from other payments due to the debtor from the Federal Government. The notice shall state that such collection is authorized under the Debt Collection Act of 1982, as amended (31 U.S.C. 3701).

(4) *Administrative Offset Program (ADOP).* Claims submitted under FTROP and FSOP are also subject to collection through the Administrative Offset Program (ADOP) from other Federal payments otherwise due to debtors.

Dated: May 15, 1998.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 98–13848 Filed 5–27–98; 8:45 am]

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Thursday
May 28, 1998

Part III

The President

Executive Order 13085—Establishment of the Enrichment Oversight Committee

Federal Register
Vol. 63, No. 102
Thursday, May 28, 1998

Presidential Documents

Title 3—

The President

Executive Order 13085 of May 26, 1998

Establishment of the Enrichment Oversight Committee

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further the national security and other interests of the United States with regard to uranium enrichment and related businesses after the privatization of the United States Enrichment Corporation (USEC), it is ordered as follows:

Section 1. *Establishment.* There is hereby established an Enrichment Oversight Committee (EOC).

Sec. 2. *Objectives.* The EOC shall monitor and coordinate United States Government efforts with respect to the privatized USEC and any successor entities involved in uranium enrichment and related businesses in furtherance of the following objectives:

(a) The full implementation of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium (HEU) Extracted from Nuclear Weapons, dated February 18, 1993 (''HEU Agreement''), and related contracts and agreements by the USEC as executive agent or by any other executive agents;

(b) The application of statutory, regulatory, and contractual restrictions on foreign ownership, control, or influence in the USEC, any successor entities, and any other executive agents;

(c) The development and implementation of United States Government policy regarding uranium enrichment and related technologies, processes, and data; and

(d) The collection and dissemination of information relevant to any of the foregoing on an ongoing basis, including from the Central Intelligence Agency and the Federal Bureau of Investigation.

Sec. 3. *Organization.* (a) The EOC shall be Chaired by a senior official from the National Security Council (NSC). The Chair shall coordinate the carrying out of the purposes and policy objectives of this order. The EOC shall meet as often as appropriate, but at least quarterly, and shall submit reports to the Assistant to the President for National Security Affairs semiannually, or more frequently as appropriate. The EOC shall prepare annually the report for the President's transmittal to the Congress pursuant to section 3112 of the USEC Privatization Act, Public Law 104–134, title III, 3112(b)(10), 110 Stat. 1321–344, 1321–346 (1996).

(b) The EOC shall consist of representatives from the Departments of State, the Treasury, Defense, Justice, Commerce, Energy, and the Office of Management and Budget, the NSC, the National Economic Council, the Council of Economic Advisers, and the Intelligence Community. The EOC shall formulate internal guidelines for its operations, including guidelines for convening meetings.

(c) The EOC shall coordinate sharing of information and provide direction, while operational responsibilities resulting from the EOC's oversight activities will rest with EOC member agencies.

(d) At the request of the EOC, appropriate agencies, including the Department of Energy, shall provide day-to-day support for the EOC.

Sec. 4. *HEU Agreement Oversight.* The EOC shall form an HEU Agreement Oversight Subcommittee (the ''Subcommittee'') in order to continue coordination of the implementation of the HEU Agreement and related contracts and agreements, monitor actions taken by the executive agent, and make recommendations regarding steps designed to facilitate full implementation of the HEU Agreement, including changes with respect to the executive agent. The Subcommittee shall be chaired by a senior official from the NSC and shall include representatives of the Departments of State, Defense, Justice, Commerce, and Energy, and the Office of Management and Budget, the National Economic Council, the Intelligence Community, and, as appropriate, the United States Trade Representative, and the Council of Economic Advisers. The Subcommittee shall meet as appropriate to review the implementation of the HEU Agreement and consider steps to facilitate full implementation of that Agreement. In particular, the Subcommittee shall:

(a) have access to all information concerning implementation of the HEU Agreement and related contracts and agreements;

(b) monitor negotiations between the executive agent or agents and Russian authorities on implementation of the HEU Agreement, including the proposals of both sides on delivery schedules and on price;

(c) monitor sales of the natural uranium component of low-enriched uranium derived from Russian HEU pursuant to applicable law;

(d) establish procedures for designating alternative executive agents to implement the HEU Agreement;

(e) coordinate policies and procedures regarding the full implementation of the HEU purchase agreement and related contracts and agreements, consistent with applicable law; and

(f) coordinate the position of the United States Government on any issues that arise in the implementation of the Memorandum of Agreement with the USEC for the USEC to serve as the United States Government Executive Agent under the HEU Agreement.

Sec. 5. *Foreign Ownership, Control, or Influence (FOCI).* The EOC shall collect information and monitor issues relating to foreign ownership, control, or influence of the USEC or any successor entities. Specifically, the EOC shall:

(a) monitor the application and enforcement of the FOCI requirements of the National Industrial Security Program established by Executive Order 12829 with respect to the USEC and any successor entities (*see* National Industrial Security Program Operating Manual, Department of Defense 2–3 (Oct. 1994));

(b) monitor and review reports and submissions relating to FOCI issues made by the USEC or any successor entity to the Nuclear Regulatory Commission (NRC) under the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq*. (1994), and the USEC Privatization Act, Public Law 104–134, title III, 110 Stat. 1321–335 *et seq*. (1996);

(c) ensure coordination with the Intelligence Community of the collection and analysis of intelligence and ensure coordination of intelligence with other information related to FOCI issues; and

(d) ensure coordination with the Committee on Foreign Investment in the United States.

Sec. 6. *Domestic Enrichment Services.* The EOC shall collect and analyze information related to the maintenance of domestic uranium mining, enrichment, and conversion industries, provided that such activities shall be undertaken in a manner that provides appropriate protection for such information. In particular, the EOC shall:

(a) collect and review all public filings made by or with respect to the USEC or any successor entities with the Securities and Exchange Commission;

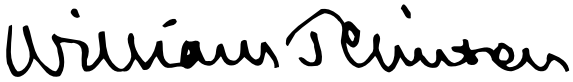
(b) collect information from all available sources necessary for the preparation of the annual report to the Congress required by section 3112 of the USEC Privatization Act, as noted in section 3(a) of this order, including information relating to plans by the USEC or any successor entities to expand or contract materially the enrichment of uranium-using gaseous diffusion technology;

(c) collect information relating to the development and implementation of atomic vapor laser isotope separation technology;

(d) to the extent permitted by law, and as necessary to fulfill the EOC's oversight functions, collect proprietary information from the USEC, or any successor entities, provided that the collection of such information shall be undertaken so as to minimize disruption to the normal functioning of the private corporation. For example, such information would include the USEC's financial statements prepared in accordance with standards applicable to public registrants and the executive summary of the USEC's strategic plan as shared with its Board of Directors, as well as timely information on its unit production costs, capacity utilization rates, average pricing and sales for the current year and for new contracts, employment levels, overseas activities, and research and development initiatives. Such information shall be collected on an annual basis, with quarterly updates as appropriate; and

(e) coordinate with relevant agencies in monitoring the levels of natural and enriched uranium and enrichment services imported into the United States.

Sec. 7. *Coordination with the Nuclear Regulatory Commission.* Upon notification by the NRC that it seeks the views of other agencies of the executive branch regarding determinations necessary for the issuance, reissuance, or renewal of a certificate of compliance or license to the privatized USEC, the EOC shall convey the relevant views of these other agencies of the executive branch, including whether the applicant's performance as the United States agent for the HEU Agreement is acceptable, on a schedule consistent with the NRC's need for timely action on such regulatory decisions.



THE WHITE HOUSE,
May 26, 1998.

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Billing code 3195–01–P

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Federal Register

Vol. 63, No. 102

Thursday, May 28, 1998

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Presidential Documents

Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**

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FEDERAL REGISTER PAGES AND DATES, MAY

24097–24382 1
24383–24738 4
24739–24910 5
24911–25152 6
25153–25386 7
25387–25746 8
25747–26062 11
26063–26420 12
26421–26710 13
26711–26954 14
26955–27192 15
27193–27438 18
27439–27662 19
27663–27814 20
27815–28216 21
28217–28474 22
28475–28888 26
28889–29088 27
29089–29338 28

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7088 24383
7089 25145
7090 25147
7091 25149
7092 25151
7093 26415
7094 26711
7095 27191
7096 27663
7097 27813
7098 28887
7099 28889

Executive Orders:
9080 (Amended by EO 13082) 26709
10692 (See EO 13082) 26709
12377 (See EO 13082) 26709
13081 24385
13082 26709
13083 27651
13084 27655
13085 29335

Administrative Orders:
Notices:
Notice of May 18, 1998 27661
Presidential Determinations:
No. 98–21 of April 28, 1998 26419
No. 98–22 of May 13, 1998 27665

5 CFR

351 26421
630 26421
890 28891
1605 24380

Proposed Rules:
351 26531

7 CFR

301 .....25153, 25747, 25748, 27439
723 26713
925 28475
944 28475
956 29089
979 25387
982 27815
1205 27818
1806 29091
1910 29091
1922 29091
1944 29091
1951 29091
1955 29091
1956 29091
1965 29091
3017 27667
3550 29091

Proposed Rules:
1 24467
59 27502
210 .....24686, 25569, 27162
220 .....24686, 25569, 27162
271 .....24985, 26250
272 29304
273 .....27511, 29304
274 27511
278 .....24985, 26250
279 .....24985, 26250
735 28488
958 26999
1160 28292
1710 24995
1714 24995
3015 28294
3016 28294
3019 28294

8 CFR

3 .....27441, 27823
213 27193
236 27441
240 27823
245 27823
274a 27823
299 27823

9 CFR

Proposed Rules:
93 26099
130 .....24473, 29061

10 CFR

11 25156
25 25156
60 26955
72 26955
73 26955
74 26955
75 26955
430 25996
1703 27667

Proposed Rules:
70 27870
835 28495

12 CFR

10 29092
Ch. III 25157
330 25750
Ch. VII 24097
703 24103
704 24103
960 27668
1720 26063

Proposed Rules:
922 26532
931 26532
933 26532

934 26532
935 25718
938 25718
941 26532
970 25718

13 CFR

120 24739
Proposed Rules:
120 ....24753, 27219

14 CFR

11 25572
21 26422
25 29070
27 26422
36 26063
39 ....24210, 24387, 24389, 24740, 24742, 24911, 24913, 24914, 24915, 25158, 25389, 26063, 26425, 26426, 26427, 26429, 26439, 26714, 26964, 26966, 26968, 27195, 27197, 27450, 27452, 27455, 27465, 27674, 27676, 27834, 28217, 28218, 28481, 28482, 28484, 29094, 29096, 29098, 29099, 29100, 29102
71 ....24389, 24390, 24744, 24745, 26445, 26446, 26447, 26448, 26449, 26450, 26451, 26969, 26970, 26971, 26972, 26973, 26974, 26975, 26976, 26977, 26978, 27199, 27474, 27476, 27477, 27478, 27479, 27480, 28891, 29103
91 26684
95 27205
97 ....25160, 25161, 28220, 28222, 28224
135 25572
207 28225
208 28225
212 28225
380 28225
Proposed Rules:
39 ....24136, 24138, 24756, 24758, 24760, 24762, 25179, 25180, 25182, 25781, 25787, 26100, 26102, 26104, 26106, 26107, 26109, 26111, 26112, 26742, 27001, 27002, 27011, 27514, 27516, 27685, 27687, 27688, 27690, 27692, 27694, 27696, 27870, 27872, 28294, 28299, 29144, 29146, 29148, 29150, 29151, 29153, 29155, 29157, 29159
71 ....24140, 24500, 24764, 24995, 27012, 27013, 27014, 27015, 27160, 27519, 29061, 29161, 29162, 29163, 29164, 29165, 29166, 29167
91 ....27876, 29061
108 26706
150 ....27876, 29061

15 CFR

270 24917
902 ....27481, 27485
911 24917
921 26716

16 CFR

260 24240
Proposed Rules:
Ch. I 24996
1615 ....27877, 27885
1616 ....27877, 27885

17 CFR

4 24390
232 29104
240 29106
Proposed Rules:
1 24142
34 26114
35 26114
201 29301
230 29168
240 29301
242 29301
249 29301
423 25417

18 CFR

Proposed Rules:
161 27526
385 27529

19 CFR

12 29121
24 29122
101 24746
162 29126
178 29126
191 27489
351 24391
354 24391
Proposed Rules:
123 27533

20 CFR

404 24927
416 24927

21 CFR

3 26690
5 ....26690, 27207
10 26690
16 26690
25 26690
50 26690
56 26690
58 26690
71 26690
101 ....26717, 26978
165 25764
173 29133
178 ....27835, 29135
184 ....24416, 28893
200 26690
201 ....26690, 27836
207 26690
210 26690
211 26690
310 26690
312 26690
314 26690
315 28301
369 26690
430 26066
431 26066
432 26066
433 26066
436 26066
440 26066
441 26066
442 26066
443 26066
444 26066
446 26066
448 26066
449 26066
450 26066
452 26066
453 26066
455 26066
460 26066
510 ....24105, 25163, 26981, 27844
520 26981
522 ....24106, 24420, 26981
524 26981
529 ....24105, 25163
556 24106
558 ....24420, 26719, 27844
601 28301
800 26690
801 24934
803 26069
804 26069
812 26690
1240 26077
Proposed Rules:
3 26694
5 26694
10 26694
16 26694
25 26694
50 26694
56 26694
58 26694
71 26694
100 27502
101 ....24253, 24593, 27016
120 24253
165 25789
200 26694
201 26694
207 ....26694, 26744
210 26694
211 26694
310 26694
312 26694
314 26694
334 27886
369 26694
429 26694
430 26127
431 26127
432 26127
433 26127
436 26127
440 26127
441 26127
442 26127
443 26127
444 26127
446 26127
449 26127
450 26127
452 26127
453 26127
455 26127
460 26127
800 26694
803 26129
804 26129
807 26744
809 29174
812 26694
864 29174
874 25794
1271 26744

22 CFR

41 24107

23 CFR

Proposed Rules:
658 27228

24 CFR

982 27434
3280 26386
Proposed Rules:
6 26022
180 26022
200 26702
203 24736
207 26702
570 26022
888 24846
3280 26392

26 CFR

Proposed Rules:
1 ....24765, 25796, 27534, 28958

27 CFR

Proposed Rules:
4 27017

28 CFR

2 ....25769, 25770, 25771
51 24108

29 CFR

4044 26982
4231 24421
Proposed Rules:
1910 24501
Ch. XVII 27698
2700 25183

30 CFR

56 28485
57 28485
75 28485
100 26719
202 ....26362, 27677, 28453
203 24747
216 ....26362, 27677, 28453
250 ....26362, 27677, 28453
918 25391
920 26451
Proposed Rules:
56 ....26756, 28496
57 ....26756, 28496
62 ....26756, 28496
70 ....26756, 28496
71 ....26756, 28496
218 25187
250 25187
256 25187
917 ....27229, 27698
934 25428
936 29174

31 CFR

285 25136
Ch. V 28896
515 ....27348, 27349
537 27846
Proposed Rules:
103 27230
208 26561

32 CFR

199 27677
323 25772
507 27208

701 25773
706 24747
2101 25736

33 CFR

100 ....24109, 24425, 27454
117 ....24426, 26983, 27679
165 ....24109, 24425, 25164, 27680, 27852, 29061, 29136
207 24427

Proposed Rules:

Ch. I 26756
20 27700
100 25187
117 ....27240, 27241
165 ....25189, 27019, 27243, 27893

36 CFR

223 24110

Proposed Rules:

211 27245

37 CFR

201 29137
202 29137
203 29137
204 29137
211 29137
260 25394

Proposed Rules:

201 26756
256 26756

38 CFR

21 ....26455, 27853

Proposed Rules:

20 27534
21 27701

39 CFR

3 28485
241 25166

40 CFR

9 26719
51 24429
52 ....24114, 24115, 24434, 24435, 24748, 24935, 25167, 25415, 25773, 26455, 26460, 26462, 26720, 27489, 27492, 28898, 28905
60 ....24436, 27854
61 27854
62 ....24841, 27494
63 ....24116, 24436, 24749, 26078, 26463, 27212, 28906
76 24116
80 24117
81 ....24445, 24748
82 ....26983, 28251
85 24429
86 24446
148 ....24596, 28556
156 25168
180 ....24118, 24119, 24450, 24451, 24452, 24936, 24939, 24941, 24949, 24955, 25775, 26082, 26089, 26097, 26466, 26472, 26473, 26481, 26986, 28253, 28258, 28909
194 27354
261 ....24976, 24963, 28556
266 28556
268 ....24596, 28556
271 ....24453, 28556
279 24963
281 24453
300 ....25169, 27855
302 24596
721 24120

Proposed Rules:

22 25006
51 25902
52 ....25191, 25796, 26561, 26562, 26564, 27541, 27895, 27897, 28958, 28960
59 25006
60 24515
62 27542
63 ....24515, 24765, 26561, 27247, 28960
72 28032
75 28032
76 25902
81 27247
89 28309
96 25092
131 26565
136 28868
141 ....25430, 26137, 27020
142 ....25430, 27020
194 27901
258 25430
260 25430
261 ....25006, 25430, 25796
264 25430
265 25430
266 25430
270 25430
279 ....25006, 25430
300 ....28317, 28961

41 CFR

101-35 27682
Ch. 301 26488

42 CFR

60 25777
409 26252
410 ....26252, 26318
411 26252
412 26318
413 ....26252, 26318
415 26318
422 25360
424 26252
483 26252
485 26318
489 26252
493 26722

Proposed Rules:

405 ....25576, 26565
412 ....25576, 26565
413 ....25576, 26565, 27251

44 CFR

64 27496
65 ....27856, 28261, 28265, 28267, 28268
67 ....28273, 28280
206 24969

Proposed Rules:

67 ....28323, 28331
206 ....24143, 25010

45 CFR

1215 26488
2507 26488

Proposed Rules:

46 27794
142 25272

46 CFR

360 28911

Proposed Rules:

Ch. I 26756
1 26566
5 27700
10 26566

47 CFR

0 ....24121, 25778
1 ....24121, 24126, 26992
43 24120
54 27857
63 24120
64 24120
68 25170
69 ....26495, 26497
73 ....24454, 24970, 26992, 26993, 27212, 27498, 27857, 27858, 27859, 28486
101 ....26502, 27625

Proposed Rules:

Ch. 1 ....26758, 27021
0 26758
1 ....26758, 28456
13 26758
22 ....26138, 26758
24 26758
26 26758
27 26758
28 26758
54 ....27542, 28339
61 25811
64 26138
73 ....24517, 24518, 27544, 27902
76 ....24145, 27545
80 26758
87 26758
90 26758
95 26758
97 26758
101 26758

48 CFR

225 28284
232 27682
252 ....27682, 28284, 28486, 29061
401 26993
402 26993
403 26993
407 26993
408 26993
409 26993
411 26993
416 26993
419 26993
422 26993
424 26993
425 26993
426 26996
432 26993
434 26993
436 26993
452 26993
970 25779
1816 28285
1842 27859
1853 27859
2802 26738
2846 26738
5243 24129
5252 24129

Proposed Rules:

1 25382
4 25382
12 25382
14 25382
19 25382
26 25382
27 25382
32 25382
41 25382
52 25382
204 25438
208 25438
213 25438
216 25438
217 25438
219 25438
223 25438
225 25438
237 25438
242 25438
246 25438
247 25438
253 25438
1609 27902

49 CFR

223 24630
232 ....24130, 27212
239 24630
365 28286
372 28286
373 28286
374 28286
375 27126
377 ....27126, 28286
393 24454
553 26508
571 ....28912, 28922, 29139
1152 28287
1155 28287

Proposed Rules:

195 27903
216 28496
223 28496
229 28496
231 28496
232 28496
238 28496
393 26759
544 24519
575 27911
1146 27253

50 CFR

17 ....25177, 26517
23 26739
229 27860
285 27862
600 ....24212, 24970, 26250, 27213
622 ....27485, 27499
648 ....25415, 27481, 27866
660 ....24970, 24973, 26250
679 ....24984, 27869

Proposed Rules:

17 ....26764, 27255, 28343, 28963
20 ....27548, 28343
217 24148
300 24751
600 ....24522, 26570
622 24522
648 ....25442, 27256, 27550
654 26765
660 27035

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 28, 1998

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
- Alpha-hydro-omega-hydroxy-poly(oxyethylene etc.; published 5-28-98

Food additives: o
- Polymers; published 5-28-98

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
- Chesapeake Bay and tributaries, including Chesapeake and Delaware Canal; regulated navigation area; published 2-27-98
- Los Angeles Harbor-San Pedro Bay, CA; safety zone; published 4-28-98

Regattas and marine parades:
- Laughlin Aquamoto Sports Challenge and Expo; published 1-21-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Bell; published 5-13-98

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
- School bus pedestrian safety devices; conspicuity requirements for stop signal arms; published 5-28-98

TREASURY DEPARTMENT

Customs Service

Merchandise; special classes:
- Nonroad engines; emissions standards; published 5-28-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Nectarines and peaches grown in California; comments due by 6-1-98; published 4-1-98

Onions grown in—
- Idaho and Oregon; comments due by 6-1-98; published 5-15-98

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Livestock and poultry disease control:
- Brucellosis; increased indemnity for cattle and bison; comments due by 6-1-98; published 3-31-98

Plant-related quarantine, foreign:
- Rhododendron established in growing media; importation; comments due by 6-1-98; published 4-30-98

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
- Conservation farm option program; comments due by 6-1-98; published 4-2-98

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Pathogen reduction; hazard analysis and critical control point (HACCP) systems—
  - Product processing categories; policy clarification; comments due by 6-1-98; published 4-1-98

AGRICULTURE DEPARTMENT

Freedom of Information Act; implementation; comments due by 6-3-98; published 5-4-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Johnson's seagrass; comments due by 6-4-98; published 4-20-98

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Scallop; comments due by 6-1-98; published 3-31-98
  - Scallop; comments due by 6-1-98; published 4-16-98
  - Shortraker/rougheye rockfish; comments due by 6-1-98; published 4-2-98
- Highly migratory species fisheries—
  - Vessel monitoring systems requirements; implementation options; comments due by 6-1-98; published 4-17-98
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 6-5-98; published 5-15-98

COMMODITY FUTURES TRADING COMMISSION

Practice and procedure:
- Miscellaneous amendments; comments due by 6-2-98; published 4-3-98

CONSUMER PRODUCT SAFETY COMMISSION

Poison prevention packaging:
- Child-resistant packaging requirements—
  - Minoxidil preparations with more than 14 mg of minoxidil per package; comments due by 6-1-98; published 3-17-98

DEFENSE DEPARTMENT

Vocational rehabilitation and education:
- Reservists education—
  - Monthly verification of enrollment and other reports; comments due by 6-1-98; published 3-31-98

DEFENSE DEPARTMENT

Navy Department

Acquisition regulations:
- Shipbuilding contracts; price adjustments; comments due by 6-1-98; published 5-1-98

EDUCATION DEPARTMENT

Elementary and secondary education:
- Elementary and Secondary Education Act; implementation—
  - Helping disadvanaged children meet high standards; comments due by 6-1-98; published 3-31-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Halogenated solvent cleaning; temporary stay extension; comments due by 6-4-98; published 5-5-98

Air pollution; standards of performance for new stationary sources:
- Dupont test program for hydrogen-fueled flares; comments due by 6-3-98; published 5-4-98

Air programs:
- Accidental release prevention—
  - Risk management programs; comments due by 6-1-98; published 4-17-98

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 6-1-98; published 4-30-98
- Connecticut et al.; comments due by 6-1-98; published 4-30-98
- New York; comments due by 6-1-98; published 4-30-98

Hazardous waste program authorization:
- Oklahoma; comments due by 6-1-98; published 4-30-98

Hazardous waste program authorizations:
- Oklahoma; comments due by 6-1-98; published 4-30-98

Hazardous waste:
- Identification and listing—
  - Exclusions; comments due by 6-1-98; published 4-15-98
  - Recycled used oil management standards; comments due by 6-5-98; published 5-6-98
  - Recycled used oil management standards; comments due by 6-5-98; published 5-6-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Propiconazole; comments due by 6-2-98; published 4-3-98

Practice and procedure:
- Civil penalties administrative assessment, compliance or corrective action orders issuance, and permits revocation, termination, or suspension; comments due by 6-5-98; published 5-6-98

Water pollution control:
- Water quality standards—
  - Alabama; comments due by 6-3-98; published 5-13-98
  - Polychlorinated biphenyls (PCBs); priority toxic pollutants numeric criteria; States' compliance; comments

due by 6-1-98; published 4-2-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Operations support systems, interconnection, and operator services and directory assistance; performance measurements and reporting requirements; comments due by 6-1-98; published 5-15-98

Radio stations; table of assignments:

Idaho; comments due by 6-1-98; published 4-21-98

New Mexico; comments due by 6-1-98; published 4-21-98

New York; comments due by 6-1-98; published 4-21-98

Oklahoma et al.; comments due by 6-1-98; published 4-21-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Child support enforcement program:

Grants to states for access and visitation programs; monitoring, evaluation, and reporting; comments due by 6-1-98; published 3-31-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

New drug applicants; patent holder notification requirements; clarification; comments due by 6-4-98; published 3-6-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

End-stage renal disease—

Home health agency costs for cost reporting periods beginning on or after October 1, 1997; schedule of per-beneficiary limitations; comments due by 6-1-98; published 3-31-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health resources development:

Organ procurement and transplantation network; operation and performance goals; comments due by 6-1-98; published 4-2-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Flatwoods salamander; comments due by 6-1-98; published 3-25-98

Pecos or puzzle sunflower; comments due by 6-1-98; published 4-1-98

Yreka phlox from Northern California; comments due by 6-1-98; published 4-1-98

Migratory bird hunting:

Annual hunting regulations and Indian tribal seasons requests; comments due by 6-2-98; published 3-20-98

Canada goose; special permit; comments due by 6-1-98; published 3-31-98

INTERIOR DEPARTMENT

National Park Service

National Park System:

Glacier Bay National Park, AK; commercial fishing activities; comments due by 6-1-98; published 4-30-98

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Kentucky; comments due by 6-2-98; published 5-18-98

LABOR DEPARTMENT

Employment and Training Administration

Indian and Native American welfare-to-work grants program; governing provisions; comments due by 6-1-98; published 4-1-98

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards:

Methylene chloride; occupational exposure; comments due by 6-3-98; published 5-4-98

PENSION BENEFIT GUARANTY CORPORATION

Multiemployer and single-employer plans:

Valuation and payment of lump sum benefits; comments due by 6-1-98; published 4-30-98

PERSONNEL MANAGEMENT OFFICE

Employment:

Personnel records and training; comments due by 6-1-98; published 4-1-98

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

Copper Canyon, Lake Havasu, Colorado River; regulated navigation area; comments due by 6-1-98; published 4-2-98

Savannah River, GA; safety zone; comments due by 6-1-98; published 4-30-98

Vocational rehabilitation and education:

Reservists education—

Monthly verification of enrollment and other reports; comments due by 6-1-98; published 3-31-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Agusta S.p.A.; comments due by 6-1-98; published 4-1-98

Airbus; comments due by 6-1-98; published 4-30-98

Bell; comments due by 6-1-98; published 4-1-98

Boeing; comments due by 6-1-98; published 4-15-98

British Aerospace; comments due by 6-1-98; published 4-1-98

Class E airspace; comments due by 6-5-98; published 5-6-98

Dassault; comments due by 6-1-98; published 4-30-98

Dornier; comments due by 6-4-98; published 5-5-98

Eurocopter France; comments due by 6-1-98; published 4-2-98

GKN Westland Helicopters Ltd.; comments due by 6-1-98; published 4-1-98

Glaser-Dirks Flugzeugbau GmbH; comments due by 6-1-98; published 4-27-98

McDonnell Douglas; comments due by 6-4-98; published 4-20-98

Raytheon; comments due by 6-4-98; published 4-27-98

Rolls-Royce, plc; comments due by 6-1-98; published 4-30-98

Class E airspace; comments due by 6-1-98; published 3-25-98

VOR Federal airways; comments due by 6-4-98; published 5-5-98

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Prohibited drug use and alcohol misuse prevention in transit operations:

Safety-sensitive functions in drug and alcohol rules; ≥maintenance≥ definition; comments due by 6-1-98; published 3-2-98

TREASURY DEPARTMENT

Comptroller of the Currency

International banking activities:

International loans; accounting fee treatment; comments due by 6-5-98; published 4-6-98

TREASURY DEPARTMENT

Fiscal Service

Bonds and notes, U.S. Treasury:

U.S. savings bonds; creation of new categories of issuing agents and expansion of means of sales, including electronic sales; comments due by 6-1-98; published 4-30-98

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Allocation and sourcing of income and deductions among taxpapers engaged in global dealing operation; comments due by 6-4-98; published 3-6-98

Foreign sales corporation transfer pricing; source and grouping rules; comments due by 6-1-98; published 3-3-98

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:

Reservists education—

Monthly verification of enrollment and other reports; comments due by 6-1-98; published 3-31-98