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June 3, 1998

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Presidential Documents

Title 3—

The President

Proclamation 7100 of May 29, 1998

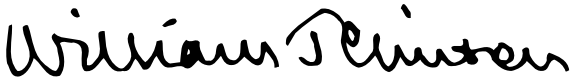
Death of Barry M. Goldwater

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of Barry M. Goldwater, former Senator from the State of Arizona, I hereby order, by the authority vested in me as President by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions on Wednesday, June 3, 1998. I also direct that the flag shall be flown at half-staff on that day at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 98–14903
Filed 6–2–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7101 of May 29, 1998

National Alternative Fuels Week, 1998

By the President of the United States of America

A Proclamation

In today's robust and growing economy, the United States faces major challenges in meeting the ever-increasing demand for transportation goods and services while minimizing the adverse impact on our energy resources, environment, and future prosperity.

Today's American transportation system remains enormously dependent on oil. Highway transportation alone accounts for more than half of our Nation's oil demand, and the number of vehicles and miles driven on our roads is steadily increasing. Transportation is the second largest contributor to U.S. greenhouse gas emissions and will likely be the most significant contributor by the year 2000.

Fortunately, vehicles that are powered by alternatives to conventional gasoline and diesel fuels are already on the market, and domestically produced, renewable alternative fuels are readily available to American consumers. These alternative fuels—such as ethanol, methanol, natural gas, propane, electricity, and biodiesel—can make significant contributions to our energy security and environmental quality. By increasing the use of alternative fuel vehicles (AFVs), we can reduce our demand for imported oil, create new products, jobs, and businesses, and improve air quality by dramatically reducing carbon dioxide emissions as well as the hydrocarbons, nitrogen oxides, and particulate matter that are such major contributors to urban air pollution.

More than 350,000 AFVs are already on the road in the 60 communities participating in the Department of Energy's Clean Cities Program. This program is fostering the development of AFV markets in a network of cities across the country through partnerships among fuel suppliers, vehicle fleet operators, Federal, State, and local governments, and private sector organizations. Through the efforts of program participants, we are moving closer to our goal of building a transportation system for our Nation that meets the energy, economic, and environmental needs of Americans today and of generations yet to come.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 31 through June 6, 1998, as National Alternative Fuels Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98–14904
Filed 6–2–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7102 of May 29, 1998

Small Business Week, 1998

By the President of the United States of America

A Proclamation

Our great Nation is renowned worldwide as the land of opportunity. Americans are dedicated to bettering their lives, pursuing the American Dream with entrepreneurial spirit and ingenuity.

Small business owners across our country are among the true heroes of our great American success story. We owe much of today's prosperity to our Nation's 23.6 million small businesses. Small businesses represent 99.7 percent of all employers, account for 47 percent of all sales in the country, employ 53 percent of the private work force, and are responsible for more than half of the private gross domestic product. New business formation reached another record level in 1997, with 884,609 new employer firms—the highest ever, and a 5-percent increase over the last record set in 1996.

Recognizing the extraordinary contributions of small businesses to the strength and continuing growth of our economy, my Administration has worked hard to implement policies and programs designed to help small businesses develop and expand. We are directing tax relief to more small businesses, expanding access to capital, supporting innovation, providing regulatory relief, opening overseas markets to entrepreneurs, and strengthening America's work force through investments in education, training, and better benefits.

The U.S. Small Business Administration plays a key role in my Administration's efforts to help Americans start, build, and grow their small businesses into the 21st century. Since the end of fiscal year 1992, the SBA extended or guaranteed more than $48 billion in loans to small businesses, more than in the previous 12 years combined. The SBA's current portfolio guarantees $29 billion in loans to 200,000 small business owners who otherwise would not have access to capital. Realizing the enormous potential of today's revolution in technology, we are leading the world in the development of electronic commerce and in using the Internet to help advance small business opportunities.

As Americans observe Small Business Week, let us pay tribute to the hundreds of thousands of small business owners across our Nation whose energy, innovative spirit, and faith in our system of free enterprise have done so much to generate the unprecedented prosperity and growth we enjoy today.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 31 through June 6, 1998, as Small Business Week. I call upon Government officials and all the people of the United States to observe this week with appropriate ceremonies, activities, and programs that celebrate the achievements of small business owners and encourage the development of new enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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Rules and Regulations

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

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 209

[INS No. 1829–96]

RIN 1115–AD73

Adjustment of Status of Refugees and Asylees: Processing Under Direct Mail Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service or INS) regulations regarding the filing and processing of applications by alien refugees and asylees to adjust their status to that of lawful permanent residents. This rule expands the Service's Direct Mail Program to require refugees and asylees to file their applications for adjustment of status directly with an INS service center for processing. This procedural change is designed to improve customer service to these applicants.

DATES: *Effective date:* This interim rule is effective July 6, 1998.

Comment Date: Written comments must be submitted on or before August 3, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20563. To ensure proper handling, please reference INS No. 1829–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Staff Officer, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, Telephone: (202) 514–5014, or Ronald E. Johnson, Center Adjudications Officer, California Service Center, Immigration and Naturalization Service, 24000 Avila Road, Laguna Niguel, CA 92677, Telephone: (714) 360–2872.

SUPPLEMENTARY INFORMATION:

Authority

Section 209(b) of the Immigration and Nationality Act (Act) provides that refugees and asylees in the United States may be adjusted to the status of permanent residents.

Background

What Are the Current Procedures for the Adjustment of Refugees and Asylees to Permanent Resident Status?

A. Refugees

The procedure by which refugees acquire permanent resident status is an inspection process divided into three stages, as follows:

(1) A personal interview of each refugee applicant is conducted by an immigration officer outside the United States to determine eligibility for refugee status and admissibility to the United States. Each applicant is questioned under oath and signs a sworn statement concerning admissibility. A medical examination is performed, and security checks, when required, are conducted prior to travel to the United States. Remaining questions of identity, eligibility for refugee status, and admissibility to the United States are resolved at this time.

(2) The applicant is admitted to the United States as a refugee.

(3) Following a personnel appearance at a local Service office 1 year after the date of admission to the United States, the refugee is inspected, interviewed, and adjusted to the status of a lawful permanent resident.

Refugees are currently required to submit fingerprints and biographic forms which are processed prior to determining there admissibility to permanent resident status. The fingerprints are referred to the Federal Bureau of Investigation (FBI) and the biographic data circulated to the FBI and other agencies to determine if any information exists which would bar the applicant from permanent residence. Responses to these agency checks, positive or negative, must be received prior to admitting the refugee to permanent residence. Once the responses have been received, the inspection and examination interview is conducted (if the applicant has not already been interviewed prior to that receipt). Upon successful completion of the inspection and examination interview, the refugee applicant is granted lawful permanent residence in the United States.

B. Ayslees

The adjustment process for asylee is similar to that for a refugee, with some exceptions. The process by which asylees acquire permanent resident status in the United States has two stages, as follows:

(1) An alien in the United States applies for asylum, followed by an interview before an asylum officer or a hearing before an immigration judge. On the application and during the interview or hearing, the applicant must establish his or her eligibility for status as a refugee.

(2) After 1 year since the grant of asylum, the asylee applies for permanent resident status by filing Form I–485, Application to Register Permanent Residence or Adjust Status, which the Service officer uses to determine the applicant's continuing eligibility for benefits under section 209(b) of the Act. Required fingerprints are generally collected and processed before the applicant appears for interview at a Service office, if an interview is required.

How Can the Service Improve and Streamline This Adjustment Process?

Applications and petitions for immigration benefits, particularly those for adjustment of status and for naturalization, are being filed in record numbers. As a result, processing time for these applications has lengthened significantly. The processing of refugees and asylees for permanent residence consumes a large amount of resources. The Service believes that the refugee adjustment process will be improved by requiring applicants to submit the written information concerning themselves on a single prescribed form, the I–485, as asylees already do. Use of the Form I–485 will help to ensure a more orderly and efficient process of

their applications for permanent resident status; it will also enable the Service to track cases more effectively, respond more quickly to status inquires, and provide better overall service to these applicants.

The Service also believes that the processing of refugee and asylee adjustment applications can be more efficiently managed at a centralized location through the Direct Mail Program. Under the Direct Mail Program, applicants for certain designated immigration benefits mail their applications or petitions directly to an INS service center for processing instead of submitting them to an INS local office. The Service is incrementally expanding the Direct Mail Program to include all applications and petitions, except where it is impracticable to do so. Expansion to Direct Mail is a key element in the Service's strategy to reduce processing times and improve customer service. It is also consistent with the Service's current adjustment of status interview policy, which encourages field personnel to focus resources on interviewing those cases in which in-person examinations are actually needed. The types of adjustment applications selected for the Direct Mail Program have been those with the lowest known fraud risk. However, as an indicator of adjudication quality, the statistical evidence of denial rates for adjustment cases currently being adjudicated by the service centers compares favorably with the overall denial rates for those adjudicated at district offices. Including applications for adjustment of status by refugees and asylees in the Direct Mail Program allows the Service to redirect resources to improve service at local offices while moving closer to the goal of full Direct Mail implementation.

What Does This Interim Rule do?

This interim rule streamlines the processing of request for adjustment of status submitted by refugees and asylees to one centralized location. Under this rule, refugees or asylees are required to mail their Form I–485 applications for adjustment of status directly to the designated service center, at this time the Nebraska Service Center (NSC), for processing. It is believed that the initial filing and data entry for all refugee and asylee adjustment applications can best be accomplished at a single service center having the personnel, training, and technical resources to process them efficiently and consistently.

Under this new Direct Mail procedure, the service center will evaluate each application and determine whether an interview is necessary. The Service may decide to adjudicate an application without an interview in cases where the evaluation does not indicate questions concerning the applicant's eligibility for adjustment of status. Service center adjudication officers are trained to refer to the local offices any application that appears to warrant an interview.

The service center will refer to the local offices for interview and adjudication all cases indicating higher risk or complex issues, such as criminal charges, indications of fraud, changes in the country conditions upon which a refugee or asylees status was based, or asylees who had entered the United States without inspection. As an additional tool to monitor the integrity of the adjudications process and any emerging trends affecting the exercise of the Service's interview determination authority, the service center will refer to the local offices for interview a random sample of at least 2 percent of all other refugee an asylee adjustment applications. In all cases where a service center refers an adjustment application to a local office for adjudication, the receiving office will complete and return to the service center an interview referral processing worksheet, which will be reviewed as an indicator for any additional interview referral criteria that should be implemented. Those cases which are referred to district offices for interview will be adjudicated by the district directors of those offices.

Other statutory references in §§ 209.1 and 209.2 are being amended to reflect revised sections of the Act, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Section 341 of IIRIRA amended section 212(a)(1)(A)(ii) of the Act regarding vaccination requirements for immigrants. The Centers for Disease Control have provided the designated civil surgeons with instructions regarding the vaccination assessment and the vaccination supplement. The Service has determined that these vaccination requirements do not apply to aliens seeking admission as refugees under section 207 of the Act, but that they do apply to refugees at the time of their application for adjustment to permanent resident status under section 209(a) of the Act, as well as to asylees applying for adjustment under section 209(b) of the Act.

What are the Changes in Refugee Adjustment Processing?

Section 209(a) of the Act states that a refugee must be returned to the ''custody'' of the Service for inspection and examination. There is no comparable statutory requirement for asylees applying for adjustment of status. The ''custody'' requirement for refugees applying for adjustment of status can be met if the Service maintains sufficient control over the applicants to make a determination of their admissibility to the United States as immigrants and to institute removal procedures if they should be found to be inadmissible. Additionally, a procedure that requires refugees to apply for adjustment of status and gives the Service the authority to compel them to appear before an officer of the Service satisfies the requirements of the Act. Although the Service may require refugees seeking adjustment of status to be interviewed by an immigration officer, the Service does not have to interview each and every refugee.

To facilitate the extension of the Direct Mail Program to include the adjustment of status of refugees, the Service is amending § 209.1 to require the submission of a Form I–485, without fee to the Service. The application and accompanying documents will be reviewed to determine whether the applicant is admissible to the United States and otherwise eligible of permanent residence, has been physically present in the United States for at least 1 year, and has not already acquired permanent resident status on some other basis.

In requiring refugees seeking permanent residence to submit a Form I–485, the Service constructively places them under its custodial control. At the same time, the direct filing of a Form I–485 with the service center enable the INS to exercise discretion in determining when an in-person interview with the applicant is necessary. With this streamlined process, the Service can enhance customer service and make more effective use of Service resources.

Although this streamlined Direct Mail process requires refugee applicants for permanent residence to file a Form I–485, they will continue to be exempted from a filing fee. In refraining from charging this class of applicants the normal Form I–485 filing fee, the Service is following its established policy of assisting refugees in their settlement and assimilation into American society.

The file of a refugee generally includes the original medical examination report issued by the panel physician prior to the applicant's entry into the United States. The regulations at § 209.1(b) provide that a refugee is not required to repeat the entire medical examination if no medical grounds of inadmissibility arose during the initial

medical examination prior to entry. Such refugee applicants for adjustment of status under section 209(a) of the Act need only comply with the vaccination requirement, by submitting a vaccination supplement that has been completed by a designated civil surgeon. The Service is developing special procedures to address concerns about the difficulties encountered by some refugees in complying with the vaccination requirements.

What are the Changes in Asylee Adjustment Processing?

To facilitate the extension of the Direct Mail Program to include applications for adjustment of status filed by asylees, the Service is amending § 209.2 by replacing the phrase ''district director'' with ''director'' wherever it appears. These changes permit the Service to assign adjudicative jurisdiction for asylum-based permanent residence applications to either district directors or service center directors.

The Service is amending § 209.2(c) to require filing of an asylum-based Form I–485 with the Service office identified in the instructions accompanying the Form I–485 (which at this time will be the NSC). This amendment allows the Service to more effectively and efficiently respond as its workload changes.

Section 209.2(e) is being amended to allow the Service to review an application for asylum-based permanent residence and determine if a final decision on the application can be made without an interview. In this process, the officer will determine if there are facts or issues that need to be resolved in an interview, or whether the application meets other referral criteria developed by the Service. The application will be transferred to a local office for processing if it is determined that an interview with the applicant is necessary. If the local office discovers evidence of fraud in the original application for asylum, or determines that the applicant no longer qualifies as a refugee under section 101(a)(42) of the Act, the evidence will be referred to the Asylum Office having jurisdiction over the applicant's place of residence, for a determination whether asylee status is to be revoked. Once the Asylum Office has resolved the issues regarding revocation, the local office will complete its adjudication of the Form I–485 application.

Medical examinations are not required from aliens who apply for asylum, because they are, by that time, already in the United States and not seeking admission. However, when asylees apply under section 209(b) of the Act for admission to permanent resident status 1 year after having been granted asylum, they must submit the results of a full medical examination, completed by a designated civil surgeon in the United States, as provided in § 209.2(d). This rule amends § 209.2(d) to include the vaccination assessment requirement as part of the civil surgeon's examination report.

What Applications are Included in the Direct Mail Process for an Adjustment Application Filed by a Refugee or Asylee?

As of June 3, 1998, the following applications must be mailed to the NSC (see section entitled ''Modification of filing instructions on relating forms'') instead of being filed with a local INS district office:

(1) Form I–485, Application to Register Permanent Residence or Adjust Status (including adjustment applications submitted by eligible dependents of the principal applicant), if it is being filed on the basis of refugee status or an approved asylum application (Form I–589, Application for Asylum or for Withholding of Deportation);

(2) Form I–643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status;

(3) Form I–131, Application for Travel Document, filed on the basis of a refugee or an asylum-based Form I–485; except that an applicant who is seeking advance parole authorization may file the Form I–131 either at a service center or at a district office;

(4) Form I–602, Application by Refugee for Waiver of Grounds of Excludability, filed on the basis of a refugee or asylum-based Form I–485; and

(5) Form I–765, Application for Employment Authorization, filed on the basis of status as a refugee or an asylee.

How Will Photographs and Fingerprints be Processed Under This Rule?

A refugee or asylee applying to the NSC for adjustment of status must submit, as part of his or her Form I–485 application, the required photographs. After the application has been accepted for processing, the NSC will send those applicants who are required to be fingerprinted written instructions regarding the time and place for the taking of the prescribed set of Form FD–258 fingerprints. Applicants whose Form I–485 applications have been approved will be instructed regarding the time and place for the execution of a Form I–89, Data Collection Card to capture the biometric data (photograph, index fingerprint, and signature) required for the production of their permanent resident card.

The Service plans to restructure Form I–485 processing to eliminate the need for a separate Form I–89 card to capture the applicant's biometric alien registration card data. Until further notice, however, applicants whose Form I–485 applications have been approved must continue to make a personal appearance for the execution of the I–89 data card. The Service will notify aliens involved in Form I–485 processing under this Direct Mail Program, regarding when and where the Form I–89 card may be executed.

How May Refugee or Asylee Adjustment Applicants Apply for an Employment Authorization Document, Advance Parole, or a Waiver of Inadmissibility?

An applicant for adjustment of status may apply concurrently to the NSC for the following:

(1) An employment authorization document (EAD) by filing a Form I–765, Application for Employment Authorization;

(2) Advance parole authorization by filing Form I–131, Application for Travel Document; or

(3) A waiver of exclusion grounds by filing Form I–602, Application by Refugee for Waiver on Grounds of Excludability.

In the event that the NSC transfers an applicant's Form I–485 to a local district office for adjudication, the NSC will send the applicant a written notice of the transfer, with instructions that any subsequent application for related benefits based on the adjustment application (such as a Form I–602, Form I–765, or Form I–131) must be filed with the local office where the I–485 application is pending.

Will There be a Transition Period?

During the first 60 days following the effective date of this rule, local Service offices that receive any of the applications designated in this rule for the Direct Mail Program must decide whether to continue to accept and process them locally, or to forward them, at no cost to the applicant or petitioner, to the Nebraska Service Center for adjudication. The local office's decision will be based on its assessment of pertinent factors such as whether the transition to Direct Mail will significantly delay EAD issuance, whether accepting the case is appropriate in light of current workloads, or other relevant circumstances. Applications forwarded to the NSC will be considered properly filed when received at the NSC with the proper signature and fee.

Any application or petition designated for Direct Mail which is submitted to a local office after the expiration of this 60 day transition period will be returned to the applicant for proper filing with the NSC. The local office cannot assume responsibility for any applicant's failure to file a timely application or petition at the NSC.

How Will This Rule Change the Filing Instructions for Form–485 and Related Forms?

The present edition of Form I–485 (Rev. 09–09–92) will be revised as soon as practicable to include instructions to refugees and asylees regarding adjustment procedures under this rule. In the meantime, the Supplementary Instructions accompanying the Form I–485 which are currently attached to all Forms I–485 distributed to the public will include the following additional information:

Fee

1. Form I–485 base filing fee. If you are applying for permanent resident status as a Refugee under section 209(a) of the Immigration and Nationality Act (Act), you are not required to pay the filing fee.

Where to File

2. Applications by Refugees and Asylees. If you are a refugee or an asylee applying for permanent residence under section 209 of the Act, you must mail your application on Form I–485 to the following address: Nebraska Service Center, P.O. Box 87485, Lincoln, NE 68501–7485.

If along with your adjustment application you are filing a Form I–131, Application for Travel Document, for the purpose of obtaining advance parole authorization, or a Form I–765, Application for Employment Authorization, or a Form I–602, Application by Refugee for Waiver on Grounds of Excludability, please follow the instructions which accompany those forms.

Good Cause Exemption

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation comments, is based upon the exception found at 5 U.S.C. 553(b)(B) and (d)(3). This rule imposes no substantive change in existing requirements, but rather adjusts the Service's procedures for implementing those requirements, in order to promote efficiency of adjudication and better service to the public.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is primarily administrative in nature and merely updates existing procedures contained in Title 8 of the Code of Federal Regulations. This rule applies to individuals and has no economic effect on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved for use by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in § 299.5, Display of control numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 209

Aliens, Immigration, Refugees.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1229, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by revising the entry for ''Form I–485'' to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–485. For filing application for permanent resident status or creation of a record of lawful permanent residence—$130 for an applicant 14 years of age or older; $100 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act.

* * * * *

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

3. The authority citation for part 209 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

4. Section 209.1 is revised to read as follows:

§ 209.1 Adjustment of status of refugees.

The provisions of this section shall provide the sole and exclusive procedure for adjustment of status by a refugee admitted under section 207 of the Act whose application is based on his or her refugee status.

(a) *Eligibility.* (1) Every alien in the United States who is classified as a refugee under part 207 of this chapter, whose status has not been terminated, is required to apply to the Service 1 year after entry in order for the Service to determine his or her admissibility under section 212 of the Act.

(2) Every alien processed by the Immigration and Naturalization Service abroad and paroled into the United States as a refugee after April 1, 1980, and before May 18, 1980, shall be considered as having entered the United States as a refugee under section 207(a) of the Act.

(b) *Application.* Upon admission to the United States, every refugee entrant shall be notified of the requirement to submit an application for permanent residence 1 year after entry. An application for the benefits of section 209(a) of the Act shall be filed on Form I–485, without fee, with the director of the appropriate Service office identified in the instructions which accompany the Form I–485. A separate application must be filed by each alien. Every applicant who is 14 years of age or older must submit a completed Form G–325A (Biographical Information) with the Form I–485 application. Following submission of the Form I–485 application, a refugee entrant who is 14 years of age or older will be required to execute a Form FD–258 (Applicant Fingerprint Card) at such time and place as the Service will designate.

(c) *Medical examination.* A refugee seeking adjustment of status under section 209(a) of the Act is not required to repeat the medical examination performed under § 207.2(c), unless there were medical grounds of inadmissibility applicable at the time of admission. The refugee is, however, required to establish compliance with the vaccination requirements described under section 212(a)(1)(A)(ii) of the Act, by submitting with the adjustment of status application a vaccination supplement, completed by a designated civil surgeon in the United States.

(d) *Interview.* The Service director having jurisdiction over the application will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status under this part.

(e) *Decision.* The director will notify the applicant in writing of the decision of his or her application for admission to permanent residence. If the applicant is determined to be inadmissible or no longer a refugee, the director will deny the application and notify the applicant of the reasons for the denial. The director will, in the same denial notice, inform the applicant of his or her right to renew the request for permanent residence in removal proceedings under section 240 of the Act. There is no appeal of the denial of an application by the director, but such denial will be without prejudice to the alien's right to renew the application in removal proceedings under part 240 of this chapter. If the applicant is found to be admissible for permanent residence under section 209(a) of the Act, the director will approve the application and admit the applicant for lawful permanent residence as of the date of the alien's arrival in the United States. An alien admitted for lawful permanent residence will be issued Form I–551, Alien Registration Receipt Card.

§ 209.2 [Amended]

5. In § 209.2, revise the term ''district director'' to read ''director'' wherever it appears in the following places:

a. Paragraph (a)(1) introductory text;

b. Paragraph (a)(2);

c. Paragraph (b); and

d. Paragraph (f).

6. Section 209.2 is further amended by:

a. Revising paragraphs (c) and (d); and by

b. Adding a sentence at the end of paragraph (e), to read as follows:

§ 209.2 Adjustments of status of alien granted asylum.

* * * * *

(c) *Application.* An application for the benefits of section 209(b) of the Act may be filed on Form I–485, with the correct fee, with the director of the appropriate Service office identified in the instructions to the Form I–485. A separate application must be filed by each alien. Every applicant who is 14 years of age or older must submit a completed Form G–325A (Biographic Information) with the Form I–485 application. Following submission of the Form I–485 application, every applicant who is 14 years of age or older will be required to execute a Form FD–258 (Applicant Fingerprint Card) at such time and place as the Service will designate. Except as provided in paragraph (a)(2) of this section, the application must also be supported by evidence that the applicant has been physically present in the United States for at least 1 year. If an alien has been placed in deportation or exclusion proceedings, the application can be filed and considered only in proceedings under section 240 of the Act.

(d) *Medical examination.* An alien seeking adjustment of status under section 209(b) of the Act 1 year following the grant of asylum under section 208 of the Act shall submit the results of a medical examination to determine whether any grounds of inadmissibility described under section 212(a)(1)(A) of the Act apply. Form I–693, Medical Examination of Aliens Seeking Adjustment of Status, and a vaccination supplement to determine compliance with the vaccination requirements described under section 212(a)(1)(A)(ii) of the Act must be completed by a designed civil surgeon in the United States and submitted at the time of application for adjustment of status.

(e) * * * The Service director having jurisdiction over the application will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status under this part.

* * * * *

§ 209.2 [Amended]

8. In § 209.2, paragraph (f) is amended by revising the reference to ''parts 242 and 236'' to read ''part 240''.

Dated: May 28, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–14655 Filed 6–2–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

10 CFR Part 1010

RIN 1990–AA19

Conduct of Employees

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its regulations on conduct of employees to remove an exemption from application of the financial conflict of interest prohibition. The removal of this exemption is in response to publication by the Office of Government Ethics (OGE) of a superseding, executive branch-wide regulation that describes the

circumstances under which certain financial interests are exempt from the general prohibitions concerning acts affecting a personal financial interest. In addition, DOE is adding a reference to OGE's executive branch-wide regulation in its cross-references provision.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Beard (Deputy Assistant General Counsel for Standards of Conduct), Office of the Assistant General Counsel for General Law, GC–80, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202/586–1522).

SUPPLEMENTARY INFORMATION:

I. Background

DOE has had a longstanding regulation, codified at 10 CFR 1010.105, establishing that an employee's financial interest arising from the ownership of stock in a widely diversified mutual fund or other regulated investment company that in turn owns stock in, or bonds of, another enterprise, is exempt from the prohibition contained in 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest). Section 208(a) prohibits employees of the executive branch from participating in an official capacity in particular matters in which they, or certain persons or entities with whom they have specified relationships, have a financial interest.

On December 18, 1996, (61 FR 66830, as corrected at 62 FR 1361 (January 9, 1997) and 62 FR 23127 (April 29, 1997)), OGE published a final executive branch-wide rule entitled ''Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest),'' which superseded DOE's waiver rule. OGE's new rule, codified at 5 CFR part 2640 and made effective January 17, 1997, describes, in subpart B, certain financial interests that the Director of OGE has determined, pursuant to 18 U.S.C. 208(b)(2), to be exempt from the general participation prohibition because they are too remote or too inconsequential to affect the integrity of the services of the employee to which the prohibition applies. At 5 CFR 2640.201(a), there is an exemption for diversified mutual funds and unit investment trusts, thereby superseding DOE's old waiver rule effective January 17, 1997 (see 5 CFR 2640.206 of OGE's regulation). Therefore, DOE is publishing this final rule removing 10 CFR 1010.105 in its entirety. DOE is also amending its cross-reference provision at 10 CFR 1010.102 to add a reference to OGE's executive branch-wide financial interests regulation.

II. Matters of Regulatory Procedure

Because DOE is required to delete the superseded provisions of 10 CFR part 1010 relating to 18 U.S.C. 208(b)(2) exemptions, with no discretion in the matter, DOE finds, pursuant to 5 U.S.C. 553(b)(3)(B), that there is good cause not to seek public comment on this rule, as such comment is unnecessary. Furthermore, consistent with 5 U.S.C. 553(d), DOE is making this interpretive rule effective upon publication in the **Federal Register**.

III. Review Under Executive Order 12866

DOE has determined that the removal of 10 CFR 1010.105 is not considered to be a ''significant regulatory action'' under Executive Order 12866, and, therefore, is not subject to review by the Office of Management and Budget.

IV. Review Under Paperwork Reduction Act

This final rule contains no information collection requirements as defined in 44 U.S.C. 3502(2), and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Federalism

The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that there are no federalism implications that would warrant the preparation of a Federalism Assessment.

VI. National Environmental Policy Act

The regulations being amended have no current environmental effect and this rulemaking will not change that status quo. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking amending an existing regulation that does not change the environmental effect of the regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

VII. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. Section 201 excepts agencies from assessing effects on State, local, or tribal governments or the private sector of rules that incorporate requirements specifically set forth in law. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, directs agencies to prepare a regulatory flexibility analysis whenever an agency is required to publish a general notice of proposed rulemaking for a rule. As discussed above, the Department has determined that prior notice and opportunity for public comment is unnecessary and contrary to the public interest. In accordance with 5 U.S.C. 604(a), no regulatory flexibility analysis has been prepared for today's rule.

IX. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3 of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to eliminate drafting errors and ambiguity; write regulations to minimize litigation; provide a clear legal standard for affected conduct rather than a general standard; and promote simplification and burden reduction. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with section 801 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 801, DOE will report to Congress the promulgation of this rule prior to its effective date. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(a).

List of Subjects in 10 CFR Part 1010

Conduct standards, Conflicts of interest, Ethical conduct, Government employees.

Issued in Washington, D.C. on May 22, 1998.

Eric J. Fygi,

Acting General Counsel, Department of Energy.

For the reasons set out in the preamble, 10 CFR part 1010 is amended as follows:

PART 1010—CONDUCT OF EMPLOYEES

1. The authority citation for part 1010 is revised to read as follows:

Authority: 5 U.S.C. 301, 303, 7301; 5 U.S.C. App. (Inspector General Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 1010.102 [Amended]

2. Section 1010.102 is amended by revising the heading to read, ''Cross-references to employee ethical conduct standards, financial disclosure regulations, and other conduct rules.'' and by adding immediately after ''5 CFR part 2634,'' the words ''the executive branch-wide financial interests regulations at 5 CFR part 2640,'' before the word ''and.''

§ 1010.105 [Removed]

3. Section 1010.105, Conflict of interest waiver, is removed.

[FR Doc. 98–14714 Filed 6–2–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–100–AD; Amendment 39–10556; AD 98–11–31]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace (BAe) Jetstream Model 3101 airplanes equipped with a certain autopilot. This AD requires modifying the autopilot elevator electric system relays by installing two additional relays and associated wiring changes in the relay box located under the right hand crew seat. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to prevent failure of the autopilot elevator electric system relays for the up and down trim interlocks, which could result in uncommanded trim servo operation and possible loss of control of the airplane.

DATES: Effective July 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone (01292) 479888; facsimile (01292) 479703. 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–100–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. S.M. Nagarajan, 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 BAe Jetstream Model 3101 airplanes equipped with certain autopilots was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 25, 1998 (63 FR 14383). The autopilot system that would be affected by the NPRM is installed under Jetstream Aircraft Limited (JAL) Modifications JM3027, 3243, 3352, or 3483. These modifications encompassed the installation of an autopilot system that has pitch-up and pitch-down relays with an 800-hour life limit. The NPRM proposed to require modifying the autopilot system by installing two additional relays and associated wiring changes in the relay box located below the right-hand crew seat in the cockpit. This modification would remove the existing 800-hour life limit on the pitch-up and pitch-down relays.

Accomplishment of the proposed action as specified in the NPRM would be in accordance with Jetstream Series 3100/3200 Service Bulletin 22–JK 2628, Revision 2, Original Issue: October 21, 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.

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

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because this action removes an existing 800-hour life limit on the pitch-up and pitch-down relays in the autopilot system. Therefore, to ensure that the above-referenced condition is corrected on all of the affected airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is required.

Cost Impact

The FAA estimates that 189 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $430 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $149,310, or $790 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:

98–11–31 British Aerospace: Amendment 39–10556; Docket No. 97–CE–100–AD.

Applicability: Jetstream Model 3101 airplanes, all serial numbers, certificated in any category, that are equipped with autopilot systems installed under Jetstream Aircraft Limited (JAL) Modifications JM3027, 3243, 3352, or 3483.

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 within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent failure of the autopilot elevator electric system relays for the up and down trim interlocks, which could result in uncommanded trim servo operation and possible loss of control of the airplane, accomplish the following:

(a) Modify the autopilot system with Jetstream Aircraft Ltd. (JAL) Kit No. JK 2628 in accordance with Jetstream 3100/3200 Series Service Bulletin No. 22–JK 2628, Revision 2, Original Issue: October 21, 1996, by installing two additional relays in the relay box with associated wiring changes. This relay box is located under the right-hand crew seat in the cockpit.

(b) The modification required by paragraph (a) of this AD eliminates the 800-hour life limit requirement for the pitch-up and pitch-down relays. Operators are encouraged to obtain the revision for their affected maintenance manuals that is available from the manufacturer.

(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) 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, Aircraft Certification Service, 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 Jetstream 3100/3200 Series Service Bulletin No. 22–JK 2628, Revision 2, Original Issue: October 21, 1996, should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone (01292) 479888; facsimile (01292) 479703. 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 modification required by this AD shall be done in accordance with Jetstream 3100/3200 Series Service Bulletin No. 22–JK 2628, Revision 2, Original Issue: October 21, 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 British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. 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 British AD No. 006–10–96, undated.

(g) This amendment becomes effective on July 17, 1998.

Issued in Kansas City, Missouri, on May 21, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14191 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–43–AD; Amendment 39–10548; AD 98–11–23]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model CN–235 series airplanes, that requires modification of certain fastener holes of the center wing. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking in this area, which could result in reduced structural integrity of the wing.

DATES: Effective July 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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 CASA Model CN–235 series airplanes was published in the **Federal Register** on March 23, 1998 (63 FR 13801). That action proposed to require modification of certain fastener holes of the center wing.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Changes Made to This Final Rule

In the proposal, the FAA inadvertently omitted reference to Annex 1, dated June 10, 1993, of CASA Service Bulletin SB–235–57–05, Revision 2, dated June 21, 1996. Therefore, the FAA has revised the final rule accordingly.

Conclusion

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 2 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that the actions specified in CASA Service Bulletin SB–235–57–14, will be required to be accomplished on one airplane of U.S. registry. These required actions will take approximately 220 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $719 per airplane. Based on these figures, the cost impact of the inspection required by this AD on the single U.S. operator is estimated to be $13,919.

For CASA Model CN–235 series airplane, serial number C–011, on which the actions specified in CASA Service Bulletin SB–235–57–05 will be required to be accomplished, those required actions will take approximately 1,900 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $11,330 per airplane. Based on these figures, the cost impact of the required actions for that airplane is estimated to be $125,330.

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:

98–11–23 Construcciones Aeronauticas S.A. (CASA): Amendment 39–10548. Docket 97–NM–43–AD.

Applicability: Model CN–235 series airplanes; as listed in CASA Service Bulletins SB–235–57–14, Revision 1, dated June 21, 1996; and SB–235–57–05, Revision 2, dated June 21, 1996, including Annex 1, dated June 10, 1993; and Model CN–235 having serial number C–011; 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 fatigue cracking in the fastener holes of the center wing, which could result in reduced structural integrity of the wing, accomplish the following:

(a) For airplanes listed in CASA Service Bulletins SB–235–57–14, Revision 1, dated June 21, 1996; and SB–235–57–05, Revision 2, dated June 21, 1996, including Annex 1, dated June 10, 1993: Perform a rototest inspection of the fastener holes of the center wing to detect cracking, in accordance with the applicable service bulletin, at the time specified in paragraph (c) of this AD.

(1) If no crack is found, prior to further flight, cold work the fastener holes in accordance with the applicable service bulletin.

(2) If any crack is found, prior to further flight, remove it in accordance with the service bulletin; repeat the rototest inspection to detect cracking; and cold work the fastener holes, in accordance with the applicable service bulletin. If any crack is found that cannot be removed using the procedures specified in the applicable service bulletin, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) For airplane serial number C–011: Perform a rototest inspection of the fastener holes of the center wing to detect cracking, in accordance with CASA Service Bulletin SB–235–57–05, Revision 2, dated June 21, 1996, including Annex 1, dated June 10, 1993, at the time specified in paragraph (c) of this AD.

(1) If no crack is found, prior to further flight, cold work the fastener holes in accordance with the service bulletin.

(2) If any crack is found, prior to further flight, remove it in accordance with the service bulletin; repeat the rototest inspection to detect cracking; and cold work the fastener holes, in accordance with the service bulletin. If any crack is found that cannot be removed using the procedures specified in the service bulletin, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116.

(c) Accomplish the inspection required by paragraph (a) or (b) of this AD, as applicable,

at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Prior to the accumulation of 17,000 total flight cycles or 37,400 total flight hours, whichever occurs first.

(2) Within 6 months after the effective date 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, 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.

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

(f) The actions shall be done in accordance with CASA Service Bulletin SB–235–57–14, Revision 1, dated June 21, 1996, and CASA Service Bulletin SB–235–57–05, Revision 2, dated June 21, 1996, including Annex 1, dated June 10, 1993, which contains the following list of effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1, 3–5, 12, 26–29, 33, 34, 45–52.	2	June 21, 1996.
2, 6–11, 13–25, 30–32, 35–44, 53–65.	1	March 13, 1995.
Annex 1		
1–46	5	June 10, 1993.

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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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 Spanish airworthiness directive 04/94, dated August 1994.

(g) This amendment becomes effective on July 8, 1998.

Issued in Renton, Washington, on May 22, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14213 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–46–AD; Amendment 39–10552; AD 98–11–27]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires replacement of the existing pressure dump and relief valves in the main and auxiliary hydraulic systems with new valves. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the pressure dump and relief valves in the main and auxiliary hydraulic systems, which could cause a loss in hydraulic pressure for roll control spoilers and brakes, and consequent reduced controllability of the airplane.

DATES: Effective July 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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 Dornier Model 328–100 series airplanes was published in the **Federal Register** on April 2, 1998 (63 FR 16167). That action proposed to require replacement of the existing pressure dump and relief valves in the main and auxiliary hydraulic systems with new valves.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required replacement, and that the average labor rate is $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 AD on U.S. operators is estimated to be $18,000, or $360 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:

98–11–27 Dornier Luftfahrt GmbH: Amendment 39–10552. Docket 98–NM–46–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3095 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pressure dump and relief valves in the main and auxiliary hydraulic systems, which could cause a loss in hydraulic pressure for roll control spoilers and brakes, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 8 months after the effective date of this AD, replace the existing pressure dump and relief valves having part number (P/N) ZHV29–1 with new valves having P/N ZHV29–2, in the main and auxiliary hydraulic systems, in accordance with Dornier Service Bulletin SB–328–29–205, dated February 12, 1997.

(b) As of the effective date of this AD, no person shall install on any airplane any pressure dump and relief valve having P/N ZHV29–1.

(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.

(e) The replacement shall be done in accordance with Dornier Service Bulletin SB–328–29–205, dated February 12, 1997. 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 FAIRCHILD Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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 German airworthiness directive 97–072, dated March 27, 1997.

(f) This amendment becomes effective on July 8, 1998.

Issued in Renton, Washington, on May 22, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14218 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–52–AD; Amendment 39–10554; AD 98–11–29]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes, that requires a one-time inspection to detect corrosion of the threads of the eyebolt and piston rod on the retraction jack of the main landing gear (MLG); and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent corrosion of the threads of the eyebolt and piston rod on the retraction jack of the MLG, which may cause the eyebolt to detach from the jack, and consequent unrestrained MLG deployment or inability to retract the MLG.

DATES: Effective July 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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 British Aerospace Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes was published in the **Federal Register** on April 3, 1998 (63 FR 16447). That action proposed to require a one-time inspection to detect corrosion of the threads of the eyebolt and piston rod on the retraction jack of the main landing gear, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on this figure, the cost impact of the AD on U.S. operators is estimated to be $1,500, or $60 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:

98–11–29 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–10554. Docket 98–NM–52–AD.

Applicability: Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes, as listed in British Aerospace Service Bulletin SB.32–145, Revision 1, dated October 6, 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 prevent corrosion of the threads of the eyebolt and piston rod on the retraction jack of the main landing gear (MLG), which may cause the eyebolt to detach from the jack, and consequent unrestrained MLG deployment or inability to retract the MLG, accomplish the following:

(a) Perform a one-time visual inspection to detect corrosion of the threads of the eyebolt and piston rod on the retraction jack of the MLG, in accordance with British Aerospace Service Bulletin SB.32–145, Revision 1, dated October 6, 1997, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Except as provided by paragraph (b) of this AD, if any corrosion is detected: Prior to further flight, repair in accordance with the service bulletin.

(1) For MLG retraction jacks that have accumulated more than 7 and less than 9 years since date of manufacture: Inspect within 2 years after the effective date of this AD.

(2) For MLG retraction jacks that have accumulated 9 or more years since date of manufacture: Inspect within 1 year after the effective date of this AD.

(3) For MLG retraction jacks other than those identified in paragraph (a)(1) or (a)(2) of this AD, and other than those MLG retraction jacks having Part/Type No. 104628003 with serial numbers DH/0029/93 (where ''93'' identifies the year of manufacture) and subsequent: Inspect within 6 years since date of manufacture, or within 2 years after the effective date of this AD, whichever occurs later.

Note 2: British Aerospace Service Bulletin SB.32–145, Revision 1, dated October 6, 1997, references Dowty Aerospace Hydraulics—Cheltenham Service Bulletin 146–32–507, dated August 1, 1997, as an additional source of service information to accomplish the inspection and repair.

(b) If any corrosion is detected during the inspection required by paragraph (a) of this AD in areas other than those detailed in British Aerospace Service Bulletin SB.32–145, Revision 1, dated October 6, 1997: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) As of the effective date of this AD, no person shall install an eyebolt or piston rod on the retraction jack of the MLG on any airplane unless it has been modified in accordance with British Aerospace Service Bulletin SB.32–145, Revision 1, dated October 6, 1997.

(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. 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.

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

(f) The actions shall be done in accordance with British Aerospace Service Bulletin SB.32–145, Revision 1, dated October 6, 1997, which contains the following list of effective pages:

Page number shown on page	Revision level shown on page	Date shown on page
1, 2	1	Oct. 6, 1997.
3–7	Original	Sept. 18, 1997.

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 AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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 British airworthiness directive 006–09–97.

(g) This amendment becomes effective on July 8, 1998.

Issued in Renton, Washington, on May 22, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14217 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–134–AD; Amendment 39–10551; AD 98–11–26]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B and 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 340B and SAAB 2000 series airplanes, that requires modification of the check valves of the airfoil de-icing system, or replacement of the check valves with improved valves. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the check valves, which could result in loss of airfoil de-icing capability during single engine operation, and consequent reduced controllability of the airplane.

DATES: Effective July 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, 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 340B and SAAB 2000 series airplanes was published in the **Federal Register** on April 1, 1998 (63 FR 15797). That action proposed to require modification of the check valves of the airfoil de-icing system, or replacement of the check valves with improved valves.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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 125 Model SAAB 340B and SAAB 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $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 AD on U.S. operators is estimated to be $30,000, or $240 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:

98–11–26 SAAB AIRCRAFT AB: Amendment 39–10551. Docket 97–NM–134–AD.

Applicability: Model SAAB 340B series airplanes, serial numbers 240 through 430 inclusive; Model SAAB 2000 series airplanes, serial numbers 002 through 050 inclusive, and 052; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the check valves, which could result in loss of airfoil de-icing

capability during single engine operation, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 5 months after the effective date of this AD, modify the left- and right-hand check valves of the airfoil de-icing system, or replace the check valves with improved valves, in accordance with Saab Service Bulletin 340–30–080, dated November 21, 1997 (for Model SAAB 340B series airplanes), or Saab Service Bulletin 2000–30–012, dated November 21, 1997 (for Model SAAB 2000 series airplanes), as applicable.

(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 340–30–080, dated November 21, 1997, or Saab Service Bulletin 2000–30–012, dated November 21, 1997, as applicable. 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, Linköping, 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 No. 1–120, dated November 24, 1997.

(e) This amendment becomes effective on July 8, 1998.

Issued in Renton, Washington, on May 22, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14221 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–279–AD; Amendment 39–10555; AD 98–11–30]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, that requires inspection of the main landing gear (MLG) bushing seats to detect cracks, and repair of the bushing hole or replacement of strut bushings with new bushings, if necessary. This amendment also requires replacement of the plain bearings of the MLG shock absorber with new bearings. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent structural failure of the MLG due to fatigue cracking of the strut bushing seat.

DATES: Effective July 8, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. 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 FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Curtis A. Jackson, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6083; fax (770) 703–6097.

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 EMBRAER Model EMB–145 series airplanes was published in the **Federal Register** on April 2, 1998 (63 FR 16170). That action proposed to require inspection of the main landing gear (MLG) bushing seats to detect cracks, and repair of the bushing hole or replacement of strut bushings with new bushings, if necessary. That action also proposed to require replacement of the plain bearings of the MLG shock absorber with new bearings.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $540, or $60 per airplane.

The FAA estimates that it will take approximately 6 work hours per airplane to accomplish the required replacement of the plain bearings, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $3,240, or $360 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:

98–11–30 Empresa Brasileira De Aeronautica S.A. (Embraer): Amendment 39–10555. Docket 97–NM–279–AD.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145018 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the main landing gear (MLG) due to fatigue cracking of the strut bushing seat, accomplish the following:

(a) Prior to the accumulation of 2,000 total flight cycles, or within 100 flight cycles after the effective date of this AD, whichever occurs later, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Perform a one-time liquid penetrant inspection to detect cracking of the flanged bushing seats of the MLG, in accordance with EMBRAER Service Bulletin 145–32–0012, dated September 1, 1997. If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(2) Perform a one-time inspection of the bushing holes using a bore micrometer to determine the dimension of the holes, in accordance with EMBRAER Service Bulletin 145–32–0012, dated September 1, 1997. Prior to further flight, accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If the dimension of the bushing hole is less than 49.2 mm, perform the applicable corrective actions specified in the service bulletin.

(ii) If the dimension of the bushing hole is greater than or equal to 49.2 mm, repair in accordance with a method approved by the Manager, Atlanta ACO.

(3) Replace the plain bearing of the MLG shock absorber with a new bearing in accordance with EMBRAER Service Bulletin 145–32–0009, dated September 1, 1997.

(b) As of the effective date of this AD, no person shall install a plain bearing having part number ABC24VG (NMB) on the shock absorber of the MLG of any airplane.

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

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

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

(e) The actions shall be done in accordance with EMBRAER Service Bulletin 145–32–0012, dated September 1, 1997, and EMBRAER Service Bulletin 145–32–0009, dated September 1, 1997. 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; 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 Brazilian airworthiness directive 97–10–02, dated October 13, 1997.

(f) This amendment becomes effective on July 8, 1998.

Issued in Renton, Washington, on May 22, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14220 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–43–AD; Amendment 39–10553; AD 98–11–28]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe Avro 146–RJ series airplanes, that requires a one-time inspection of certain electrical wires in the electrical equipment bay to determine if ERMA terminal lugs are installed; and replacement with new parts, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the electrical circuit terminal lugs, which could result in electrical system failure, and consequent reduced controllability of the airplane.

DATES: Effective July 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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 British Aerospace Model BAe Avro 146–RJ series airplanes was published in the **Federal Register** on April 2, 1998 (63 FR 16175). That action proposed to require a one-time inspection of certain electrical wires in the electrical equipment bay to determine if ERMA terminal lugs are installed; and replacement with new parts, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on the single U.S. operator is estimated to be $240.

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:

98–11–28 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–10553. Docket 98–NM–43–AD.

Applicability: Model BAe Avro 146–RJ85A series airplanes, serial numbers E2296, E2297, E2299, E2300, E2302, E2303, E2304, E2305, E2306, and E2307; and Model Avro 146–RJ100A series airplanes, serial numbers E3298, E3301, and E3308; 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 electrical circuit terminal lugs, which could result in electrical system failure, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time visual inspection of the electrical wires, having part numbers (P/N) MD0011N and MD0012N, in the electrical equipment bay and hydraulic equipment bay, to determine if any ERMA terminal lug having P/N ERMA 12115/2 is installed, in accordance with British Aerospace Service Bulletin SB.24–120, dated September 18, 1997. If any ERMA terminal lug is found, prior to further flight, remove the lug and replace with an AMP terminal lug having P/N AMP 323064, in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install an ERMA terminal lug, P/N ERMA 12115/2, on any airplane.

(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.

(e) The inspection and replacement shall be done in accordance with British Aerospace Service Bulletin SB.24–120, dated September 18, 1997. 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 AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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 British airworthiness directive 007–09–97.

(f) This amendment becomes effective on July 8, 1998.

Issued in Renton, Washington, on May 22, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14219 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–60–AD; Amendment 39–10550; AD 98–11–25]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–311 and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–311 and –315 series airplanes, that requires replacement of the nitrogen cylinder assemblies that inflate the airplane's ditching dams with improved nitrogen cylinder assemblies. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the ditching dams to inflate fully during an emergency water landing, which could result in water entering the airplane.

DATES: Effective July 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. 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 FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7520; fax (516) 568–2716.

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 de Havilland Model DHC–8–311 and –315 series airplanes was published in the **Federal Register** on April 2, 1998 (63 FR 16169). That action proposed to require replacement of the nitrogen cylinder assemblies that inflate the airplane's ditching dams with improved nitrogen cylinder assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

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 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer of the nitrogen cylinder assembly at no cost to the operator. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $480, or $240 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:

98–11–25 De Havilland Inc.: Amendment 39–10550. Docket 98–NM–60–AD.

Applicability: Model DHC–8–311 and –315 series airplanes in the medium and high gross weight configuration, on which Bombardier Change Request CR803SO00001, CR803SO00002, CR803CH00046, CR803CH00079, CR803CH00105, CR825CH00847, or CR803CH00051 has been incorporated; 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 failure of the ditching dams to inflate fully during an emergency water landing, which could result in water entering the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the existing nitrogen cylinder assembly on the ditching dams with a new nitrogen cylinder assembly that incorporates an improved valve assembly (reference de Havilland Modification 8/3154), in accordance with Bombardier Service Bulletin S.B. 8–25–122, dated October 10, 1997.

(b) As of the effective date of this AD, no person shall install on any airplane any nitrogen cylinder assembly having part number 410870(BSC) or 410870–1.

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

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

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

(e) The replacement shall be done in accordance with Bombardier Service Bulletin S.B. 8–25–122, dated October 10, 1997. 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 Bombardier Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; 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 Canadian airworthiness directive CF–97–21, dated November 13, 1997.

(f) This amendment becomes effective on July 8, 1998.

Issued in Renton, Washington, on May 22, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14222 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–60–AD; Amendment 39–10557, AD 98–11–32]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company AE 3007A and AE 3007C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Allison Engine Company AE 3007A and AE 3007C series turbofan engines. This action supersedes priority letter AD 98–02–09, that currently requires certain checks of the center sump magnetic chip collector plug for paste. Engines found with paste are required to be removed from service. This action references revisions of the applicable Alert Service Bulletins (ASB) providing clarifications of check procedures. This amendment is prompted by a change in the part number applicability, a change in the check interval, and the publication of these revised ASBs. The actions specified by this AD are intended to prevent No. 4 bearing failure due to excessive bearing wear, which can result in an inflight engine shutdown.

DATES: Effective June 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before August 3, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–60–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Allison Engine Company, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420; telephone (317) 230–6674. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7836, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On January 16, 1998, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 98–02–09, applicable to Allison Engine Company AE 3007A and AE 3007C series turbofan engines, which requires each calendar day, for Allison Engine Company AE 3007A series engines, and every three calendar days, or prior to the next flight, whichever occurs later, for Allison Engine Company AE 3007C series engines, alternating between the left hand and right hand engines, checks of the center sump magnetic chip collector plug. After checking the center sump magnetic chip collector plug , that AD requires, if paste is found, collecting paste, examining the O-ring for damage, cleaning the plug once during the first check only and not subsequently, performing an engine ground run-up and again examining the plug for paste. If paste is found on this second examination or subsequent examinations, the engine must be removed from service. There have been five inflight engine shutdowns associated with these bearing failures since December 1, 1997, on Allison Engine Company AE 3007A and AE 3007C series turbofan engines, which occurred with total time in service since new (TSN) ranging from 36 to 1,284 hours. The investigation revealed that the No. 4 bearings deteriorate due to manufacturing anomalies, which lead to excessive bearing wear. Analysis of failed bearings and service history has narrowed the unsafe condition to one particular bearing part number. That condition, if not corrected, could result in No. 4 bearing failure due to excessive bearing wear, which can result in an inflight engine shutdown.

Since the issuance of that priority letter AD, Allison Engine Company has issued Alert Service Bulletin (ASB) No. AE 3007A–A–79–014, Revision 4, dated April 14, 1998, and ASB No. AE 3007C–A–79–018, Revision 3, dated April 21, 1998, which provide clarifications of check procedures. In addition, this final rule has added oil leak checks after each magnetic chip detector inspection, in order to minimize the possibility of

maintenance-induced errors. Also, this final rule adds a terminating action which eliminates the requirement for repetitive magnetic chip detector inspections by installing an improved No. 4 main engine bearing.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes priority letter AD 98–02–09 to reference revisions of the applicable Allison Engine Company ASBs providing clarifications of check procedures, change the part number applicability, and change the check interval. The actions are required to be accomplished in accordance with the ASBs described previously.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–60–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–11–32 Allison Engine Company: Amendment 39–10557. Docket No. 97–ANE–60–AD. Supersedes AD 98–02–09.

Applicability: Allison Engine Company AE 3007A and AE 3007C series turbofan engines with No. 4 bearing, Part Number (P/N) 23062504, installed on but not limited to EMBRAER EMB–145 and Cessna 750 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 No. 4 bearing failure due to excessive bearing wear, which can result in an inflight engine shutdown, accomplish the following:

(a) For Allison Engine Company AE 3007A series engines, within 8 flight hours after the effective date of this AD, accomplish the following in accordance with Allison Engine Company Alert Service Bulletin (ASB) No. AE 3007A–A–79–014, Revision 4, dated April 14, 1998.

(1) Remove the center sump magnetic chip collector plug (non-indicating) on each engine and examine it for paste.

Note 2: Paste is a mixture of very fine metallic particles and oil or soft carbon.

(2) If no paste is found, reinstall the center sump magnetic chip collector, perform an oil leak check, and thereafter inspect both engines at intervals not to exceed 8 flight hours.

(3) If paste is found, accomplish the following prior to further flight:

(i) Remove the engine from service if paste was previously found on the same engine during any previous checks performed in accordance with this AD, otherwise continue with the following procedure:

(ii) Collect the paste on a clean white paper. Cover the sample with clear tape and retain it for analysis.

(iii) Examine the O-ring for damage and replace as necessary.

(iv) Clean the center sump magnetic chip collector plug.

(v) Reinstall the center sump magnetic chip collector plug.

(vi) Perform a ground run-up of the engine as follows:

(A) Ground Idle for 5 minutes.

(B) Maximum Takeoff for 2 minutes.

(C) 50% N1 (Fan speed) for 5 minutes.

(D) Ground Idle for 3 minutes.

(E) Stop the engine.

(vii) Re-examine the center sump magnetic chip collector plug for paste. If paste is found, remove the engine from service. If no paste is found, thereafter inspect in accordance with paragraph (a)(2) of this AD.

(viii) Send any removed paste to a laboratory or facility capable of analysis with a scanning electron microscope and an energy dispersive x-ray microanalyzer for analysis.

Note 3: Two laboratories capable of performing this analysis are:

Aviation Laboratories, 910 Maria Street, Kenner, LA 70062, 504–469–6751

or

Spectro Oil Analysis, Palace Gate, High Street, Oldham, Hook, Hampshire, RG 291 NP, United Kingdom.

Send documentation referencing this AD or ASB along with the sample.

(ix) Send the results of the analysis to Allison as follows: Manager, AE Customer Support, Large Commercial Engines, fax (317) 230–4010.

(x) An engine found with paste either after the engine ground run-up or during subsequent checks performed in accordance with this AD may not be operated again without the approval of the Manager, Chicago Aircraft Certification Office.

(b) For Allison AE 3007C series engines, within 8 flight hours after the effective date of this AD, accomplish the following in accordance with Allison Engine ASB No. AE 3007C–A–79–018, Revision 3, dated April 21, 1998:

(1) Remove the center sump magnetic chip collector plug (non-indicating) on each engine and examine it for paste. (See Note 2)

(2) If no paste is found, reinstall the center sump magnetic chip collector, perform an oil leak check, and thereafter inspect both engines at intervals not to exceed 8 flight hours.

(3) If paste is found, accomplish the following prior to further flight:

(i) Remove the engine from service if paste was previously found on the same engine during any previous checks performed in accordance with this AD.

(ii) Collect the paste on a clean white paper. Cover the sample with clear tape and retain it for analysis.

(iii) Examine the O-ring for damage and replace as necessary.

(iv) Clean the center sump magnetic chip collector plug.

(v) Reinstall the center sump magnetic chip collector plug.

(vi) Perform a ground run-up of the engine as follows:

(A) Ground Idle for 5 minutes.

(B) Maximum Takeoff for 2 minutes.

(C) 50% N1 (Fan speed) for 5 minutes.

(D) Ground Idle for 3 minutes.

(E) Stop the engine.

(vii) Re-examine the center sump magnetic chip collector plug for paste. If paste is found, remove the engine from service. If no paste is found, thereafter inspect in accordance with paragraph (b)(2) of this AD.

(viii) Send any removed paste to a laboratory or facility capable of analysis with a scanning electron microscope and an energy dispersive x-ray microanalyzer for analysis. Send documentation referencing this AD or ASB along with the sample. (See Note 3)

(ix) Send the results of the analysis to Allison as follows: Manager, AE Customer Support, Large Commercial Engines, fax (317) 230–4010.

(x) An engine found with paste either after the engine ground run-up or during subsequent checks performed in accordance with this AD may not be operated again without the approval of the Manager, Chicago Aircraft Certification Office.

(c) For Allison Engine Company AE 3007A series and AE 3007C series engines, remove from service No. 4 main engine bearings, P/N 23062504, at the next engine shop visit, and replace with serviceable parts. Installation of an improved No. 4 main engine bearing constitutes terminating action to the repetitive magnetic chip detector checks required by paragraphs (a) and (b) of this AD.

(d) For the purpose of this AD, the following definitions apply:

(1) A serviceable part is defined as any No. 4 main engine bearing P/N other than 23062504.

(2) A shop visit is defined as any maintenance action resulting in the separation of any major engine flange.

(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, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(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 aircraft to a location where the check requirements of this AD can be accomplished.

(g) The actions required by this AD shall be accomplished in accordance with the following Allison Engine Company ASBs:

Document No.	Page	Revision	Date
AE 3007A–A–79–014 ..... Total Pages: 7.	1–7	4	April 14, 1998.
AE 3007C–A–79–018 ..... Total Pages: 6.	1–6	3	April 21, 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 Allison Engine Company, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420; telephone (317) 230–6674. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment supersedes priority letter AD 98–02–09, issued January 16, 1998.

(i) This amendment becomes effective on June 18, 1998.

Issued in Burlington, Massachusetts, on May 22, 1998.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–14339 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–22–AD; Amendment 39–10410; AD 98–12–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–111 series airplanes. This amendment requires repetitive inspections to detect cracking around the attachment holes for the access panels in the lower skin of the wing; and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct such cracking, which could result in reduced structural integrity of the airplane.

EFFECTIVE DATE: The direct final rule published at 63 FR 13508 is effective on June 18, 1998.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with request for comments in the **Federal**

Register on March 20, 1998 (63 FR 13508). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on June 18, 1998.

Two comments were received. Both commenters support the rule. However, one of the commenters requests clarification of the applicability of the rule, which is stated in the direct final rule as follows:

''Applicability: Model A320–111 series airplanes, as identified in Airbus Service Bulletin A320–57–1056, Revision 1, dated July 15, 1997, including Appendix 1; certificated in any category.''

The commenter notes that when an operator is not affected by a service bulletin, that operator only receives a copy of the summary section of the service bulletin. The summary of a service bulletin provides a list of affected operators; it does not provide manufacturer's serial numbers for the affected airplanes. This results in difficulty for an operator, a leasing group, or other non-technical group to evaluate any pending or applicable rules against a specific airplane serial number. Therefore, the commenter proposes that the applicability of the rule reference specific serial numbers for affected airplanes, as follows.

''Applicability: Model A320 series airplanes having manufacturer's serial numbers 002 through 008 inclusive; 010 through 014 inclusive; and 016 through 018 inclusive; certificated in any category.''

The FAA concurs that this AD applies to the airplanes identified by the commenter. The applicability, as presented in the rule, is equivalent to the applicability suggested by the commenter. Therefore, the FAA finds that no change to the rule is necessary. As the commenter points out, those operators that are affected by the rule will receive the entire service bulletin (not just the summary) and will, therefore, be informed of the specific serial numbers to which this AD applies.

The same commenter also requests clarification of the cost impact information. The commenter notes that this information specifies that there are 118 Model A320–111 airplanes of U.S. registry. The commenter indicates that only 22 Model A320–100 series airplanes were manufactured, and that none of these are on the U.S. Register. The commenter believes that the number 118 reflects all Model A319 and A320 airplanes on the U.S. Register, and not the actual number of Model A320–100 series airplanes. The commenter adds that Model A319–100 series airplanes are being manufactured, and are on the U.S. Register, but are not considered to be Model A320–100 series airplanes.

The FAA concurs with the clarification provided by the commenter. The number of airplanes affected by the direct final rule reflects the FAA's estimation of the total number of Airbus Model A319, A320, and A321 series airplanes currently on the U.S. register. However, no change to the direct final rule is necessary, since it indicates that none of the affected airplanes are on the U.S. Register.

No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Renton, Washington, on May 27, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14609 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–14]

Revision of Class D and Establishment of Class E Airspace; Yuma MCAS–Yuma International Airport, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action will amend the Class D airspace area operating times and establish a Class E airspace surface area at Yuma MCAS–Yuma International Airport, Yuma, AZ. In April of 1998 the U.S. Marines reduced the hours of operation of the Air Traffic Control Tower (ATCT) at Yuma MCAS. The reduction of the ATCT hours of operation has made this action necessary. The intended effect of this action is to modify the hours of the Yuma Class D airspace area in the legal description of the controlled airspace and establish a Class E airspace surface area to contain instrument operations during times the ATCT is closed. This action does not involve a change in the dimensions or operating requirements of that airspace containing Instrument Flight Rules (IFR) operations at Yuma MCAS–Yuma International Airport, Yuma, AZ.

DATES: *Effective*: 0901 UTC August 13, 1998. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before July 6, 1998.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–14, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION: This action will change the airspace legal description to reflect the new operating hours of the Class D airspace area of the Yuma MCAS–Yuma International Airport and establish a Class E airspace surface area to be effective during times the Yuma ATCT is closed. The 1998 reduction of the ATCT hours of operation has made this action necessary. The intended effect of this action is to modify the hours of the Yuma Class D airspace area in the legal description of the controlled airspace and establish a Class E Airspace surface area to contain instrument operations during times the ATCT is closed. Class D airspace areas are published in Paragraph 5000 and Class E airspace surface areas are published in Paragraph 6002 of FAA Order 7400.9D dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designation listed in this document would be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will published a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–AWP–14.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; 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; 14 CFR 11.69.

§ 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 5000 Class D Airspace

* * * * *

AWP AZ D YUMA AZ [Revised]

Yuma MCAS–Yuma International Airport, AZ
(Lat. 32°39′23″N, long. 114°36′22″W)
Somerton Airport, AZ
(Lat. 32°36′03″N, long. 114°39′57″W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5.2-mile radius of Yuma MCAS/Yuma International Airport, excluding that airspace from the surface up to and including 300 feet above the surface within a 1-mile radius of the Somerton Airport west of a line one-quarter mile northeast of and parallel to the Somerton Airport northwest-southeast runway. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AWP AZ E2 YUMA AZ [Revised]

Yuma MCAS–Yuma International Airport, AZ
(Lat. 32°39′23″N, long. 114°36′22″W)
Somerton Airport, AZ
(Lat. 32°36′03″N, long. 114°39′57″W)

That airspace, within a 5.2-mile radius of Yuma MCAS/Yuma International Airport, excluding that airspace from the surface up to and including 300 feet above the surface within a 1-mile radius of the Somerton Airport west of a line one-quarter mile northeast of and parallel to the Somerton Airport northwest-southeast runway. The Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on May 19, 1998.

Sherry Avery,

Acting Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–14757 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–2]

Modification of Class E Airspace; Porterville, CA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule, correction.

SUMMARY: This action corrects an error in the geographic coordinates of a Final Rule that was published in the **Federal Register** on April 20, 1998 (63 FR 19393), Airspace Docket No. 98–AWP–2. The final rule modified the Class E airspace area at Porterville, CA.

EFFECTIVE DATE: 0901 UTC August 13, 1998.

FOR FURTHER INFORMATION CONTACT:

Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–10303, Airspace Docket No. 98–AWP–2, published on April 20, 1998 (63 FR 19393), revised the geographic coordinates of the Class E airspace area at Porterville, CA. A typographical error was discovered in the geographic coordinates for the Porterville, CA, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Class E airspace area at Porterville, CA, as published in the **Federal Register** on April 20, 1998 (63 FR 19393), (**Federal Register** Document 98–10303), are corrected as follows:

§ 71.1 [Corrected]

AWP CA 35 Porterville, CA [Corrected]

On page 19394, column 2, in line 9 of the Porterville Municipal Airport, CA, airspace area, correct ''lat. 35°47′30″W'' to read ''lat. 35°47′30″N''.

Issued in Los Angeles, California, on May 19, 1998.

Sherry Avery,

Assistant Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–14541 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM91–11–007 and RM87–34–073]

Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued May 28, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Rehearing.

SUMMARY: This order denies requests for rehearing of Order No. 636–C published on March 6, 1997 (62 FR 10204). The Commission issued Order No. 636–C to resolve six issues remanded by the decision of the United States Court of Appeals for the District of Columbia Circuit in *United Distribution Cos.* v. *FERC*, 88 F. 3d 1105 (D.C.Cir. 1996), *cert. denied*, 117 S.Ct. 1723 (1997), concerning the Commission's rule restructuring services in the natural gas industry.

FOR FURTHER INFORMATION CONTACT:

Richard Howe, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First St., NE, Washington, DC 20426, (202) 208–1274

Ingrid Olson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First St., NE, Washington, DC 20426, (202) 208–2015

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

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

On February 27, 1997, the Commission issued Order No. 636–C,[1] to comply with the Court's decision in *United Distribution Companies* v. *FERC* (*UDC*).[2] Timely requests for rehearing of Order No. 636–C were filed by thirteen parties.[3] The requests for rehearing are denied, and clarification is granted, as discussed below.

[1] 78 FERC ¶ 61,186 (1997).

[2] 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied*, 117 S.Ct. 1723 (1997).

[3] These parties are American Public Gas Association and Decatur Utilities, City of Decatur Alabama, and Huntsville Utilities, City of Huntsville, Alabama (APGA); Coastal Companies (ANR Pipeline Co., ANR Storage Co., Colorado Interstate Gas Company and Wyoming Interstate Ltd.); East Tennessee Group; Interstate Natural Gas Association of America (INGAA); Missouri Public Service Commission (MoPSC); National Association of Gas Consumers (NAGC); National Association of State Utility Consumer Advocates and the Pennsylvania Office of Consumer Advocate; National Fuel Gas Supply Corporation; Noram Gas Transmission Company and Mississippi River Transmission Company; Pacific Gas Transmission Company; Tennessee Valley Municipal Gas Association; Texas Eastern Transmission Corporation, Panhandle Eastern Pipeline Company, Trunkline Gas Company, and Algonquin Gas Transmission Company (PanEnergy Companies); and Williams Interstate Natural Gas Company.

I. Background

In Order No. 636,[4] the Commission directed pipelines to restructure their services in order to improve the competitive structure of the natural gas industry. Specifically, the Commission required pipelines to unbundle the transportation from the sale of gas, to use a straight fixed variable rate design in developing their transportation rates, and to permit firm shippers to resell their capacity rights. In addition, the Commission took action to promote the growth of market centers, and adopted policies to govern the pipeline's recovery of the transition costs that would arise from the restructuring. In *UDC*, the Court affirmed the major elements of the Commission's restructuring rule, but remanded six issues to the Commission for further consideration.[5] In Order No. 636–C, the Commission addressed the issues remanded by the Court.

The requests for rehearing of Order No. 636–C raise issues concerning the term matching cap for the right of first refusal, the eligibility date for no-notice service, the appropriate rates for small customers of downstream pipelines who became direct customers of the upstream pipeline as a result of restructuring, and GSR costs. The only parties who sought rehearing of Order No. 636–C's holding that pipelines need not absorb a share of the GSR costs have withdrawn their rehearing requests. Therefore, that issue is now resolved. The requests for rehearing on the other three issues are discussed below.

II. Right of First Refusal

A. Background

Order No. 636 authorized pre-granted abandonment of long-term firm transportation contracts, subject to a right of first refusal for the existing shipper. Under the right of first refusal, the existing shipper can retain service by matching the rate and the term of service in a competing bid. The rate is capped by the pipeline's maximum tariff rate, and in Order No. 636, the Commission capped the term of service at twenty years. In *UDC*, the Court approved the concept of a right of first refusal with a term-matching cap as ''a rational means of emulating a competitive market for allocating firm transportation capacity,''[6] but found that the Commission's explanation for selecting a twenty-year cap, as opposed to some other term, inadequate. The Court concluded that the Commission had failed to explain why the twenty-year cap ''adequately protects against pipelines' preexisting market power, which they enjoy by virtue of natural monopoly conditions;''[7] and why the twenty-year cap will ''prevent bidders on capacity constrained pipelines from using long contract duration as a price surrogate to bid beyond the maximum approved rate to the detriment of captive customers.''[8] The Court accordingly remanded this issue for further consideration.

On remand, in Order No. 636–C, the Commission reexamined the record of the Order No. 636 proceedings, as well as data concerning contract terms that had become available since restructuring. The Commission found that this information suggested that since the issuance of Order No. 636, the industry trend appeared to be contract terms of much less than twenty years. The Commission noted that many of the commenters in the Order No. 636 rulemaking had proposed a cap of five years, and found that five years was approximately the median length of long term contracts entered into since January 1, 1995. Therefore, in Order No. 636–C, the Commission established the contract matching term cap at five years, and directed pipelines to amend their tariffs accordingly, regardless of whether the issue was preserved in the individual restructuring proceedings. The Commission thought that the five–year cap would avoid customers' being locked into long-term arrangements with pipelines that they do not really want, and therefore was responsive to the Court's concerns, and that the five-year cap also has the advantage of being consistent with the industry trend of short-term contracts. The Commission stated that it would consider on a case-by-case basis whether any relief is necessary in connection with contracts that had been renewed since Order No. 636, and that it would entertain requests to shorten a contract term if a customer renewed a contract under the right-of-first-refusal process since Order No. 636, and can show that it agreed to a longer term renewal contract than it otherwise would have because of the twenty-year cap.

On rehearing, the pipelines object to the five-year cap. INGAA, National Fuel, Noram and MRT, PanEnergy, PGT, and Williams argue that the five year cap interferes with the market forces that Order No. 636 sought to encourage. They assert that because of the five year cap, it is unlikely that any existing shipper will renew a contract for a term longer than five years. Therefore, they argue, allocation will be determined not by the market, but by regulatory controls and by the status of a party as an existing customer or a new customer. They further assert that existing customers will be shielded from competition and given unwarranted control over pipeline capacity rights. The pipelines also argue that the five year cap creates an imbalance in the risks assumed by pipelines and shippers, and is too short to meet the legitimate needs of the pipeline industry.

In addition, the pipelines argue that the five year cap is not supported by substantial evidence, and that the Commission erred in establishing the cap based on recent data showing that the median length of contracts is five years. These parties argue that the use of a median, based on less than two years experience since January 1995, to determine the maximum contract length is not appropriate. They state that the long term average term of previously effective long term contracts is over 20 years, and the average term of all such contracts is over ten years.

Several pipelines also argue that the order is procedurally infirm because the Commission did not provide an adequate opportunity for interested partes to comment and develop a complete record before adopting this rule, and because the Commission failed to evaluate the alternatives to a five year cap. Several of these parties also argue that the five year renewal term conflicts with the Commission's decision in Order No. 888–A, where the Commission adopted a ROFR provision without a maximum renewal term. The pipelines also argue that Order No. 636–C is not responsive to the Court's remand, and that the twenty-year cap withstands the inquiries posited by the Court. They argue that the Commission should return to the rationale that it originally expressed in Order No. 636, *i.e.*, that under the ROFR, capacity rights should go to the party that values them most.

[4] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636–A, [Regs. Preambles Jan. 1991–June 1992] FERC Stats. & Regs ¶ 30,950 (1992), *order on reh'g*, Order No. 636–B, 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993).

[5] Specifically, the Court remanded to the Commission issues related to eligibility for no-notice transportation, the selection of a twenty-year cap in the right of first refusal process, SFV rate mitigation, eligibility of small customers on downstream pipelines for a small customer rate, the requirement that pipelines allocate 10 percent of GSR costs to interruptible customers, and the decision to exempt pipelines from sharing in GSR costs.

[6] UDC, 88 F.3d at 1140.

[7] Id.

[8] Id.

B. Discussion

The Commission has decided not to modify the five-year cap in this proceeding. The record in the Order No. 636 proceeding consists of data and arguments presented to the Commission in 1991 and 1992, before restructuring had been implemented, and some limited information regarding contract terms that became available after restructuring. Based on that record, the five-year cap is responsive to the Court's concern that a twenty year matching cap may not adequately protect consumers against the exercise of the pipelines' monopoly power. As the Court pointed out, most of the commenters in this proceeding advocated a term of less than twenty years, such as five years.[9] Further, the record in this case also shows that the trend in the industry in the months after restructuring was toward shorter contracts, and the five year cap is consistent with this industry trend. As the Commission explained in Order No. 636–C, the selection of a particular matching cap involves weighing several factors, and, as the Court recognized, is necessarily somewhat arbitrary. The record in this proceeding supports the finding that the five year cap reasonably protects captive customers from having to match competing bids that offer longer terms than the bidder would have to bid in a competitive market without the pipeline's natural monopoly. Therefore, the requests for rehearing are denied.

Nevertheless, the pipelines have raised legitimate concerns about the practical effects of the five year term matching cap on the restructured market as it continues to evolve. Information subsequent to the period covered in this record suggests that the five year cap results in a bias toward short-term contracts, with possible adverse economic consequences for both pipelines and captive customers. The Commission is currently analyzing these and other issues related to both short term and long term gas markets as part of a comprehensive review of its gas policies. This ongoing review will develop a record containing information on the pipeline industry in the post-restructured environment, and will provide an opportunity for interested parties to submit information and comments on future regulatory policies, including whether the term matching cap in the right of first refusal should be lengthened or removed altogether. In contrast, the record in this proceeding contains no information concerning current conditions in the natural gas industry. Therefore, any change that may be made in the Commission's current policy concerning the right of first refusal would be better addressed in the context of a new gas policy initiative, where all long-term issues can be considered and a new record can be developed concerning current conditions in the natural gas industry.

Several parties seek clarification of the mechanism for providing case-by-case relief to shippers who had already renewed their contracts pursuant to the right of first refusal prior to the issuance of Order No. 636–C. Coastal Companies asks the Commission to clarify that the Commission will not shorten the term of an already renewed contract if the renewal took place pursuant to a pipeline's tariff procedures that were established in an order that is non-appealable.[10] This is particularly important, Coastal argues, where, as in the case of CIG, the twenty year cap is part of a comprehensive settlement. If the Commission denies clarification and rehearing, Coastal asks the Commission to clarify that in addressing a shipper's request to shorten the term of a contract, the Commission will consider all pertinent factors, such as whether business decisions were made in reliance on that provision. Similarly, Noram argues that the Commission should not disturb matching caps established by individual pipelines. On the other hand, NAGC asserts that the Commission properly reduced the cap to five years, but erred in not requiring that all existing contracts under Order No. 636 for 20 years could be modified at the request of the adversely affected customers without the necessity of extensive proceedings before the Commission.[11]

The problem of shippers exercising the right of first refusal during the time period between the issuance of Order No. 636 and Order No. 636–C has not been significant. The issue has been raised in only three proceedings.[12] The Commission clarifies that any case specific relief from contract terms will be dependent on a factual finding that the party entered into a longer term contract than it otherwise would have because of the 20 year cap, consistent with the Commission's approach in *Horsehead Resource Development Co., Inc.* v. *Transcontinental Gas Pipeline Co.*,[13] and *Williams Natural Gas Co.*[14] The Commission further clarifies that in determining whether a contract term should be reduced under this standard, the Commission will consider all pertinent factors, including whether the term was part of a settlement package.

III. Eligibility Date for No-Notice Service

The Commission held in Order No. 636 that pipelines were required to provide no-notice service only to those customers that were bundled sales customers on May 18, 1992, the effective date of Order No. 636. In *UDC*, the Court held that the Commission had not adequately explained why former bundled firm sales customers who had converted to transportation before issuance of Order No. 636 should not also have a right to receive no-notice service. Accordingly, the Court remanded the issue to the Commission for a further explanation of which customers should be eligible for no-notice service. In Order No. 636–C, the Commission modified its no-notice policy on a prospective basis and held that if a pipeline offers no-notice service, it must offer that service on a non-discriminatory basis to all customers that request it. The Commission explained that at the time of Order No. 636, there was considerable uncertainty as to whether pipelines would be able to perform no-notice service on a widespread basis, but that post-restructuring experience had not realized these concerns.

No party seeks rehearing of the Commission's requirement that pipelines offering no-notice service must do so on a nondiscriminatory basis. Only NAGC requests rehearing, and only on the issue of retroactivity.

[9] Id. at 1141.

[10] Coastal states that the Commission took a similar approach in Order No. 528, 53 FERC ¶ 61,163 at 61,594 (1990).

[11] In addition, APGA and Cities ask the Commission to clarify that those pipeline customers whose long term firm transportation contracts expire before the end of the 180-day period for complying with Order No. 636–C will not be required to match bids of longer than five years to retain their capacity during the right-of-first refusal process. Alabama-Tennessee Natural Gas Co. (now Midcoast Interstate Transmission) filed an answer to APGA and Cities. Issues concerning the exercise of the right of first refusal on Alabama-Tennessee by these parties were addressed in several complaint proceedings, and need not be addressed here. *See, e.g.*, Decatur Utilities v. Midcoast Interstate Transmission, 81 FERC ¶ 61,034 (1997).

[12] *Horsehead Resource Development Co., Inc.* v. *Transcontinental Gas Pipeline Co.*, 81 FERC ¶ 61,293 (1997); Williams Natural Gas Co., 81 FERC ¶ 61,350 (1997); and Utilicorp United Inc., Docket No. RP98–189–000 (filed April 17, 1998).

[13] 81 FERC ¶ 61,293 (1997). In *Horsehead Resources*, the Commission found that the specific facts in that case supported a finding that the shipper agreed to a longer term than it otherwise would have because of the twenty year cap requirement, and therefore, granted the requested relief subject to the outcome of the requests for rehearing of Order No. 636–C. The Commission then stated that it would be preferable to wait until it had acted on the requests for rehearing of Order No. 636–C to reduce the term of the contract. That term can now be reduced.

[14] 81 FERC ¶ 61,350 (1997).

NAGC asserts that the Commission erred in denying refunds to customers who, in the past, were not eligible for no-notice service. NAGC argues that, although the Commission's authority under section 5 of the NGA is only prospective, the courts have held that refunds effective at the time of the original error by the Commission are permissible in a case like this where, NAGC asserts, the Commission's order never became final and has been overturned by a reviewing court.[15] NAGC asks the Commission to revise Order No. 636–C insofar as it limits the effectiveness of this ruling to prospective periods, and order refunds to put petitioners in the same position they would have occupied had the alleged error not been made.

In Order No. 636–C, the Commission made a prospective change in its policy on this issue based on then current circumstances in the gas industry showing that early concerns about the pipelines' ability to provide no-notice service to a broader group of customers were unfounded. Order No. 636–C did not find, as NAGC suggests, that the original holding in Order No. 636 was in error. Moreover, the Commission explained in Order No. 636–C that it cannot retroactively change Order No. 636's limitation on the pipeline's obligation to provide no-notice service because it is impossible to change past service. Because no notice service, as a premium service, is generally more expensive than the alternatives, issues concerning refunds to customers who did not receive no notice service before Order No. 636–C should not arise in most instances.[16]

In any event, even if the Commission had erred in Order No. 636 by limiting no notice service, refunds would not be an appropriate remedy in these circumstances. Refunds would be difficult to determine because if the class of no notice customers had been larger, both the no notice and non-no notice rates would likely have been different, and it would be impossible to determine what service choices other customers would have made if the rates had been different. Further, unless the Commission were to order surcharges to counterbalance the refunds, the pipelines would suffer losses simply for complying with the Commission's order. It is for this reason that the Commission does not order refunds for rate design changes if the pipeline made a good faith effort to implement the Commission's rate design goals.[17] Nothing in the cases cited by NAGC suggests that refunds must be ordered for a change in rate design directed by the Commission in a rulemaking proceeding where pipelines complied with the Commission's directive pending judicial review.[18] No-notice service is now available on a non-discriminatory basis to all shippers on any pipeline that offers no-notice service. Refunds are a discretionary remedy, and the Commission concludes that refunds are not appropriate in these circumstances. The request for rehearing is therefore denied.

NAGC also asks the Commission to clarify Order No. 636–C by expressly eliminating the language in Order No. 636 that limits the eligibility to no-notice service. The Commission has clearly removed the restriction on no-notice service and has held that no-notice service must now be offered on a nondiscriminatory basis. Since there is no regulation text at issue, nothing further is needed to effect this change.

IV. Small Customer Rates for Customers of Downstream Pipelines

In Order No. 636, the Commission required pipelines to offer a one-part small customer transportation rate to their customers that were eligible for a small customer sales rate on the effective date of restructuring. On rehearing of Order No. 636–A, the issue arose as to whether the Commission should require upstream pipelines to offer their small customer rate to the small customers of downstream pipelines who became direct customers of the upstream pipelines as a result of unbundling. In Order No. 636–B, the Commission held that this issue should be considered on a case-by-case basis in the individual pipeline restructuring proceedings. In *UDC,* the Court found that the Commission had made an arbitrary distinction between former indirect small customers of an upstream pipeline and small customers who were direct customers of the upstream pipelines, and remanded this issue for further explanation.

In Order No. 636–C, the Commission again concluded that downstream customer eligibility for a one-part rate should be determined on a pipeline-by-pipeline basis, rather than in a generic rulemaking. The Commission explained that the determination of the small customer class size and eligibility criteria requires consideration of the individual circumstances present on each pipeline system because changes in the eligibility requirements for the small customer rate upset the prior cost allocation among the classes of customers. Order No. 636–C discussed the circumstances on Tennessee Pipeline Co. (Tennessee) to illustrate some of the factors that should be taken into account with respect to determining small customer class and eligibility. In Tennessee's restructuring proceeding,[19] the Commission held that the eligibility level for Tennessee's former downstream customers should be 5,300 Dth/day or less,[20] while the eligibility level for its directly connected small customers would remain at Tennessee's pre-existing eligibility level of 10,000 Dth/day or less.

The only parties seeking rehearing of Order No. 636–C on this issue are the

[15] *NAGC cites U.S. Improvement Co.* v. *Callery Properties*, 382 U.S. 223, 229 (1985); Consumer Counsel, *State of Ohio* v. *FERC*, 826 F.2d 1136, 1138–39 (D.C.Cir. 1988); *Mid-Louisiana Gas Co.* v. *FERC*, 780 F.2d 1238, 1247 (5th Cir. 1986); and *Tennessee Valley Municipal Gas Ass'n.* v. *FPC*, 470 F.2d 446, 452 (D.C.Cir. 1972).

[16] The Commission is aware of only one pipeline where the issue of refunds arose. Kansas Cities, one of the municipal customers included in NAGC, filed a complaint against Williams Natural Gas Company alleging that Williams was engaging in unlawful discrimination by giving converting sales customers preferential access to no-notice service. The Commission denied Kansas Cities' complaint in large part because it was a collateral attack on Order No. 636.65 FERC ¶ 61,221 (1993), *reh'g*, 66 FERC ¶ 61,315 (1994). Kansas Cities appealed the Commission's denial of its complaint in *Kansas Municipals* v. *FERC* (D.C.Cir. No. 93–1656), and argued to the Court that it should receive refunds. On May 12, 1998, the Court found that the petition was not ripe for review and remanded the case to the Commission for further consideration in light of the decision in the instant proceeding. The Commission will address the application of its ruling in this proceeding to Kansas Municipals in the remanded proceeding in Williams Natural Gas Co., RS92–12–008, *et al.*

Also, in Williams Natural Gas Co., 80 FERC ¶ 61,158 (1997), Kansas Cities argued that it had been harmed by its ineligibility to receive no notice service because, Kansas Cities alleged, it was required to pay more on an annual basis than it would have paid if it had received no notice service. The Commission denied the request for refunds, and Kansas Cities did not appeal the Commission's decision.

[17] Williams Natural Gas Co., 80 FERC ¶ 61,158 at 61,692 (1997); Opinion No. 369–A, Panhandle Eastern Pipe Line Co., 59 FERC ¶ 61,244 at pp. 61,845, 61,849 (1990; ANR Pipeline Co., 50 FERC 61,091 at p. 61,257 (1990), reh'g denied, 51 FERC 61,038 at p. 61,075; Mississippi River Transmission Corp., 50 FERC ¶ 61,092, reh'g denied, 51 FERC ¶ 61,111 at p. 61,259 (1990); Trunkline Gas Co. 50 FERC ¶ 61,085 (1990).

[18] Further, NAGC's characterization that in *UDC*, the Court found that the restriction in Order No. 636–B on no-notice service was unlawfully discriminatory, and that in Order No. 636–C, the Commission agreed with the Court that its action in promulgating that restriction was unlawful, is inaccurate. The Court remanded the issue to the Commission for further consideration, and in Order No. 636–C, the Commission removed the restriction based on experience with no-notice service.

[19] Tennessee Pipeline Co., 65 FERC ¶ 61,224 (1993), *reh'g. denied*, 66 FERC ¶ 61,317 (1994)(*Tennessee*), *remanded*, *TVMGA* v. *FERC*, (D.C. Cir. April 21, 1998).

[20] The highest criteria used in the tariffs of Tennessee's downstream pipelines was 5,300 Dth/day.

East Tennessee Group (East Tennessee) and the Tennessee Valley Municipal Gas Authority (TVMGA), downstream small customers of Tennessee. This issue therefore has now been narrowed solely to the treatment of downstream customers on Tennessee. On rehearing of Order No. 636–C, East Tennessee and TVMGA argue that the Commission failed to remove the arbitrary distinction between the two classes of small customers or to support the distinction with substantial evidence. Further, TVMGA argues that the Commission erred in Order No. 636–C by using the *Tennessee* case as an example because the Commission misapplied its own review standard in *Tennessee*. TVMGA asserts that while Order No. 636–C states that the Commission should review the economic impact and cost shift of granting small customer rate treatment to newly qualifying small customers, in *Tennessee*, the Commission considered only their contract demand entitlement as a percentage of the total system. TVMGA alleges that this caused the Commission to substantially overestimate the economic impact of allowing the indirect downstream customers to qualify for small customer status on Tennessee based on Tennessee's 10,000 Dth/day or less standard. TVMGA asserts that if the Commission had actually examined the economic impact of any cost shift of according equal treatment to all small customers in *Tennessee*, as it states in Order No. 636–C that it will do, it would have concluded that any effect would be de minimis.

East Tennessee and TVMGA also appealed the Commission's decision on this issue in the *Tennessee* restructuring case to the D.C. Circuit.[21] In their appeal, East Tennessee and TVMGA made arguments very similar to their arguments on rehearing in this proceeding. On April 21, 1998, the Court issued its decision in *TVMGA* v. *FERC*,[22] and remanded the portion of the Commission's order in *Tennessee* dealing with the small customer rate to the Commission. The Court recognized that the issues before it on appeal of the *Tennessee* decision were essentially the same as those before the Commission on rehearing of Order No. 636–C, and therefore directed the Commission to consider this aspect of the case in light of the order on rehearing of Order No. 636–C.

The Commission continues to believe that the small customer issue should be decided on a case–by–case basis for the reasons explained in Order No. 636–C. The Commission can better address concerns regarding eligibility and discrimination in the context of a proceeding that takes into account the specific circumstances of the pipeline. The requests for rehearing on this issue indicate that the parties' general concerns cannot be adequately addressed without reference to the specifics of the *Tennessee* proceeding. For example, a key issue raised in the requests for rehearing involves the cost shifts that would result from allowing indirect customers to qualify for Tennessee's 10,000 Dth/day limit. That issue is more appropriately addressed in the *Tennessee* proceeding than in this generic rulemaking. Therefore, the Commission upholds the general proposition that issues related to small customer rates should be decided in specific rate proceedings. The Commission will address the issues raised in the requests for rehearing concerning downstream small customer on Tennessee, including the allegations of discrimination, in its order on remand in the *Tennessee* proceeding.

V. Recovery of GSR Costs

In *UDC*, the Court did not question the basic principle that pipelines should be able to recover their GSR costs, but remanded two aspects of the Commission's recovery policy for further consideration. First, the Court found that the Commission had failed to explain adequately its decision to allocate 10 percent of the GSR costs to the pipeline's interruptible transportation customers. Second, the Court held that the Commission had not adequately explained it decision to exempt pipelines altogether from the absorption of any GSR costs.

In Order No. 636–C, the Commission provided a further explanation of its conclusion that pipelines should be able to recover 100 percent of prudently incurred GSR costs, and reaffirmed that conclusion. MoPSC and NASUCA/POCA sought rehearing of this ruling, but subsequently withdrew their requests for rehearing. This issue is therefore resolved.

With regard to the issue of the recovery of GSR costs from IT customers, in Order No. 636–C, the Commission determined not to require that the percentage of GSR costs allocated to IT customers be 10 percent for all pipelines. Instead, the Commission required each individual pipeline, whose GSR proceeding had not been resolved, to propose the percentage of the GSR costs that its interruptible customers should bear in light of the circumstances on its system. Therefore, the Commission directed pipelines that had filed to recover GSR costs before the date Order No. 636–C was issued, and whose GSR recovery proceedings had not been resolved by settlement or final and non-appealable Commission order, to file proposals for allocation of costs to IT customers in their respective proceedings within 120 days of the issuance of Order No. 636–C.

No party seeks rehearing of the basic policy that determination of the appropriate allocation of GSR costs to IT customers should be done on a case-by-case basis, but the Coastal Companies seek clarification of the order. The Coastal Companies request the Commission to clarify that where the provisions in a pipeline's tariff that set forth the allocation of GSR costs to interruptible transportation were approved by a final, non-appealable Commission order, any change from the existing ten percent allocation will be applied prospectively from the date of an order approving a subsequent tariff sheet that incorporates the new allocation percentage. The Coastal Companies also ask the Commission to clarify that the calculations[23] in Order No. 636–C were merely illustrative, and that the Commission will consider all pertinent factors in determining the appropriate level of GSR costs to allocate to IT. These clarifications are consistent with the intent of Order No. 636–C and are therefore granted.

The Commission Orders

The requests for rehearing are denied, and the requests for clarification are granted and denied, as set forth in this order.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14676 Filed 6–2–98; 8:45 am]

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[21] *Tennessee Valley Municipal Gas Ass'n* v. *FERC*, (D.C. Cir. No. 93–1566).

[22] *Id*.

[23] In Order No. 636–C, the Commission provides examples to comparing the percentage of interruptible throughput to overall throughput for several pipelines. Order No. 636–C, slip op. at 76n.170.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 94P–0341]

RIN 0910–ZA10

Medical Devices; Classification/ Reclassification of Immunohistochemistry Reagents and Kits

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to classify/reclassify immunohistochemistry reagents and kits (IHC's) into three classes depending on intended use. FDA is classifying/reclassifying into class I (general controls) and exempt from premarket notification requirements IHC's used as adjunctive tests and presenting a low risk to public health. FDA is classifying/reclassifying into class II (special control) IHC's that detect or measure certain target analytes and that provide prognostic or predictive data that is not confirmed by routine histopathologic control specimens. The results of the class II IHC's are reported independently to the clinician, and the performance claims are widely accepted and supported by valid scientific evidence. FDA is classifying/reclassifying into class III (premarket approval) IHC's intended for any other use. The scope of products covered by this final rule includes both pre-1976 devices that have not been previously classified, as well as post-1976 devices that are statutorily classified into class III. The intent of this final rule is to regulate pre-1976 devices and post-1976 devices in a consistent fashion. Therefore, FDA is classifying or reclassifying these products as applicable.

EFFECTIVE DATE: This rule is effective August 17, 1998.

FOR FURTHER INFORMATION CONTACT: Max Robinowitz, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293, ext. 136, or FAX 301–594–5941.

SUPPLEMENTARY INFORMATION:

I. Background

Immunohistochemistry (IHC) is the diagnostic laboratory practice that combines immunologic techniques, using specially prepared antibody reagents, with the examination of intact cells and tissues under the microscope by a pathologist or other trained laboratory scientist. An IHC device is an in vitro diagnostic reagent or test kit that uses immunological methods to identify antigens in tissues or intact cells. An IHC reagent is the primary antibody of an IHC assay that is developed to specifically target, react to, or combine with, a particular cellular or tissue constituent, or antigen, using specific immunological characteristics of the antibody. IHC's may be used together with a secondary or reporter antibody, buffers, washing solutions, and controls. If an IHC primary antibody reagent is sold separately, there should be recommendations for what ancillary reagents and equipment should be used with the IHC reagent to achieve the performance characteristics claimed for the primary IHC reagent. If the IHC is marketed as a test kit, there should be performance data with the finished test kit.

II. Highlights of the Final Rule

In response to public comments, FDA has revised and clarified certain provisions of the final regulation. The revisions maintain the protection of the public health while reducing the regulatory burden on manufacturers by lowering the classification of a number of IHC's. The most significant changes from the proposed rule are as follows:

1. Under the final rule, most IHC's are being classified as class I devices, exempt from premarket notification. Class I includes all IHC's being used as adjuncts to conventional histopathologic diagnostic examination.

2. The definition of class II IHC's has been changed to include IHC's that are not directly confirmed by routine histopathologic control specimens and with claims that are widely accepted and supported by valid scientific evidence. Class II IHC's now include such products as estrogen and progesterone receptors (ER/PR's).

3. The definition of class III IHC's has been narrowed to include only those IHC's that do not meet the criteria for class I or II.

4. Accordingly, the rule lessens the regulatory burden for bringing IHC's to market because most IHC's are now classified/reclassified as class I or II. As post-1976 devices, most IHC's previously were class III devices under section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act) (the act) (21 U.S.C. 360c(f)(1)).

In addition, the agency clarifies and reinforces the following points:

1. This final rule regulates only IHC's being used for diagnostic purposes. Neither the proposed rule nor the final rule would require submissions for reagents or test kits used for research purposes only. Nor does FDA require manufacturers of such research use only reagents or test kits to comply with general controls; and

2. IHC's used for diagnostic purposes have been and will continue to be subject to the current good manufacturing practices (CGMP's) under the act. The requirement to comply with CGMP's is a general control that all devices must meet (unless expressly exempt under section 513(d)(2)(A)) of the act without regard to their level of classification or whether they have been previously classified. (See H. Rept. 94–853 at 17 (1976).)

III. The Final Rule

A. General Approach

FDA believes that the final rule establishes reasonable requirements that can be implemented by the regulated industry without unnecessary burden. To ensure safety and effectiveness, all classes of IHC's will be subject to the following general controls: (1) Labeling requirements for in vitro devices (§ 809.10 (21 CFR 809.10)), (2) compliance with CGMP's, (3) registration and listing, (4) recordkeeping and medical device reporting (MDR), and (5) labeling for prescription use (§ 801.109 (21 CFR 801.109)). FDA has determined that these controls are necessary for a reasonable assurance of safety and effectiveness.

B. Class I Exempt From Premarket Notification

In the final rule, FDA has broadened the class I identification to include all adjunctive IHC's. This change places the majority of IHC's into class I. The final rule also modifies the language in the regulation to clarify that class I IHC's are used to classify tumors.

In response to comments submitted on the proposed rule, FDA reconsidered the regulation of class I IHC's and decided to exempt them from premarket notification (510(k)) requirements. In considering whether to exempt class I devices from premarket notification, FDA focuses on whether notification for the type of device is necessary for the protection of the public health. For the devices exempted from premarket notification by this rule, FDA has concluded that notification is unnecessary primarily for the following reasons:

1. The devices do not have a significant history of false or misleading performance claims or of risks

associated with inherent characteristics of the device, such as device design or materials. When making such determinations, FDA generally has considered the frequency, persistence, cause, or seriousness of such performance claims or risks, as well as other relevant factors.

FDA is unaware of IHC failure being reported in the MDR data base. IHC failures have been reported in the medical literature; the risks of such failure, however, are mitigated by widely accepted practices that are based on valid scientific evidence.

2. In general, FDA will exempt a device from premarket notification when the following factors apply: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that could affect safety and effectiveness will either be readily detectable by users by visual examination or other means, such as routine testing, before causing harm (e.g. testing of a clinical laboratory reagent with positive and negative controls), or not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) any changes in the device would not be likely to result in a change in the device's classification. FDA makes these determinations based on its knowledge of the device, including past experience and relevant reports or studies on device performance.

The characteristics of IHC's are well established. Although the method is not generally quantitative, the results generated using this technology are sufficiently accurate and precise to support subclassification of tumors (neoplasms), and detection and measurement of the presence or absence of clinically significant target analytes. There are sufficient quality assurance techniques in the use of IHC's to enhance the precision of the methodology and minimize the risks of misdiagnosis.

Because class I IHC's are identified as those that are used adjunctively to support conventional histopathological diagnosis and are controlled by readily available internal and external control materials, minor changes to the IHC would not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment. Adjunctive test results are evaluated and incorporated into the diagnostic interpretation by the pathologist and are not usually reported directly to the clinician. Because laboratories certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) are required to run positive and negative quality control samples with all special stains, reagent failures are likely to be easily identified by pathologists. In addition, most slides will have normal along with abnormal tissue included as part of the tissue sample on the slide and this juxtaposition affords an additional opportunity to identify inappropriate or uncommon staining patterns.

Manufacturers are reminded that exemption from the requirement of premarket notification is not an exemption from CGMP's and the other applicable general controls.

Because IHC's have been classified in accordance with the risk associated with their intended use, a change in intended use or indications for use of an IHC would likely result in a reclassification. Such a change would not be considered minor and would probably require a submission to the agency. For a discussion of whether a change to a device would require a manufacturer to submit a 510(k), see the FDA's guidance entitled ''Deciding when to Submit a 510(k) for a Change to an Existing Device.''

C. Class II

In contrast to all adjunctive IHC's being placed into class I, the final rule clarifies that class II IHC's are IHC's that generate results that are not directly confirmed by routine histopathologic internal and external control specimens. Class II IHC's are intended to provide information that is ordinarily reported as independent diagnostic information to the clinician. For an IHC to be classified into class II, the claims associated with this information must be widely accepted and supported by valid scientific evidence. FDA believes that the manufacturer/sponsor can establish the acceptance of the intended use of the IHC and valid scientific evidence through sponsor-supported studies or scientific literature references, materials from professional educational seminars, and/or the citation of practice standards or guidelines, as described in the special control noted in the paragraph below. These IHC's must be developed and established by validation and correlation testing with well characterized clinical specimens that support the intended use of the IHC test system as an independent prognostic or predictive marker. FDA believes that providing valid scientific evidence of performance claims that are widely accepted and complying with the general controls should be sufficient to ensure the safe and effective use of these IHC's.

Class II IHC's are subject to a special control entitled ''FDA Guidance for Submission of Immunohistochemistry Applications to the FDA,'' FDA, Center for Devices and Radiologic Health, 1998. The updated guidance will assist sponsors in collecting and presenting data to FDA to establish that the claims associated with use of the device are widely accepted and that there is valid scientific evidence to support performance claims with clinical specimens. The special control is also intended to provide guidance to manufacturers about labeling for use of the device. This guidance has been issued as a Level 2 guidance consistent with the ''Good Guidance Practices'' (GGP's) FDA adopted for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). Persons interested in obtaining this document should refer to section VI of this document entitled ''Access to the Special Control.''

Several comments urged that IHC's for ER/PR's be classified as class II devices rather than as class III, as proposed. FDA concurs with this suggestion. By using well characterized clinical specimens and validating their IHC's against appropriate FDA approved chemical receptor assays, manufacturers can reliably characterize these products and support their clearance as class II devices. FDA believes that class II classification can now safely apply to IHC's for ER/PR's, including hormone receptors in breast cancer, because clinical reliance on such testing has been established in the medical literature and the information derived from such test results are well understood.

D. Class III

In response to comments on the proposed rule and changes to the class II classification, FDA has narrowed the scope of the class III identification. Under the final rule, IHC's that do not meet the criteria for class I or II will be classified into class III. Manufacturers of these IHC's must submit valid scientific evidence to support the new intended uses. An example of a class III IHC would be markers used to identify new, clinically significant target analytes in tissue specimens that cannot be confirmed by conventional histopathologic examination.

FDA has amended proposed § 864.1860(c) to indicate that postamendment class III IHC's cannot be commercially distributed unless the manufacturer has an approval under section 515 of the act (21 U.S.C. 360e).

IV. The Proposed Rule

In the **Federal Register** of June 14, 1996 (61 FR 30197), FDA published a

proposed rule to classify/reclassify IHC's. The proposed rule contained the reasons for the proposed classification/reclassification, summarized the Hematology and Pathology Device Panel's recommendation regarding the classification of IHC devices, identified the risks to health presented by the devices, included a summary of the data upon which the proposed classification/reclassification was based, and delineated the statutory authority under which FDA issues this rule. Written comments were due August 30, 1996.

The agency received 26 comments from individuals, manufacturers, professional societies, and the U.S. Small Business Administration. A summary of the written comments and FDA's response to them is provided in section V of this document.

V. Response to Comments

A. Classification

1. Two comments supported the classification of IHC reagents and test kits into classes based on intended use as a balanced and responsible level of regulation that would: (1) Not impinge on the continued availability of these materials; (2) not negatively impact the advance of new technology due to application of inappropriately stringent regulatory controls; (3) not be overly burdensome to FDA or industry; or (4) not be inconsistent with the needs and interests of the medical professions, clinical laboratories, FDA, and industry.

A third comment agreed with most of the proposed classification designations. A fourth comment stated that IHC's intended for adjunctive use were appropriately classified into class I. A fifth comment stated that most immunohistochemical antibody reagents should be regulated as class I because if they were ''over-regulated'' it would be difficult to bring the antibodies to market and the reagents were needed daily in the practice of surgical pathology.

A sixth comment suggested that the proper classification for many IHC reagents and test kits would be class I 510(k) exempt in vitro diagnostic (IVD) devices. The comment argued that premarket notification (510(k)) should not be necessary because: (1) 510(k) clearance will not impact significantly on the expertise of the pathologist nor on the quality or reproducibility of immunocytochemistry/immunohistochemistry, which was the central factor in the safe and effective use of immunocytochemistry/immunohistochemistry; (2) 510(k) clearance provided false reassurance to the inexperienced end user in making diagnoses based on possibly erroneous interpretations of data; and (3) of the negative implications of the cost of 510(k) clearance.

A seventh comment argued that the benefits do not outweigh the costs for class I devices to be required to submit a 510(k). The comment argued that manufacturers have no control over how accurately a pathologist interprets results and that the correct focus should be on CGMP standards and other key determinants of manufacturing consistency and compliance.

An eighth comment believed the majority of IHC's should be class I and exempt from premarket notification requirements. The comment argued that production of the antibody product was not the most critical and subjective step in this diagnostic technique and that FDA's resources were better spent in the area of ensuring reliable and consistent production through the controls of CGMP's, medical device reporting, registration, etc., to assure manufacturing consistency and compliance.

FDA has considered these comments and has concluded that premarket notification is unnecessary for the protection of the public health for class I IHC's, which are those used to produce diagnostic information that is confirmed readily by other tests or procedures. Section 513(d)(2)(A) of the act authorizes FDA to exempt class I IHC's from the requirement of premarket notification in section 510(k) of the act (21 U.S.C. 360(k)). This exemption permits manufacturers to introduce into commercial distribution those IHC's that fall within the class I classification without obtaining premarket clearance from FDA. Ongoing initiatives by professional organizations, manufacturers, and FDA are directed at ensuring that pre- and postanalytic, as well as analytic procedures, are properly performed. In the context of these initiatives, FDA believes that classifying these devices as class I and applying general controls will ensure that the majority of adjunctive IHC's are used safely and effectively without the need to require premarket notification. The Food and Drug Administration Modernization Act of 1997, which became effective on February 19, 1998, does not eliminate the need for this rule or require changes with respect to FDA's determinations about classification of these products. The rule establishes a classification scheme for all IHC's including many that were not previously classified as well as class III IHC's. The class I IHC's that are exempt from premarket notification under this rule do not fall into the category of those class I devices that continue to require premarket notification under the new legislation (section 510(l) of the act). Nor does the agency believe that the IHC's being classified into class II by this rule are appropriate for exemption from 510(k) submissions under new section 510(m) of the act.

2. One comment requested clarification concerning the scope of the proposed regulation as it pertains to ''ancillary reagents'' (including detection systems). The comment recommended that ancillary reagents, including secondary antibodies, buffers, and chromogens, should most appropriately be regulated as general purpose reagents under § 864.4010 (21 CFR 864.4010), and subject to § 864.1860 (21 CFR 864.1860) only when packaged with one or more primary antibodies as components of a complete test system.

FDA agrees in part with the comment. ''Ancillary reagents'' are subject to § 864.1860 when they are packaged with one or more primary antibodies as a complete test system. In addition, ancillary reagents are also subject to this regulation when they are sold with performance claims for their use as a general detection system in conjunction with primary antibodies that are sold separately. FDA agrees that secondary antibodies, buffers, and chromogens may be regulated as general purpose reagents under § 864.4010 when these reagents are sold without performance claims.

3. Two comments requested clarification concerning whether devices in commercial distribution prior to May 28, 1976, must comply with the classification and requirements in the proposed rule, particularly the proposed labeling recommended in the March 28, 1995, guidance listed as Ref. 6 in the proposal (61 FR 30197 at 30199). The comment argued that the regulation of ''pre 1976 devices which have not been previously classified'' contradicts § 807.85(b)(1) (21 CFR 807.85(b)(1)), which exempts ''grandfathered'' products from 510(k) review.

These comments misunderstand the meaning of § 807.85(b)(1). Section 807.85(b)(1) establishes exemptions from premarket notification for private label distributors and repackagers who distribute devices that already are being legally marketed without making any changes to the device or its labeling beyond the addition of the private label name. The exemptions in § 807.85(b)(1) do not apply to device manufacturers and distributors generally.

It is true that the requirement to submit a premarket notification before introducing a device into the market

after May 28, 1976, does not apply to devices that were legally marketed prior to that date. However, as explained in 21 CFR 807.81(a)(3), a manufacturer of a device that was marketed prior to the 1976 amendments is required to file a 510(k) if the devices was significantly changed or modified in design, components, methods of manufacture, or intended use. A first time manufacturer of a device that the manufacturer believes to be the same or substantially equivalent to a device that is already marketed also must submit a 510(k) to establish that substantial equivalence, unless the product has been exempted from notification under 513(d)(2)(A).

As discussed previously, preamendment devices have been and will continue to be subject to general controls, such as CGMP's and the existing labeling requirements (§ 809.10) for in vitro devices. Although manufacturers of preamendment class II IHC's that are not required to submit 510(k)'s will have no need to utilize FDA's guidance being established as a special control, manufacturers of preamendment devices that are modified in a way that will require submission of a new 510(k) should consult the special control: ''FDA Guidance for Submission of Immunohistochemical Applications to the FDA'' when submitting premarket notifications for class II devices. Because this special control is a guidance, no manufacturer is bound to follow the details of the document (see response to comment 13 in section V of this document).

4. Three comments argued that additional regulation will do nothing to lower the risk of misinterpretation of results. The comment stated that IHC's have almost always been used as an adjunct to other diagnostic techniques and that the proposed regulations would not necessarily accomplish FDA's stated objectives of reducing risks to patients.

FDA's regulation of IHC assays is limited to oversight of the manufacturers of IHC reagents or test kits; the rule does not regulate the end users or their laboratories. FDA recognizes that safe and effective IHC's do not by themselves guarantee that an IHC in the end user's laboratory will be used accurately and reliably. FDA agrees that IHC assays are multistep IVD test systems that require the expert supervision of a qualified pathologist or laboratory scientist to ensure that all the preanalytic, analytic, and postanalytic steps are performed accurately and reliably.

FDA believes, however, that the building blocks of those assays should be safe, effective, and properly labeled for their intended use. The risks associated with use of an IHC include the likelihood of obtaining a false result, while the effectiveness of an IHC is dependent upon the likelihood of the IHC performing as claimed by the manufacturer. In accordance with § 809.10, the label must include, among other things, the intended use, indications for use, the instructions for use, and limitations. The manufacturer is required to support any performance claims for accuracy, precision, sensitivity, and specificity included on the label of the IHC device with valid scientific evidence. The labeling also should include statements that remind the end user of the variable nature of the specimens to be examined by the IHC, i.e., biologic variability of the tissues and patients, the need for procedures relating to preanalytic fixation, handling, processing, storage, and the variability and subjectivity in the interpretation of the IHC slides.

Contrary to the assertion of some comments, FDA believes that such regulation does reduce risks associated with use of IHC's. The requirements that labeled performance claims be supported by valid scientific evidence and that labeling include instructions for use, limitations, and information about variability significantly increases the likelihood that the end user will have a product that will be used safely and effectively in the laboratory.

In response to comments that implied that industry experts did not believe regulation of IHC's was necessary to reduce risks associated with their use, FDA notes that its classification/reclassification initiatives with respect to IHC's are based on input from public workshops, advisory panels to the FDA, and industry petitions for reclassification, as well as FDA experience with assessment of the safety and effectiveness of IHC devices.

FDA is aware that its regulation of IHC's is supported by other assurances of safe and effective performance of the assays. For example, there is widespread participation by end users in voluntary and mandatory training in IHC assays and proficiency testing in IHC assays by other government and professional organizations. End users may also use voluntary guidelines to ensure reliable and accurate performance of IHC assays within their laboratories, e.g., ''The National Committee for Clinical Laboratory Standards (NCCLS) Quality Assurance for Immunocytochemistry; Proposed Guideline, MM4–P,'' February, 1997. (The approved NCCLS guideline is expected within 2 years.) However, FDA believes such voluntary standards and practices cannot serve as a complete substitute for government regulation of these devices. The existence of such guidelines and widespread compliance with their recommendations has contributed to FDA's determination that most of these devices can be regulated at the least stringent level of control and be exempt from premarket notification.

5. One comment did not support placing IHC's in which test results were ''ordinarily reported as independent diagnostic information'' into class II because the manner in which IHC test results were reported was determined independent of the IHC supplier or FDA. The comment stated that because there may be significant laboratory-to-laboratory and within-laboratory variation in how results were reported, it would be difficult to consistently determine device classification on the basis of how results were reported.

FDA agrees that the IHC manufacturer is not responsible for how each end user laboratory scientist will report the results of an IHC assay. However, the manufacturer is responsible for recommendations and performance claims on the product's label (see § 809.10). Such indications and directions for use are important for the proper performance of the assay and as a reference for compliance with the CLIA requirements for the end user laboratory (42 CFR 493.1211). An individual laboratory that chooses to use the device differently or report results in a manner contrary to labeled recommendations is responsible for that decision and validation of that use.

FDA defines independent diagnostic information as information that: (1) Is the sole or a major determinant of a diagnosis; (2) is used by itself as the basis for a significant medical decision; or (3) may not be readily confirmed by other diagnostic tests or clinical procedures. FDA believes it is possible to identify IHC's for which test results ordinarily are reported as independent diagnostic information to the ordering clinician, and for which the claims associated with these data are widely accepted and supported by valid scientific evidence. Those IHC's that generate independent diagnostic information and where the claims are not widely accepted will be reviewed as class III devices and approved for marketing if there is valid scientific evidence to support those claims.

6. One comment stated that it was unclear why Ki-67 was class II, while hematoxylin and eosin (H & E) staining, which was the more critical assay, was class I. The comment added that class II reagents had no characteristics clearly

distinguishable from those proposed to be in class I.

The agency believes there are differences between H & E stains and IHC's. Despite the critical nature of the assay, biologic stains such as H & E have been placed in class I and exempted from 510(k) review because FDA determined that the stains were well understood, with commonly used controls that permit the user to readily detect deviations in staining properties. For these reasons, FDA concluded that general controls were sufficient and 510(k) submissions were not necessary to establish reasonable assurance of safe and effective use of H & E stains. IHC's, on the other hand, use monoclonal or polyclonal antibodies that may require specific testing or reagents to verify that the assay meets the manufacturer's specification for performance (see also comment 14 of section V of this document). Under the final rule, however, most IHC's will also be regulated as class I devices exempt from premarket notification.

FDA has made changes to the final rule that further distinguish class I from class II IHC's. Class I IHC's are adjunctive IHC's. Class II IHC's generate results that ordinarily are independently reported to the clinician. However, the primary difference between a class I or II IHC depends on the manufacturer's claims in the proposed product labeling for an IHC reagent or test kit because it is these claims that establish the intended use of the IHC. An identical device can be subject to a range of regulatory controls—from the lowest to the highest levels of regulation—depending on the claims being made and on the issues of safety and effectiveness associated with those claims.

Ki-67, the example referenced in the comment, is the name of a monoclonal antibody clone that recognizes a nuclear antigen that is expressed only in proliferating cells. A Ki-67 IHC will yield a positive qualitative result in normal and abnormal proliferating cells. This result correlates with the presence of mitotic activity. A Ki-67 IHC would be classified into class I, exempt from premarket notification if: (a) The intended use of the assay result is to provide adjunctive information that indicates the presence or absence of cell proliferation in all or some of the cells within a tissue sample; (b) the IHC can be controlled by the user with readily available positive and negative tissues controls; (c) the result will be incorporated into the pathologist's differential diagnosis; and (d) the result will not be reported as independent information to the clinician.

A Ki-67 IHC would be classified into class II if: (a) The sponsor claims that the IHC results could be used as a stand-alone test to determine prognosis independent of other findings; (b) the user must use clinically well-characterized tissues to serve as positive and negative controls; or (c) the analytic result will be reported as independent information to the clinician. A Ki-67 IHC would be classified into class III if the sponsor claims that the IHC will be used in combination with a novel amplification method that would allow this IHC to be used as a stand-alone detection system for micrometastases in tissue, or some other new intended use.

The previous comment was in response to the proposed rule. As discussed previously, the final rule establishes that the majority of IHC's are adjunctive and will fall within class I, exempt from premarket notification. For those IHC's that are not adjunctive, the majority will be class II because they have claims that are widely accepted and supported by valid scientific evidence.

7. FDA received conflicting comments about the necessity of classifying certain types of IHC's in class III. Two comments stated that IHC's intended for stand-alone use in making clinically significant determinations, such as markers used for the detection of medically important genetic mutations in tissues that were normal by conventional histopathology, should be regulated as class III devices until more information regarding the safety and effectiveness of these tests became available. A third comment stated that, with the exception of a limited number of class III devices that define a site-specific therapeutic intervention and were used to provide circumstantial information in support of H & E based histopathological diagnosis, markers should be classified as class I exempt from premarket notification. A fourth comment added that the higher classifications were not relevant because currently there was no IHC for a prognostic/proliferation marker that was a reliable ''stand-alone'' indicator and whose use was generally accepted.

FDA agrees that the IHC's described in the first two comments should be regulated as class III devices and not be commercially marketed until a premarket approval application (PMA) establishes that there is valid scientific evidence to support safe and effective use of such products. The agency also agrees with the general point being made by the third comment and has classified the majority of IHC's into class I and exempted them from premarket notification requirements. With respect to the fourth comment, the agency does not agree that the identification of class III IHC's is not relevant. The fact that the comment is unaware of products currently on the market that fit the identification does not obviate the need for FDA to have regulations in place for review of such products when they become available.

B. Costs

8. One comment stated the FDA may also have underestimated the cost associated with the submission of 510(k) and PMA's and compliance inspections for many firms engaged in manufacturing IHC's for research purposes that will be required to register under the new rule.

This comment was made under the mistaken assumption that this rule applied to manufacturers of research products as well as to manufacturers of IHC's marketed for diagnostic use. As noted previously, this rule does not apply to manufacturers of research products and, therefore, imposes no new burden on them. FDA also believes that this comment was made under the mistaken assumption that this rule would create a new requirement for firms to comply with CGMP's. As discussed previously, the requirement to meet CGMP's is not the result of this rulemaking; manufacturers of IHC devices marketed for diagnostic use have always been required to comply with CGMP's under section 520(f) of the act (21 U.S.C. 360j(f). Finally, FDA reiterates that it has reconsidered its position since the proposed rule and has established a classification scheme that does not require 510(k)'s for the majority of these IHC devices, and that places most remaining IHC's in class II. Therefore, existing firms that are currently in compliance with CGMP's should not experience any increased costs because of this rule.

C. Definition of IHC

9. One comment supported the proposed definition for IHC reagents and test kits because the definition distinguished between IHC reagents and analyte specific reagents (ASR's) or flow cytometry reagents. The comment also supported the use of performance claims and directions for use with IHC's.

FDA agrees with this comment. The definition of IHC's and labeling requirements have been retained in the final rule.

10. One comment was concerned that the IHC definition was ''technology-specific'' and limited to only those devices that employ monoclonal or polyclonal antibodies. The comment

argued that the operating technology used by the device should be of secondary consideration, provided that the test was intended for adjunctive use along with other conventional histopathology techniques.

FDA disagrees with this comment. Although the operating technology of the device is of primary importance in identifying an IHC, the intended use of the device will establish its regulatory class. The final rule provides a broad and inclusive regulatory path for commercialization of new versions of currently available IHC devices or IHC devices that are intended to detect a new analyte in tissues or cells. This classification/reclassification is intended to decrease the burden on FDA and industry by obviating the need to individually classify IHC devices that detect previously identified or newly identified analytes.

D. Estrogen and Progesterone Receptors

11. Three comments recommended that ER/PR's be placed in class II instead of class III, as had been proposed. One comment argued that regulating hormone receptors as class III medical devices may limit the availability of an important testing modality, forcing patients to rely upon less accurate methodology for testing results. Two comments maintained that ER/PR's should not be class III because they were not used as stand-alone tests; the information they provided was substantially dependent on other pathological or cytopathological aspects of the specimen, and these tests did not have novel claims not supported by current widely accepted scientific pathophysiologic principles. A third comment recommended reclassifying ER/PR assays into class II because it was likely that there was a sufficient accumulated history of safe and effective use of the tests to support the reclassification and because FDA had published a guideline for premarket submissions of ER/PR assays that could be used as a special control.

FDA agrees with these comments and has modified the regulation accordingly. The first IHC tests for ER/PR's were in vitro steroid-binding chemical assays that used dextran-coated charcoal to separate bound from free fractions. These IHC tests were subject to class III premarket approval because there was no substantially equivalent legally marketed predicate device, a necessary requirement to qualify for premarket notification (510(k)). There were additional safety and effectiveness considerations raised by these devices, including the likelihood that ER/PR results would be used as stand-alone test results that would serve as the basis for choice of therapy and the inability to confirm these results by other IVD tests or clinical procedures. However, after evaluating the comments and reviewing the peer-reviewed literature regarding use of these IHC's, FDA believes that IHC's for estrogen, progesterone, or other hormone receptors now can be classified/reclassified into class II under the final regulation when their claims are widely accepted and there is valid scientific evidence to support those claims.

12. Two comments stated that there was confusion about which products were covered under the proposed rule and used estrogen receptor (ER) as an example. The comment suggested it was not appropriate to place all ER's in a single class because that class could not take into account differences between broad antigen recognition and clones reacting with certain epitopes or populations of ER, even though there was no clinical utility for some clones.

FDA disagrees with these comments and believes they are based on a misunderstanding of the proposed rule. FDA does not intend to require premarket submissions for reagents or tests kits that are for ''research use only.'' The regulation requires premarket submissions only for ER/PR reagents or test kits that are intended to be marketed ''for in vitro diagnostic use'' to obtain clinical information. If an IHC reagent or test kit marketed for clinical use includes antibodies, FDA requires the IHC manufacturer to identify the clones of those monoclonal antibodies used in the IHC reagent or test kit that support that intended use.

E. Guidance Document

13. One comment argued that a guidance document cannot be a special control because using a draft guidance document as a special control is an inappropriate use of guidance documents, and that it seemed to contradict the interim policy announced by FDA concerning guidances to use a guidance as if it were a rule.

FDA disagrees that a guidance document cannot be a special control. ''Guidelines (including guidelines for the submission of clinical data in premarket notification submission * * *)'' are expressly listed in section 513(a)(1)(B) of the act as an example of special controls. In addition, FDA guidance documents are specifically listed as potential special controls in the legislative history of the Safe Medical Devices Act of 1990 (H. Committee Rept. 101–808, October 5, 1990, p. 28).

Moreover, consistent with FDA's policy on GGP's, the agency published for public comment a ''draft'' of this FDA guidance document in advance of it being used as a special control (62 FR 8961, February 27, 1997). The guidance entitled ''FDA Guidance for Submission of Immunohistochemical Applications to the FDA'' was developed by FDA in conjunction with professional organizations, manufacturers of immunohistochemical products, and the advisory committees of FDA. The draft has been revised in response to public comments, and the guidance is available to the public as delineated in section VI of this document.

FDA is using this guidance in conformance with its policy concerning guidances. The guidance is intended to provide information about acceptable ways to facilitate the gathering of data to ensure reasonable safety and effectiveness of those IHC devices whose safety and effectiveness cannot be ensured by general controls alone. Although the guidance represents FDA's best thinking about ways to efficiently and effectively gather and submit data to support the marketing of these devices, neither the manufacturer nor the agency is bound by the details of that guidance. As stated in the guidance document, manufacturers are free to use alternative methods that achieve the same underlying standard of safety and effectiveness.

F. Impact of Proposed Rule

14. One comment stated the author's belief that IHC's were utilized under the guidance of board certified pathologists a significant percentage of the time and had a performance record equal to or greater than stains used since the turn of the century. This comment maintained that undue restrictions on the use of the reagents would impact on the availability of existing and future antibodies to the detriment of patient care.

FDA agrees in part with this comment. FDA is treating IHC's used to provide adjunctive information the same as H & E stains by classifying these products into class I and exempting them from the requirement to submit 510(k)'s. Histopathologic and cytologic diagnostic tests that use either conventional stains such as hematoxylin and eosin or IHC methodologies are part of a multistep process that requires the direct supervision of a qualified pathologist or other laboratory scientist to ensure safe and effective results. However, FDA does not consider IHC's to be equivalent to conventional biologic stains and has not exempted IHC's from CGMP requirements although it did exempt the stains from CGMP's. FDA considers IHC's to be

more complex to develop, manufacture, and standardize. FDA exempted conventional biologic stains from premarket notification and compliance with CGMP's because these stains have well-established chemical and physical specifications and quality assurance. In addition, there are voluntary organizations such as the Biologic Stain Commission that test and certify the specifications of biologic stains. The final rule ensures that all commercialized IHC reagents and test kits for in vitro diagnosis are manufactured under general controls including CGMP, thereby enhancing reliability and consistency for end users of these products.

G. Panel Meeting

15. One comment stated that the October 21, 1994, meeting of the Hematology and Pathology Devices Panel (the Panel) was procedurally flawed. The comment referenced a complaint filed by a Washington, DC, law firm that FDA inaccurately described the regulations to the Panel members, and that this alleged misinformation was the basis for their recommendations. The comment recommended that it be stated in the administrative record that the advisory Panel meeting was procedurally flawed, that the Panel recommendations should not be used to support the decisions made by FDA about the classification of these products, or that the Panel meeting should be invalidated and reconvened for further consideration of the issue.

This comment refers to a complaint about a FDA employee's public comment that CGMP inspections for class I IVD device manufacturers are so relatively low on the priority list for the agency actions that there is a strong likelihood that these manufacturers will not get timely CGMP inspections. The comment argues that this statement exerted undue influence on the Panel. Because requiring compliance with CGMP's was a high priority for pathologists and other laboratory scientists, the comment asserts that the Panel recommended that IHC's should be class II medical devices in large part to ensure timely CGMP inspections.

FDA does not agree with this comments' characterization of the Panel meeting. While FDA agrees the Panel was concerned that IHC's be subject to CGMP's, FDA believes the availability and need for a special control is the basis for the Panel's recommendation that most IHC's be classified as class II. However, as discussed previously, FDA has reconsidered this recommendation of the Panel and amended the proposed rule to place most IHC's in class I and exempt from premarket notification. FDA does not believe that class II regulation is required for all IHC reagents and test kits for the reasons discussed in section III.B of this document. Unless specifically exempted, all manufacturers of FDA regulated medical devices must comply with general controls, which include CGMP's, regardless of whether or not the device is in class I, II, or III, or exempt from premarket notification. While FDA acknowledges that its limited resources do not allow inspections to be as frequent as it might wish, the agency's experience shows that competitors and dissatisfied customers will provide the agency with information about circumstances that require more immediate followup.

H. Practice of Medicine

16. One comment argued that whether a reagent was used to make ''significant medical decisions'' was an inappropriate criterion for classification. The comment argued that classifications did not rely on the intent of the manufacturer, but on the physician's usage, which the comment argued was the practice of medicine and beyond the responsibility of a manufacturer. The comment stated that the basis for device classification in this rule was medical practice (e.g. ''significant medical decisions,'' ''markers of clinically significant genetic mutations,'' and ''adjunctive diagnostic information that was ordinarily reported as independent diagnostic information to the ordering clinician'') that was inconsistent with the current requirements of law for determining classification and an attempt to regulate the practice of medicine.

FDA does not regulate medical practice. FDA regulates the manufacturers of IVD tests to ensure reasonable safety and effectiveness of these products for the claimed intended use and indications for use. The rule focuses on the use to which the information being generated by the IHC will be put because it is the IHC's intended use that determines the level of safety and effectiveness that must be assured. An IHC manufacturer must document the safety and effectiveness of these intended uses and indications for use with valid scientific evidence. If a laboratorian or clinician uses an IHC test for purposes not recommended by the IHC manufacturer, these would be off-label uses that become the responsibility of the laboratory scientist or clinician to establish and validate.

The level of risk to a patient associated with use of an IVD must account for the consequences of inaccurate results. The level of risk rises with the seriousness of consequences from a false result, the likelihood of the false result occurring, and the number of persons likely to be exposed to the risk of a false result. All of these risks are weighed against the benefit of the assay if it is performed accurately for its intended use and the risk from not having the results from the IHC assay. When evaluation of risks and benefits requires FDA to seek information about the use to which test results are to be put, such data collection is not an intrusion into the practice of medicine but the necessary review of information that is essential to establish whether the product can be marketed as labeled by the manufacturer with reasonable assurance of safety and effectiveness.

I. Prescription

17. One comment stated that it was inappropriate to include § 801.109, which provides that antibodies be provided only upon authorization by a physician, as a general control applying to IHC's. The comment argued that it would put severe restrictions on a researcher wishing to purchase the reagents and was a complete change from the way IHC's were currently ordered. The comment maintained that many of the requirements of § 801.109 were inappropriate for IHC's, such as frequency or duration of administration and side effects, and that generating and tracking this information would be burdensome to the manufacturers and result in added cost to the customer. The comment added that this requirement appeared to impose a ''drug model'' on device manufacturers. The comment recommended that the proper general control was 21 CFR 801.119. A related comment questioned whether a physician prescription was necessary for the research use of FDA-approved and marketed IHC reagents and stated that such a requirement had a high potential to hinder legitimate biomedical research efforts. Five other comments stated that a key concern was that IHC reagents be purchased only on the order of a physician, even if the reagents were being used for research use.

FDA disagrees with these comments. As stated previously, the rule does not apply to IHC's used for research and FDA does not require any premarket submissions from manufacturers of products labeled and intended ''for research use only.'' FDA does not restrict the purchase of reagents or test kits used for research, and FDA does not require a physician's prescription if

these products are not to be used for diagnosis or management of patients.

Section 801.109 applies only to IVD devices intended for clinical use in the diagnosis and management of patients. These devices are required to be in the possession of practitioners licensed by law to use or order such devices. Physicians are not the only practitioners allowed to use or order IVD tests. Other practitioners include dentists, veterinarians, nurses, or others licensed by applicable State law to use or order the use of the device.

J. Research Use

18. Several comments were concerned that the proposed rule would limit basic research by requiring IHC's used only in research to be subject to the requirements of this regulation. Another comment requested clarification about FDA's position with respect to antibodies intended for use as immunohistochemical research reagents and whether such antibodies could be marketed as ASR's. The comment also questioned whether low or moderate complexity clinical laboratories would be able to use these products if the products were marketed as ASR's.

As discussed previously, FDA does not require premarket submissions from manufacturers or users of in vitro reagents or test kits that are labeled ''for research use only.'' FDA introduced the ASR regulations to allow manufacturers to simplify the commercialization of new ASR's for diagnostic use before these reagents have established performance characteristics. IHC reagents may be marketed as ASR's as long as they comply with the ASR regulations(§ 809.10, 21 CFR 809.30, and 864.4020). The product must be manufactured under general controls, which include CGMP's. The product cannot be sold with any performance claims, intended use, indications for use or instructions for use. It is the responsibility of the end user to validate the intended use, indications for use, and performance characteristics of the ASR. It is because of the high level of proficiency required of the end user that the ASR regulations restrict the use of ASR's to high complexity laboratories.

K. Reimbursement Status

19. One comment asked FDA to discuss with the Health Care Financing Administration (HCFA) and announce the Medicare reimbursement status of: (1) IHC reagents in the interim period while manufacturers prepared and FDA cleared 510(k) submissions, and (2) IHC reagents that have been designated as ASR's.

Manufacturers who have questions about HCFA reimbursement should address their questions directly to HCFA. FDA's regulatory decisions are based on providing assurance of safety and effectiveness of these devices and are made independent of HCFA's reimbursement decisions. HCFA does consider FDA's clearance and approval of IVD devices as part of HCFA's decision to approve reimbursement. HCFA's decision to reimburse for IVD devices is a cost-benefit decision about whether the device is reasonable and necessary to establish a diagnosis or for patient management.

L. Small Entities

20. One comment from a trade association requested that FDA re-examine its assertion that ''the proposed rule will not have significant impact on a large number of small entities.'' The comment stated it was aware that FDA made no formal study in arriving at its conclusion and has not placed any data in the docket to support the decision. The comment stated that most of the suppliers of antibodies to the research community are small businesses that would be severely affected by a requirement to manufacture small quantities of a large number of products under CGMP regulations. The comment argued that its membership estimates the cost of an antibody submission at between $10,000 and $40,000 per antibody when the manufacturer follows the draft guidance document and that the sales volume of most of these products could not justify this expense.

Another comment stated that FDA had offered no analysis or study to support its conclusion that there would be no significant economic impact on a substantial number of small entities. The comment stated that, in order for an agency to certify that a rule would not have a significant economic impact on a substantial number of small entities, an agency must first demonstrate that it had made a reasonable preliminary assessment of what constituted a small entity in the affected industry, the number of small entities likely to be affected, and the impact of the regulation on those businesses. The comment argued that FDA had an affirmative obligation to explain why reasonable alternatives were rejected and to demonstrate that there had been outreach to the affected industry.

These comments were made under the mistaken assumption that this rule applied to manufacturers of research IHC products. Manufacturers of preamendment IHC medical devices for diagnostic use already are required to comply with general controls applicable to all manufacturers of devices, and this rule does not add any new obligation with respect to that requirement. All postamendment IHC devices require premarket approval or an order finding substantial equivalence unless exempted by statute or regulation. The effect of this rule is to establish that the majority of these postamendment devices will now be in class I and exempt from any premarket submissions. Although these devices will continue to be subject to general controls, the rule will impose no new burdens for most of these devices. In fact, the rule will reduce the economic burden for many of these manufacturers because they will no longer be required to submit PMA or 510(k) applications for most of their products.

FDA has prepared an analysis of impact for this rule in section VII of this document and alternatives to the final rule are discussed there. In response to the comment on agency outreach to the affected industry, FDA notes that it convened a public meeting of the Hematology and Pathology Devices Panel in October 1994 and received written comments from interested parties before, during, and after the meeting.

FDA believes this final regulation will not have a significant adverse impact on small businesses that currently are in the business of manufacturing IHC's. FDA believes the regulation ensures the public that IHC reagents and test kits are reasonably safe and effective for their intended use. At the same time, FDA does not intend or expect the regulation to impede the timely development of safe and effective medical devices. The level of regulation is designed to be in proportion to the need for regulatory oversight based on claims and promotion that a manufacturer makes for its products and the risks the products pose. A product that is to be sold and used as a ''for research use only'' reagent or test kit does not fall within the scope of the rule and the manufacturer of these devices currently does not have to comply with CGMP's. However, an IHC manufacturer that wants to promote reagents for diagnosis or management of patients is required to comply with the final rule and provide valid scientific evidence to support its claims for the intended use of the device, indications for use, and performance characteristics, unless exempted by the rule.

The agency notes that the final rule exempts most IHC's from premarket submission requirements because the majority of IHC's are adjunctive and will be classified as class I, exempt from

premarket notification. Even when premarket submissions are required, for the most part premarket notification (510(k)) is required, rather than premarket approval. Most of the remaining IHC's will be classified as class II devices because they provide independent information and have claims that are widely accepted and supported by valid scientific evidence. Moreover, FDA is providing guidance for those IHC's requiring 510(k)'s. The guidance entitled ''FDA Guidance for Submission of Immunohistochemical Applications to the FDA'' serves as a special control to assist sponsors in collecting and presenting these data to FDA for clearance of their class II devices. The guidance may also serve as a resource for manufacturers of class I IHC's who do not have to submit 510(k)'s but will nevertheless want to properly develop and validate their products prior to marketing. PMA's are only needed for those IHC's that do not meet the class I and II criteria.

The regulation does require manufacturers of class II and class III IHC's to submit valid scientific evidence to support the intended use of these products. In many cases, much of the necessary data may be available in the peer reviewed/refereed scientific literature. In those cases where published data are available, the burden on the manufacturer is minimal, and the guidance being established as a special control can provide small and large firms with information to help identify and submit such data. However, published data may not be available for other IHC reagents or test kits that the manufacturer wishes to modify or for new intended uses or indications for use of these IHC devices. In those cases, manufacturers will have to gather new testing data to support the claims.

There also may be IHC reagents or test kits that do not have the potential volume of sales to justify any manufacturer's business decision to comply with FDA's requirements for data to support the reasonable assurance of safety and effectiveness for particular labeled claims and uses. In those cases, the manufacturer may commercialize the IHC products with lesser performance claims or as an ASR and transfer the responsibility for validation of the finished assay to the user. In addition, manufacturers of low use/low revenue products may choose to commercialize the IHC under the humanitarian device exemption procedures (21 CFR part 800, subpart H). Each IHC manufacturer, whether a large or small firm, will be able to control the impact of the final rule on its business by carefully evaluating the claims and uses it intends to promote for particular products.

The minimal level of IHC IVD device regulation will be the ASR regulation. Class I ASR's are exempt from premarket notification, but must be manufactured in compliance with general controls to be legally marketed as IVD reagents for diagnosis and management of patients. Because ASR's do not require data to support an intended use, indications for use, or performance characteristics; ASR product labeling cannot include any claims for intended use, indications for use, or performance characteristics. The sale of ASR's is restricted to high complexity laboratories that are able to take the responsibility for establishing and validating the reagent for an intended use, indications for use, and performance characteristics of the finished assay (62 FR 62243, November 21, 1997).

21. One comment requested that new hearings be held and that representatives of all small companies who will be affected by the regulation be given an opportunity to speak and be heard not only by FDA but also by congressional representatives.

The Administrative Procedures Act gives agencies discretion over whether to hold oral hearings in connection with informal rulemakings (5 U.S.C. 553(c)). FDA believes that providing an opportunity for written comment on the proposed rule has provided sufficient opportunity for small entities to comment on this rulemaking. Moreover, FDA has already held a public hearing soliciting comment on the classification of immunohistochemical devices. That hearing, which was convened on October 21, 1994, was open to all interested parties, including small business entities and their representatives. Input from regulated industry played an important part in shaping FDA's proposal for regulating IHC's. Moreover, FDA has made extensive changes to the final rule based on the agency's evaluation of the written comments. FDA believes that it would be an unnecessary use of scarce agency resources to hold a hearing for this rulemaking. Furthermore, FDA has no authority to require congressional attendance or participation at the agency's hearings.

VI. Access to the Special Control

To receive the special control entitled ''FDA Guidance for Submission of Immunohistochemistry Applications to the FDA,'' FDA, Center for Devices and Radiologic Health, 1998, via fax machine, call the CDRH Facts-On-Demand system at 800–399–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to access the Division of Small Manufacturers Assistance (DSMA) Facts. At the second voice prompt, press 2, and then enter the document No. 364 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

CDRH maintains an entry on the World Wide Web (www) for easy access to information, including text, graphics, and files that may be downloaded to a PC with access to the www. The CDRH home page is updated on a regular basis and includes the guidance cited previously, as well as other guidance documents; device safety alerts; **Federal Register** reprints; information on premarket submissions (including lists of approved applications and manufacturers' addresses); small manufacturers' assistance; and information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press ENTER several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select MEDICAL DEVICES AND RADIOLOGICAL HEALTH. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

VII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Enforcement Fairness Act of 1966 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule has been determined to be a

significant regulatory action as defined by the Executive Order and so is subject to review under the Executive Order.

A. Description of Impact

The intended purpose of this final rule is to regulate pre- and postamendment IHC devices in a consistent manner. Presently, preamendment IHC's are unclassified, while most postamendment IHC's are statutorily classified into class III. Both pre- and postamendment devices are currently subject to general controls, and postamendment devices require FDA approval before marketing. This rule will categorize IHC devices based on their potential risk to public health into one of the three device classes. The great majority of IHC's will be categorized as class I devices and will be exempt from premarket notification. The IHC's that fall into class II will require premarket clearance and be subject to a special control, in addition to general controls. Currently, there are no IHC devices on the market that will fall into class III.

The economic impact of this rule on manufacturers of IHC's will be negligible. Currently, manufacturers of all IHC devices are required to follow general controls. Under this rule, most preamendment IHC devices marketed with their original (pre-1976) claims will be categorized as class I devices and consequently exempt from premarket notification requirements. Therefore, there will be no change in the regulatory requirements that manufacturers of these devices must follow. The manufacturers of postamendment devices may realize an economic savings as a result of this rule. Manufacturers of the postamendment devices, which are currently statutorily classified into class III, would have been required to submit 510(k)'s or PMA's to be legally marketed. The final rule classifies most IHC's in class I and exempts them from premarket notification, eliminating the requirement for manufacturers to make premarket submissions for these devices. Most postamendment devices that will require submissions have been classified into class II and will not require a PMA approval. One comment suggested that the cost to submit a 510(k) ranged from $10,000 to $40,000 per antibody (see comment 21 of this document). The cost of preparing a PMA would be much higher. In addition, the special control established by this rule for class II IHC's is a guidance document intended to help manufacturers prepare 510(k)'s efficiently and effectively.

FDA can not reliably estimate the total number of manufacturers of IHC's affected by this rule. Currently, there are fewer than 25 firms listed with the agency as manufacturers of 510(k) or PMA IHC devices. Most, if not all, of these firms are small, based on the Small Business Administration's definition of a small medical device entity (fewer than 500 employees).

B. Response to Comments by Small Business

Some small businesses and the Small Business Administration commented that the proposed rule would impose a severe economic burden on IHC manufacturers, driving some companies out of business. These comments misunderstood the scope of the proposed rule by assuming that it would apply to IHC's used for research. In fact, there will be no new regulatory costs for research firms. As discussed previously, FDA has classified the majority of IHC devices as class I, exempt from premarket notification. The final rule also narrowed the identification of class III devices so that many devices that would have been class III under the proposal will be class II under the final rule and not require a PMA.

There were also comments from small businesses that stated the rule, as proposed, would have a negative effect on new product introduction. With the changes made to the proposal, the agency believes that the final rule will have no negative effect on new product introduction and will introduce consistency in the regulation of IHC's. Currently, postamendment IHC's require PMA's or 510(k)'s. With this rule, most new products will be classified as class I exempt from premarket notification.

C. Summary

In the proposed rule, FDA considered requiring 510(k)'s or PMA's for all IHC's. In response to comments, the agency reconsidered its position and determined that the necessary safeguards to public health could be achieved with general controls alone for the majority of currently marketed IHC's. Because this rule classifies these postamendment devices into class I, exempt from premarket notification, or into class II, the cost of the rule will be far below the $100 million threshold that determines an economically significant regulation under Executive Order 12866 and the Unfunded Mandates Reform Act. Because the rule will safeguard the public health and impose almost no new burden on industry, the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

VIII. References

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

1. Baddoura, F. K. , C. Cohen, E. R. Unger, P. B. DeRose, and M. Chenggis, ''Image Analysis for Quantitation of Estrogen Receptor in Formalin-fixed Paraffin-embedded Sections of Breast Carcinoma,'' *Modern Pathology*, January 1991, 4(1):91–95.

2. Esteban, J. M., P. L. Kandalaft, P. Mehta, T. L. Odom-Maryon, S. Bacus, and H. Battifora, ''Improvement of the Quantification of Estrogen and Progesterone Receptors in Paraffin-embedded Tumors by Image Analysis,'' *American Journal of Clinical Pathology*, January 1993, 99(1):32–38.

3. Esteban, J. M., C. Ahn, P. Mehta, and H. Battifora, ''Biologic Significance of Quantitative Estrogen Receptor Immunohistochemical Assay by Image Analysis in Breast Cancer,'' *American Journal of Clinical Pathology*, August 1994, 102(2):158–162.

4. Esteban, J. M., C. Ahn, H. Battifora, and B. Felder, ''Predictive Value of Estrogen Receptors Evaluated by Quantitative Immunohistochemical Analysis in Breast Cancer,'' *American Journal of Clinical Pathology*, October 1994, 102 (4 Supplement 1), S9–S12.

5. Molino, A., R. Micciolo, M. Turazza, F. Bonetti, Q. Piubello, A. Corgnati, L. Sperotto, G. Martignoni, A. Bonetti, R. Nortilli, et al., ''Estrogen Receptors in 699 Primary Breast Cancers: A Compatison of Immunohistochemical and Biochemical Methods,'' *Breast Cancer Research Treatment*, June 1995, 34(3):221–228.

IX. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 864.1860 is added to subpart B to read as follows:

§ 864.1860 Immunohistochemistry reagents and kits.

(a) *Identification.* Immunohistochemistry test systems (IHC's) are in vitro diagnostic devices consisting of polyclonal or monoclonal antibodies labeled with directions for use and performance claims, which may be packaged with ancillary reagents in kits. Their intended use is to identify, by immunological techniques, antigens in tissues or cytologic specimens. Similar devices intended for use with flow cytometry devices are not considered IHC's.

(b) *Classification of immunohistochemistry devices*—(1) Class I (general controls). Except as described in paragraphs (b)(2) and (b)(3) of this section, these devices are exempt from the premarket notification requirements in part 807, subpart E of this chapter. This exemption applies to IHC's that provide the pathologist with adjunctive diagnostic information that may be incorporated into the pathologist's report, but that is not ordinarily reported to the clinician as an independent finding. These IHC's are used after the primary diagnosis of tumor (neoplasm) has been made by conventional histopathology using nonimmunologic histochemical stains, such as hematoxylin and eosin. Examples of class I IHC's are differentiation markers that are used as adjunctive tests to subclassify tumors, such as keratin.

(2) Class II (special control, guidance document: ''FDA Guidance for Submission of Immunohistochemistry Applications to the FDA,'' Center for Devices and Radiologic Health, 1998). These IHC's are intended for the detection and/or measurement of certain target analytes in order to provide prognostic or predictive data that are not directly confirmed by routine histopathologic internal and external control specimens. These IHC's provide the pathologist with information that is ordinarily reported as independent diagnostic information to the ordering clinician, and the claims associated with these data are widely accepted and supported by valid scientific evidence. Examples of class II IHC's are those intended for semiquantitative measurement of an analyte, such as hormone receptors in breast cancer.

(3) Class III (premarket approval). IHC's intended for any use not described in paragraphs (b)(1) or (b)(2) of this section.

(c) *Date of PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the Federal Food, Drug, and Cosmetic Act is required for any device described in paragraph (b)(3) of this section before this device may be commercially distributed. See § 864.3.

Dated: February 6, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–14605 Filed 6–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–035]

RIN 2115–AE46

Special Local Regulations for Marine Events; The Great Chesapeake Bay Swim Event, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.507 for the Great Chesapeake Bay Swim Event to be held on June 14, 1998. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim and their attending personnel.

EFFECTIVE DATE: 33 CFR 100.507 is effective from 10 a.m. until 4 p.m., on June 14, 1998.

FOR FURTHER INFORMATION CONTACT: LT J. Driscoll, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Rd., Baltimore, MD 21226–1797, (410) 576–2676.

SUPPLEMENTARY INFORMATION: The March of Dimes will sponsor the Great Chesapeake Bay Swim Event on Chesapeake Bay in the vicinity of the William P. Lane Jr. Memorial Twin Bridges. Approximately 600 swimmers will start from Sandy Point State Park and swim between the William P. Lane Jr. Memorial Twin Bridges to the Eastern Shore. A large fleet of support vessels will be accompanying the swimmers. Therefore, to ensure the safety of the participants and support vessels, 33 CFR 100.507 will be in effect for the duration of the event. Under provisions of 33 CFR 100.507, no vessels may enter the regulated area without permission of the Coast Guard patrol commander. Vessel traffic will be permitted to transit the regulated area as the swim progresses. As a result, maritime traffic should not be significantly disrupted.

Dated: May 20, 1998.

Roger T. Rufe, Jr.

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 98–14705 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–98–057]

RIN 2115–AE46

Special Local Regulation: Fireworks Displays Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation.

SUMMARY: This document provides notice of the dates and times of the special local regulations contained in 33 CFR 100.114, Fireworks Displays Within the First Coast Guard District. All vessels will be restricted from entering the area of navigable water within a 500-yard radius of the fireworks launch platform for each event listed in the table below. Implementation of these regulations is necessary to control vessel traffic within the regulated area to ensure the safety of spectators.

EFFECTIVE DATE: The regulations in 33 CFR 100.114 are effective from one hour before the scheduled start of the event until thirty minutes after the last firework is exploded for each event listed in the table below. The events are listed chronologically by month with their corresponding number listed in the special local regulations, 33 CFR 100.114.

ADDRESSES: Comments should be mailed to Commander (osr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 734 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mark A. Cawthorn, Office of Search and Rescue Branch, First Coast Guard District at (617) 223–8460.

SUPPLEMENTARY INFORMATION: This notice implements the special local

regulations in 33 CFR 100.114 (62 FR 30988; June 6, 1997). All vessels are prohibited from entering a 500-yard radius of navigable water surrounding the launch platform used in each fireworks display listed below.

Table 1—Fireworks Displays

May

1. Hull Memorial Day Festival, Date: May 30, 1998, Time: 8 p.m. to 10 p.m. Location: Off Nantasket Beach, Lat: 42°16.6′ N., Long: 070°51.5′ W. (NAD 1983)

June

2. Barnum Festival Fireworks, Date: June 26, 1998, Time: 9 p.m. to 9:30 p.m., Location: Seaside Park, Bridgeport Harbor, Lat: 43°11.5′ N., Long: 073°.09.5′ W. (NAD 1983)

Dated: May 24, 1998.

James D. Garrison,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 98–14703 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–009]

RIN 2121–AA97

Safety Zone; Coney Island Air Show Days, Coney Island Channel, Brooklyn, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the vicinity of Coney Island Channel for the Coney Island Air Show Days. The safety zone is in effect from 10:30 a.m. until 2:00 p.m. on June 5, 6, and 7, 1998. This action is necessary to provide for the safety of life on navigable waters during the event. It is intended to restrict vessel traffic approximately ½ mile from the beach at Coney Island, NY.

DATES: This rule is effective from 10:30 a.m. until 2:00 p.m. on June 5, 6, and 7, 1998.

ADDRESSES: Comments may be mailed to Commander (wob) (CGD01–98–009), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305–5005, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying in room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) A. Kenneally, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4195.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest. Immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this airshow, which is intended for public entertainment.

Background and Purpose

Astroland Amusement Park has submitted an Application for Approval of Marine Event to hold the Coney Island Air Show Days over the waters in the vicinity of Coney Island Channel. This regulation establishes a safety zone, rectangular in shape; the borders of which are marked by buoys in the following positions:

Latitude	*Longitude*
40° 34.03′ N	073° 59.81′ W, then south to
40° 33.69′ N	073° 59.75′ W, then east to
40° 33.94′ N	073° 57.19′ W, then north to
40° 34.30′ N	073° 57.25′ W, then west to the starting point.

The safety zone is in effect from 10:30 a.m. until 2 p.m. June 5, 6, and 7, 1998. The safety zone prevents vessels from transiting an area adjacent to Coney Island. This safety zone is needed to provide unobstructed flight lines for the U.S. Navy Blue Angels Jet Demonstration Team and to protect mariners from the hazards associated with military aircraft flying high speed maneuvers at low altitudes. No more than 100 spectator crafts are expected for the event.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed 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 (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the following: pleasure craft desiring to view the event will be able to do so outside the safety zone; commercial and recreational vessels navigating Coney Island Channel can alter their route south of the affected area; the minimal time that vessels will be restricted from the zone, and the extensive advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for 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. Add temporary section 165.T01–009 to read as follows:

§ 165.T01–009 Safety Zone; Coney Island Air Show Days, Brooklyn, New York.

(a) *Location.* The following area is a safety zone: all waters in the vicinity of Coney Island Channel, approximately ½ mile from shore; rectangular in shape, the corners of which are marked by buoys in the following positions:

Latitude	*Longitude*
40° 34.03′ N	073° 59.81′ W, then south to
40° 33.69′ N	073° 59.75′ W, then east to
40° 34.94′ N	073° 57.19′ W, then north to
40° 34.30′ N	073° 57.25′ W, then west to the starting point.

(b) *Effective period.* This section is in effect from 10:30 a.m. until 2 p.m. on June 5, 6, and 7, 1998.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: May 7, 1998.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 98–14704 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–228; RM–9163]

Radio Broadcasting Services; Pima, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 296A to Pima, Arizona, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of R. A. Montierth Enterprises, L.L.C. *See* 62 FR 61721, November 19, 1997. Coordinates used for Channel 296A at Pima, Arizona, are 32–53–36 and 109–49–42. As Pima is located within 320 kilometers (199 miles) of the U.S.-Mexico border, the Commission obtained concurrence of the Mexican government to the requested allotment of Channel 296A at that community. With this action, the proceeding is terminated.

DATES: Effective July 6, 1998. A filing window for Channel 296A at Pima, Arizona, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–228, adopted May 13, 1998, and released May 22, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Pima, Channel 296A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–14685 Filed 6–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–222; RM–9180 and RM–9214]

Radio Broadcasting Services; McMillan and Sault Ste. Marie, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel *272C3 to Sault Ste. Marie, Michigan, and reserves the channel for noncommercial educational use in response to a petition filed by Northern Christian Radio, Inc. *See* 62 FR 17372, October 31, 1997. The coordinates for Channel *272C3 at Sault Ste. Marie are 46–29–36 and 84–21–06. Canadian concurrence has been obtained for this allotment. In response to a counterproposal filed by Linda K. Graver, President of Black Bear Broadcasting Company of Bay City, Michigan, we will allot Channel 244C3 to McMillan, Michigan. The coordinates for Channel 244C3 are 46–20–24 and 85–41–12. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated. A filing window for Channel 244C3 at McMillan, Michigan, will not be opened at this time. Instead the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 6, 1998.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–222, adopted May 13, 1998, and released May 22, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments Under Michigan, is amended by adding Channel *272C3 at Sault Ste. Marie and by adding McMillan, Channel 244C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–14684 Filed 6–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–169; RM–9121 and RM–9170]

Radio Broadcasting Services; Coon Valley & Westby, WI and Lanesboro, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 280A to Lanesboro, Minnesota, and Westby, Wisconsin, as a first local service in each community. The allotments are being made in response to a counterproposal filed by Bluff Country Community Radio. Sparta-Tomah Broadcasting Company, Inc. proposed the allotment of Channel 280A at Coon Valley, Wisconsin. *See* 62 FR 42225, August 6, 1997. The coordinates for Channel 280A at Lanesboro, Minnesota, are 43–44–00 and 92–07–00. There is a site restriction 11.8 kilometers (7.3 miles) west. The coordinates for Channel 280A at Westby, Wisconsin, are 43–37–30 and 90–41–50. There is a site restriction 13.2 kilometers (8.2 miles) east of the community. The petition filed by Sparta-Tomah Broadcasting Company, Inc., for Coon Valley has been dismissed. With this action, this proceeding is terminated. A filing window for Channel 280A at Lanesboro and Westby will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: July 6, 1998.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–169, adopted May 13, 1998, and released May 22, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Westby, Channel 280A.

3. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Lanesboro, Channel 280A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–14686 Filed 6–2–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 970515116–8103–02; I.D. 030598C]

RIN 0648–AJ94

Antarctic Marine Living Resources Convention Act of 1984; Conservation and Management Measures

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

ACTION: Final regulatory notice.

SUMMARY: At its sixteenth meeting in Hobart, Tasmania, October 27 to November 7, 1997, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending members' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These measures were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, list the fishing seasons, continue previously adopted reporting requirements, and specify measures that must be taken to minimize the incidental taking of non-target species. The measures were announced by the Department of State by a preliminary notice in the **Federal Register** on February 3, 1998 (63 FR 5587–5598). Public comments were invited, but none were received. NMFS implements these measures by final regulatory notice, consistent with the framework process specified in the International Fisheries Regulations (50 CFR 300.111).

DATES: June 3, 1998 through June 3, 1999.

ADDRESSES: Copies of the CCAMLR measures and the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle, 301–713–2282.

SUPPLEMENTARY INFORMATION: See 50 CFR Part 300, Subpart G - Antarctic Marine Living Resources, and the Department of State's preliminary notice at 63 FR 5587 (February 3, 1998). CCAMLR approved several fisheries as new or exploratory fisheries for the 1997/98 fishing season. These fisheries are limited total allowable catch fisheries, open only to the countries which notified CCAMLR of an interest by their fishers in the fisheries. The United States was not a notifying country, and, thus, U.S. fishers are not eligible to participate. The new fisheries are for: *Dissotichus* species in Statistical Subareas 48.1, 48.2 and 88.3 by Chile; *Dissotichus* species in Statistical Subarea 48.6 by Norway; *Dissotichus* species in Statistical Subarea 48.6 and Divisions 58.4.3 and 58.4.4 by South Africa; *D. eleginoides* in Statistical Division 58.4.4 by Ukraine; and *Dissotichus* species in Statistical Subarea 88.2 by New Zealand. The exploratory fisheries are for: *M. hyadesi* in Statistical Subarea 48.3 by Korea and the United Kingdom; *Dissotichus* species, using trawls, in Statistical Division 58.4.3 by Australia; and *Dissotichus* species in Statistical Subareas 58.6 and 58.7 outside exclusive economic zones by Russia, South Africa and Ukraine; and *Dissotichus* species in Statistical Subareas 88.1 by New Zealand.

The measure for the minimization of the incidental mortality of seabirds in the course on longline fishing or longline fishing research in the Convention Area was amended to prohibit the dumping of offal from the vessel during the setting of longlines. The measure had previously indicated that dumping offal during setting should be avoided as far as possible.

Participation in the Convention Area crab fishery continues to be limited to one vessel per Commission member. Applications for a crab permit must be received no later than 90 days prior to intended harvesting and will be considered in order of application. If there are multiple applicants, the one U.S. crab permit will be issued on the basis of: (1) order of receipt of applications; (2) criteria for harvesting permits appearing in 50 CFR 300.112; (3) willingness to participate in CCAMLR pilot programs; and (4) record of previous participation, if any, in the crab fishery.

CCAMLR adopted three conservation measures and one resolution addressing illegal, unreported and unregulated fishing in the Convention Area. The first conservation measure, a ''Scheme to Promote Compliance by non-Contracting Party Vessels with CCAMLR Conservation Measures,'' is based upon a scheme adopted by the Northwest Atlantic Fisheries Organization restricting landings and transshipment by vessels concluded to be fishing in contravention of CCAMLR conservation measures. The second measure is a ''Requirement for Contracting Parties to License Their Flag Vessels in the Convention Area,'' and the third is a ''Prohibition of Directed Fishing for *Dissotichus* species, except in Accordance with Specific Conservation Measures.'' Directed fishing for *Dissotichus* species is prohibited in Statistical Subarea 48.5, and Divisions 58.4.1 and 58.4.2. from November 7, 1997, through November 6, 1998.

The resolution calls upon Members to endeavor to establish by November 6, 1998, an automated vessel monitoring system to monitor the position of its flag vessels licensed or permitted to harvest Patagonian toothfish or other marine living resources in the Convention Area for which catch limits, fishing seasons or area restrictions have been set. Current fishing for krill was excluded from the scope of the resolution at the insistence of Japan.

The Standing Committee on Observation and Inspection agreed to study the feasibility and usefulness of a CCAMLR system to apply trade restrictive measures to non-Contracting Parties (NCP) identified by CCAMLR as undermining the effectiveness of its conservation measures through the activities of vessels flying NCP flags. To date, these have included vessels flagged by Panama, Vanuatu, Portugal, Belize, and Honduras. The starting point for study will be the tracking and trade restrictive measures adopted by the International Commission for the Conservation of Atlantic Tunas. In considering trade-related measures as a means of facilitating compliance, the Commission recommended that members (1) collect information related to the trade of Patagonian toothfish in order to better understand the international flows (including where it is landed, transhipped or imported and under what product names it is being marketed); and (2) provide that information to the Secretariat for distribution to members for consideration in advance of the next annual meeting of the Commission.

Implementing the requirements to (1) restrict landings and transshipment by non-Contracting parties engaged in activities which undermine the effectiveness of CCAMLR conservation measures and to (2) report import data will require coordination among NMFS, Department of State, Coast Guard, Customs, and the International Trade Commission (ITC). Coordination with Customs and ITC are underway to secure harmonized tariff code designations for Patagonian toothfish. The United States already requires its vessels fishing on the high seas to hold a High Seas Fishing Vessel License and fishers in the CCAMLR Convention Area to hold a NMFS CCAMLR permit.

Classification

NMFS has determined that this regulatory notice is necessary to implement the Antarctic Marine Living Resources Convention Act of 1984 and to give effect to the management measures adopted by CCAMLR and agreed to by the United States.

This notice has been determined to be not significant for purposes for E.O. 12866. It is exempt from 5 U.S.C. 553, because it involves a foreign affairs function of the United States. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number. This rule refers to a collection-of-information that is subject to the Paperwork Reduction Act and has been approved by OMB under OMB control number 648–0194.

Authority: 16 U.S.C. 2431 *et seq.*

Dated: May 27, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–14594 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 971229312–7312–01; I.D. 052898A]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Mothership Sector

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the 1998 mothership fishery for whiting at 9 p.m. local time (l.t.) May 31, 1998, because the allocation for the mothership sector will be reached by that time. This action is intended to keep the harvest of whiting at levels announced by NMFS on January 6, 1998.

DATES: Effective from 9 p.m. l.t. May 31, 1998, until the start of the 1999 primary season for the mothership sector, unless modified, superseded or rescinded, which will be published in the **Federal Register**. Comments will be accepted through June 18, 1998.

ADDRESSES: Submit comment to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or William Hogarth, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King at 206–526–6145.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On January 6, 1998 (63 FR 419), regulations were published announcing the annual management measures for Pacific Coast whiting. The regulations at 50 CFR 660.323(a)(4) (62 FR 27519, May 20, 1997) established separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. Each allocation is a harvest guideline, which, when reached, results in the end of the primary season for that sector. The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors. The allocations, which are based on the 1998 commercial harvest guideline for whiting of 207,000 metric tons (mt), are: 70,400 mt (34 percent) for the catcher/processor sector; 49,700 mt (24 percent) for the mothership sector; and 86,900 mt (42 percent) for the shoreside sector.

The best available information on May 28, 1998, indicates that 33,841 mt of whiting had been taken by the mothership sector through May 26, 1998, and that the 49,700–mt mothership allocation would be reached by 9 p.m. l.t. May 31, 1998. Accordingly, the primary season for the mothership sector ends at 9 p.m. l.t. May 31, 1998, at which time further at-sea processing and receipt of whiting by a mothership, or taking and retaining, possessing or landing of whiting by a catcher boat in the mothership sector, are prohibited. The regulations at 50 CFR 600.323(a)(3)(i) describe the primary season for vessels delivering to motherships as the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector.

Attainment of the catcher/processor and shore-based sector allocations is not announced at this time.

NMFS Action

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(B), NMFS herein announces:

Effective 9 p.m. l.t. May 31, 1998–(1) Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited; and (2) whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection a the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(B) and is exempt from review under E.O. 12866.

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

Dated: May 29, 1998.

George H. Darcy,

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

[FR Doc. 98–14741 Filed 5–29–98; 4:43 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980521135–8135–01; I.D. 051198B]

RIN 0648–AK85

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 1998 Harvest Guideline

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

ACTION: Harvest guideline for crustaceans for 1998.

SUMMARY: NMFS announces a 1998 harvest guideline of 286,000 lobsters (spiny and slipper lobsters combined) for the Northwestern Hawaiian Islands (NWHI) crustacean fishery, which opens on July 1, 1998. The harvest guideline applies to the entire NWHI; however, due to the potential for overexploitation of lobster populations at certain NWHI banks/areas, the Western Pacific Fishery Management Council (Council) is considering allocating the harvest guideline among specific areas or banks to ensure the long-term health of the lobster populations and stability of the fishery. The intent of this action is to prevent overfishing and achieve the objectives of the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP).

DATES: Effective July 1, 1998.

ADDRESSES: Copies of background material pertaining to this action may be obtained from Alvin Katekaru, Pacific Islands Area Office, Southwest Region, NMFS, 2570 Dole Street, Honolulu, HI 96822 or Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at (808) 973–2985 or Kitty Simonds at (808) 522–8220.

SUPPLEMENTARY INFORMATION: Under Amendment 9 to the FMP, the Southwest Regional Administrator, NMFS (Regional Administrator), sets the annual harvest guideline for the NWHI crustacean fishery. The guideline is determined by multiplying the estimated exploitable lobster population (spiny and slipper lobster combined) by a constant harvest rate (13 percent) associated with a specific risk of overfishing (10 percent. As described in Amendments 7 and 9 to the FMP, the total NWHI population of exploitable lobsters is estimated from commercial logbook lobster catch and effort data. The harvest guideline represents the total allowable mortality of lobsters in the fishery regardless of lobster size or reproductive condition. The Regional Administrator will close the fishery when the harvest guideline is estimated to be reached.

The harvest guideline for the 1998 NWHI lobster fishery is 286,000 lobsters based on an estimated total exploitable population of about 2,200,000 spiny and slipper lobsters (species combined).

Under Amendment 9 to the FMP, the Regional Administrator is required to announce a harvest guideline for the entire NWHI. However, the Regional Administrator has reason to believe that if the 1998 lobster harvest is not limited for certain banks/areas, the lobster populations there may be at risk of overexploitation. The Council and fishing industry also concur with this assessment. At its 95th meeting, the Council initiated action to consider the establishment of a bank/area specific management regime under the framework procedures of the FMP. At its 96th meeting, which was held on May 8, 1998, the Council met and voted to recommend bank-specific harvest guidelines for the 1998 fishing year. The public was given the opportunity to comment prior to and at this meeting, on the issue of bank-specific harvest guidelines. NMFS is working with the Council to develop separate proposed and final rules for bank-specific harvest guidelines.

The Pacific Islands Area Office will monitor landings and issue timely reports of the level of cumulative catch information and of the amount of the harvest guideline remaining. Fishermen are advised to contact the Pacific Islands Area Office (see **ADDRESSES**) periodically to stay abreast of any changes and of progress of the fishery toward attaining the harvest guideline. Under the procedures in 50 CFR 660.50(b)(3), NMFS will announce the date upon which the harvest guideline will be reached and when the fishery will be closed.

Classification

This action is authorized by 50 CFR part 660 and is exempt from review under Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The Assistant Administrator for Fisheries (AA), NOAA, finds that because this notice merely announces a harvest guideline resulting from the nondiscretionary application of the objective harvest guideline formula in Amendment 9 to the FMP, no useful purpose would be served by providing prior notice and opportunity for public comment. Accordingly, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive as unnecessary the requirement to provide prior notice and opportunity for public comment.

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

Dated: May 28, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–14743 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 112097B]

Fisheries of the Exclusive Economic Zone Off Alaska; Correction

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

ACTION: Correction to final 1998 specifications for groundfish.

SUMMARY: This document contains corrections to the Final 1998 Harvest Specifications for Groundfish of the Bering Sea and Aleutian Islands which were published on March 16, 1998, and contain an incorrect fishing season date for Pacific cod nontrawl fisheries and an incorrect apportionment of halibut mortality to the nontrawl fisheries.

DATES: This action becomes effective June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The final 1998 specifications for groundfish of the Bering Sea and Aleutian Islands published on March 16, 1998, announced harvest limits and associated management measures for groundfish during the 1998 fishing year (63 FR 12689). The specifications contained an incorrect fishing season date for Pacific cod nontrawl fisheries, and an incorrect apportionment of halibut mortality to the nontrawl fisheries. The Council intended the allocation of halibut mortality to the Nontrawl Fisheries for Pacific cod to be 750 mt, not 777 mt; the dates for the Pacific cod third seasonal allocation to be September 15 through December 31, not September 14 to December 31; the allocation to that Pacific cod third season (September 15 through December 31) to be 255 mt, not 282 mt; and the allocation to the ''Other non-trawl'' category to be 83 mt, not 56 mt.

Correction of Publication

The publication on March 16, 1998, of the final regulations (I.D. 112097B), which was the subject of FR Doc. 98–6620 is corrected as follows:

1. On page 12695, Table 6 (Continued), revise the text under the heading ''Nontrawl Fisheries'' to read as follows:

TABLE 6.—1998 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES—CONTINUED

Nontrawl Fisheries						
Pacific cod	750					
Jan. 1–Apr. 30	458					
May 1–Sep. 14	37					
Sep. 15–Dec. 31	255					
Other non-trawl	83					

TABLE 6.—1998 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES—CONTINUED—Continued

Groundfish pot & jig	(1)					
Sablefish hook & line	(1)					
Total Nontrawl	833					
PSQ Reserve [1]	351	129	7,500	349,050	56,250	157,500

[1] Exempt.

Dated: May 28, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–14742 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 63, No. 106
Wednesday, June 3, 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–128–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 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 all Airbus Model A310 and A300–600 series airplanes, that currently requires a revision of the Airplane Flight Manual that warns the flightcrew of certain consequences associated with overriding the autopilot when it is in the pitch control axis. It also requires modification of certain flight control computers, and a modification to the autopilot. For certain airplanes, that AD also requires repetitive operational testing of the modified autopilot to determine if the disconnect function operates properly, and repair, if necessary. This action would add a new requirement to accomplish those repetitive operational tests on other airplanes. 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 an out-of-trim condition between the trimmable horizontal stabilizer and the elevator, which could result in severely reduced controllability of the airplane.

DATES: Comments must be received by July 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–128–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–128–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–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 25, 1997, the FAA issued AD 97–18–09, amendment 39–10119 (62 FR 45710, August 29, 1997), applicable to all Airbus Model A310 and A300–600 series airplanes, to require a revision to the Airplane Flight Manual (AFM) that warns the flightcrew of certain consequences associated with overriding the autopilot when it is in the pitch control axis, modification of certain flight control computers (FCC), and modification of the autopilot, which would enable the flightcrew to disconnect the autopilot when direct force is applied to the control column, regardless of its mode and the altitude of the airplane. That AD also requires repetitive operational testing of the modified autopilot to determine if the disconnect function operates properly, and repair, if necessary. That action was prompted by the results of an FAA review of the requirements of an earlier AD. The requirements of that AD are intended to prevent an out-of-trim condition between the trimmable horizontal stabilizer and the elevator, which could result in severely reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 97–18–09, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French airworthiness directive 97–373–237(B), dated December 3, 1997, which specifies that Airbus Model A310 and A300–600 series airplanes on which the modification of the autopilot (reference Airbus Modification 11454) has been accomplished during production should be subject to the same repetitive operational tests required to be performed on Airbus Model A310 and A300–600 series airplanes modified in accordance with Airbus Service Bulletin A310–22–2044, Revision 1, or A300–22–6032, Revision 1, both dated January 8, 1997 (which were referenced by AD 97–18–09 as the appropriate sources of service information).

In light of the criticality of the unsafe condition (an out-of-trim condition between the trimmable horizontal stabilizer and the elevator, which could

severely reduce controllability of the airplane), modification of the autopilot alone may not provide the degree of safety assurance necessary for the transport airplane fleet. Therefore, repetitive operational testing of the modified autopilot to determine if the disconnect function operates properly is necessary to ensure long term continued operational safety, whether the modification was installed during production or in accordance with AD 97–18–09.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of 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 97–18–09 to continue to require a revision to the Limitations Section of the AFM that warns the flightcrew of certain consequences associated with overriding the autopilot when it is in the pitch control axis; modification of certain FCC's; modification of the autopilot and removal of the revision to the AFM once the modification has been accomplished; repetitive operational testing of the modified autopilot to determine if the disconnect function operates properly; and repair, if necessary.

This proposed AD would add a new requirement for accomplishment of the same repetitive operational tests on Airbus Model A310 and A300–600 series airplanes that received the modification to the autopilot during production.

Cost Impact

There are approximately 94 airplanes of U.S. registry that would be affected by this proposed AD.

The AFM revision that was required previously by AD 96–08–07 and retained in this AD, 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 of certain FCC's that was required previously by AD 96–08–07 and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the currently required modification of FCC's on U.S. operators is estimated to be $5,640, or $60 per airplane.

The modification of the autopilot that was required previously by AD 97–18–09 and retained in this AD, takes approximately 25 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $1,578 per airplane. Based on these figures, the cost impact of the currently required modification of the autopilot on U.S. operators is estimated to be $289,332, or $3,078 per airplane.

The operational test that was required previously by AD 97–18–09 and retained in this AD, takes approximately 7 work hours per airplane, per test cycle, to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required operational test requirement on U.S. operators is estimated to be $39,480, or $420 per airplane, per test cycle.

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 39–10119 (62 FR 45710, August 29, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–128–AD. Supersedes AD 97–18–09, Amendment 39–10119.

Applicability: All Model A310 and A300–600 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an out-of-trim condition between the trimmable horizontal stabilizer and the elevator, which could result in severely reduced controllability of the airplane, accomplish the following:

RESTATEMENT OF ACTIONS REQUIRED BY AD 96–08–07, AMENDMENT 39–9573

(a) Within 10 days after May 23, 1996 (the effective date of AD 96–08–07, amendment 39–9573), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the information contained in paragraph (a)(1) or (a)(2) of this AD, as applicable. This may be accomplished by inserting a copy of this AD in the AFM. The AFM limitation required by AD 94–21–07, amendment 39–9049, may be removed following accomplishment of the requirements of this paragraph.

(1) For airplanes on which the flight control computers (FCC) have not been modified in accordance with the requirements of paragraph (b) of this AD:

''Overriding the autopilot (AP) in pitch axis does not cancel the AP autotrim when LAND TRACK mode [green LAND on both Flight Mode Annunciators (FMA)] or GO-AROUND mode is engaged. In these modes, if the pilot counteracts the AP, the autotrim will trim against pilot input. This could lead to a severe out-of-trim situation in a critical phase of flight.''

(2) For airplanes on which the FCC's have been modified in accordance with the requirements of paragraph (b) of this AD:

''Overriding the autopilot (AP) in pitch axis does not cancel the AP autotrim when LAND TRACK mode (green LAND on both FMA's) is engaged, or GO-AROUND mode is engaged below 400 feet radio altitude (RA). In these modes, if the pilot counteracts the AP, the autotrim will trim against pilot input. This could lead to a severe out-of-trim situation in a critical phase of flight.''

RESTATEMENT OF ACTIONS REQUIRED BY AD 94–21–07, AMENDMENT 39–9049

(b) For airplanes equipped with FCC's having either part number (P/N) B470ABM1 (for Model A310 series airplanes) or B470AAM1 (for Model A300–600 series airplanes): Within 60 days after November 2, 1994 (the effective date of AD 94–21–07, amendment 39–9049), modify the FCC's in accordance with Airbus Service Bulletin A310–22–2036, dated December 14, 1993 (for Model A310 series airplanes), or Airbus Service Bulletin A300–22–6021, Revision 1, dated December 24, 1993 (for Model A300–600 series airplanes), as applicable.

(c) As of November 2, 1994, no person shall install a FCC having either P/N B470ABM1 or B470AAM1 on any airplane.

RESTATEMENT OF ACTIONS REQUIRED BY AD 97–18–09, AMENDMENT 39–10119

(d) For airplanes on which Modification No. 11454 [reference Airbus Service Bulletin A310–22–2044, Revision 1 (for Model A310 series airplanes) or Airbus Service Bulletin A300–22–6032, Revision 1 (for Model A300–600 series airplanes)] has not been installed: Accomplish paragraphs (d)(1), (d)(2)(i), and (d)(2)(ii) of this AD.

(1) Within 24 months after October 3, 1997 (the effective date of AD 97–18–09, amendment 39–10119), modify the autopilot in accordance with Airbus Service Bulletin A310–22–2044, Revision 1, dated January 8, 1997 (for Model A310 series airplanes), or Service Bulletin A300–22–6032, Revision 1, dated January 8, 1997 (for Model A300–600 series airplanes), as applicable. The requirements of paragraph (a) of AD 95–25–09, amendment 39–9455, if applicable, must be accomplished prior to or at the same time the requirements of this paragraph are accomplished.

(2) Prior to further flight following accomplishment of paragraph (d)(1) of this AD:

(i) Remove the AFM revisions required by paragraph (a) of this AD; and

(ii) Perform an operational test of this autopilot disconnect feature to determine that it operates properly, in accordance with Airbus Service Bulletin A310–22–2047, dated July 16, 1996 (for Model A310 series airplanes), or Service Bulletin A300–22–6035, dated July 16, 1996 (for Model A300–600 series airplanes), as applicable. If any discrepancy is detected, prior to further flight, repair it in accordance with the applicable service bulletin. Repeat this test thereafter at intervals not to exceed 18 months.

NEW ACTIONS REQUIRED BY THIS AD

(e) For airplanes on which Modification No. 11454 was installed during production: Within 18 months after the date of manufacture of the airplane, or within 6 months after the effective date of this AD, whichever occurs later, accomplish the actions specified in paragraph (d)(2)(ii) of this AD.

(f) 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.

(g) 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 97–373–237(B), dated December 3, 1997.

Issued in Renton, Washington, on May 27, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14610 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Model Avro 146–RJ 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 British Aerospace Model BAe 146 and certain Model Avro 146–RJ series airplanes. This proposal would require a one-time inspection for ''drill marks'' and corrosion on the underside of the wing top skin, and corrective actions, 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 corrosion from developing on the underside of the top skin of the center wing, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by July 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, *Attention:* Rules Docket No. 97–NM–128–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 AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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 97–NM–128–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–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace BAe 146 and certain Model Avro 146–RJ series airplanes. The CAA advises that, the manufacturer randomly selected 10 production airplanes for inspection; all of these airplanes were found to have ''drill marks'' on the underside of the wing top skin inside the closed section stringers, at Rib 0 and Rib 2. The CAA further advises that the ''drill marks'' were made during the assembly of the stringer crown dagger fittings, and can impair the protective treatment of the skin, which protects the underside of the wing from exfoliation corrosion. This condition, if not corrected, could result in corrosion developing on the underside of the top skin of the center wing, and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued British Aerospace Service Bulletin SB. 57–50, Revision 2, dated March 20, 1997, which describes procedures for repetitive intrascope inspections of the underside of the wing top skin inside the closed section stringers at Rib 0 and Rib 2 to detect the presence of ''drill marks'' and corrosion, and corrective actions, if necessary. Corrective actions include degreasing and applying protective treatment coating, which will restore the corrosion protection. The service bulletin indicates that application of the protective treatment coating would eliminate the need for repetitive inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–12–96 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin described previously provides for repetitive inspections, this proposed AD would require the application of protective treatment coating, following a one-time inspection for ''drill marks'' and corrosion. Accomplishment of this application eliminates the need for the repetitive inspection. The FAA has determined that long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, along with the understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on the corrective actions. This proposed requirement is in consonance with these conditions.

Additionally, operators should note that, although the service bulletin specifies that the manufacturer be contacted for disposition of repair if any corrosion is detected, this proposal would require repair of any corrosion to be accomplished in accordance with a method approved by the FAA before applying protective treatment coating.

Cost Impact

The FAA estimates that 40 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 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 inspection proposed by this AD on U.S. operators is estimated to be $24,000, or $600 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:

British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 97–NM–128–AD.

Applicability: All Model BAe 146 series airplanes; and Model Avro 146–RJ series airplanes, as listed in British Aerospace Service Bulletin SB.57–50, Revision 2, dated March 20, 1997; certificated in any category.

N**ote 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 corrosion from developing on the underside of the top skin of the center wing, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Within 2 years after the effective date of this AD, perform a one-time intrascopic inspection for ''drill marks'' and corrosion on the underside of the wing top skin, in accordance with British Aerospace Service Bulletin SB.57–50, Revision 2, dated March 20, 1997.

(1) If no ''drill mark'' or corrosion is detected, no further action is required by this AD.

(2) If any ''drill mark'' is detected, prior to further flight, apply protective treatment coating, in accordance with the service bulletin.

(3) If any corrosion is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Directorate; and apply protective treatment coating 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. 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.

N**ote 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.

N**ote 3:** The subject of this AD is addressed in British airworthiness directive 004–12–96.

Issued in Renton, Washington, on May 27, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14608 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–52–AD]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) (62 FR 48502, September 16, 1997) that would have applied to certain Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. The proposed action would have required revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. During the comment period of this NPRM, the FAA was notified that this airplane model does not have a pneumatic de-icing system, therefore, the proposed action would not apply. With this in mind, the FAA has determined that the proposed rule should be withdrawn. This withdrawal does not prevent the FAA from initiating future rulemaking on this subject.

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

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain I.A.M. Model Piaggio P–180 airplanes of the same type design that are registered in the United States was published in the **Federal Register** on September 16, 1997 (62 FR 48502). The action proposed to require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and

• provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

In addition to the proposed rule described previously, in September 1997, the FAA issued 24 other similar proposals that address the subject unsafe condition on various airplane models. These 24 proposals also were published in the **Federal Register** on September 16, 1997. Numerous comments were received on all 24 proposed actions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received for this AD. The comment received is from the manufacturer and directly relates to the I.A.M. Model Piaggio P–180 airplane. The manufacturer states that the I.A.M. Model Piaggio P–180 does not meet the criteria of the proposed action. This airplane has a bleed air and electro-thermal wing anti-icing system, not a pneumatic system. The FAA concurs and has decided to withdraw the NPRM.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing future rulemaking on this issue, nor does it commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 97–CE–52–AD, published in the **Federal Register** on September 16, 1997 (62 FR 48502), is withdrawn.

Issued in Kansas City, Missouri, on May 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14616 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell IC–600 Integrated Avionics Computers, as Installed in, but not Limited to, Learjet Model 45 and EMBRAER Model EMB–145 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 Honeywell IC–600 integrated avionics computers. This proposal would require modification of the integrated avionics computers. This proposal is prompted by a report of integrated avionics computer failures, which caused a ''random reset'' condition of the electronic flight instrument system. The actions specified by the proposed AD are intended to prevent such ''random reset'' conditions, which could affect the pilot's ability to control the airplane.

DATES: Comments must be received by July 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–142–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., Business and Commuter Aviation Systems, Box 29000, Phoenix, Arizona 85038. 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: J. Kirk Baker, 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) 627–5345; 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 98–NM–142–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–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during several test flights of a Cessna Model XL series airplane, the screen of the electronic flight instrument system (EFIS) turned blank. Investigation has revealed that the Honeywell IC–600 integrated avionics computer failed, which resulted in a ''random reset'' condition of the EFIS. During such a ''random reset'' condition, the following events may occur: the primary flight displays may turn blank, or display a red ''X,'' and take 10 to 15 seconds to reboot; the flight director mode may drop; the EFIS may reset to its default state; and the autopilot and/or the yaw damper, if engaged, may disconnect. This ''random reset'' condition of the EFIS, if not

corrected, could affect the pilot's ability to control the airplane.

The affected computers are Honeywell IC–600 integrated avionics computers, which may be installed in, but not limited to, Learjet Model 45 and EMBRAER Model EMB–145 series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Honeywell Service Bulletin 7017000–22–43, dated March 24, 1998, which describes procedures for modification of the integrated avionics computers. This modification involves replacing programmable array logic devices U6, U32, and U33 with new modified parts; adding two resistors; replacing resistor R7 with a new value; adding two capacitors; and adding bus wires. 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.

Cost Impact

There are approximately 38 airplanes of the affected design in the worldwide fleet. The FAA estimates that 20 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 modification at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,400, or $120 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:

Honeywell. Docket 98–NM–142–AD.

Applicability: Honeywell IC–600 integrated avionics computers having part numbers 7017000–82201, –82202, –82203, –82204, –82351, –82352, –82401, –82402, –82403, –83351, –83352, –83401, –83402, and –83403, as installed in, but not limited to, Learjet Model 45 and EMBRAER Model EMB–145 series airplanes.

Note 1: This AD applies to Honeywell IC–600 integrated avionics computers having part numbers 7017000–82201, –82202, –82203, –82204, –82351, –82352, –82401, –82402, –82403, –83351, –83352, –83401, –83402, and –83403, as installed in any airplane, regardless of whether the airplane 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 ''random reset'' condition of the electronic flight instrument system, which could affect the pilot's ability to control the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the IC–600 integrated avionics computer, in accordance with Honeywell Service Bulletin 7017000–22–43, dated March 24, 1998.

(b) As of the effective date of this AD, no person shall install a Honeywell IC–600 integrated avionics computer having part number 7017000–82201, –82202, –82203, –82204, –82351, –82352, –82401, –82402, –82403, –83351, –83352, –83401, –83402, or –83403 on any airplane, unless it has been modified in accordance with Honeywell Service Bulletin 7017000–22–43, dated March 24, 1998.

(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.

Issued in Renton, Washington, on May 27, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–14612 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–36]

Proposed Removal of Class D Airspace and Class E Airspace; Willoughby, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove Class D airspace and Class E

airspace at Willoughby, OH. The air traffic control tower for Willoughby, Lost Nation Airport, OH, has been decommissioned, therefore the required criteria for Class D airspace is no longer being met. The removal of the Class D airspace will also cause the removal of the Class E airspace extensions to the Class D airspace.

DATES: Comments must be received on or before July 20, 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–36, 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–36.'' 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 remove Class D airspace and Class E airspace at Willoughby, OH. The required criteria for Class D airspace is no longer being met, as the air traffic control tower for Willoughby, Lost Nation Airport, OH, has been decommissioned. The removal of the Class D airspace will also cause the removal of the Class E airspace extensions to the Class D airspace. Class D airspace designations are published in paragraph 5000, and Class E airspace designations for airspace areas designated as an extension to a Class D surface area are published in paragraph 6004, 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 D and Class E airspace designations listed in this document would be removed subsequently from 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 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 5000 Class D airspace.

* * * * *

AGL OH D Willoughby, OH [Removed]

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AGL OH E4 Willoughby, OH [Removed]

* * * * *

Issued in Des Plaines, Illinois on May 20, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–14754 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–34]

Proposed Establishment of Class E Airspace; Tioga, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Tioga, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 30 has been developed for Tioga Municipal airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL), and controlled airspace extending upward from 1200 AGL, is needed to contain aircraft executing the approach. This action proposes to create controlled airspace at and nearby the Tioga Municipal Airport to accommodate the approach.

DATES: Comments must be received on or before July 20, 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–34, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, 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–34.'' The post card 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 Tioga, ND, to accommodate aircraft executing the proposed GPS Rwy 30 SIAP at Tioga Municipal Airport by creating controlled airspace at and nearby the airport. Controlled airspace extending upward from 700 to 1200 feet AGL, and controlled airspace extending upward from 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 Execution 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 ND E5 Tioga, ND [New]

Tioga Municipal Airport, ND
(Lat. 48°22′30″N., long. 102°53′51″W.)
Minot AFB, ND
(Lat. 48°24′56″N, long. 101°21′28″W)
Williston VORTAC
(Lat. 48°15′12″N., long. 103°45′02″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Tioga Municipal Airport and that airspace within 2 miles either side of the 133° bearing from the Tioga Municipal Airport extending from the 6.7-mile radius to 9.4 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface bounded on the north by latitude 49°00′00″N., on the east by the 47-mile radius of Minot AFB,

on the south by V–430, on the southeast by the 21.8-mile radius of the Williston VORTAC and on the west by the North Dakota/Montana state boundary.

* * * * *

Issued in Des Plaines, Illinois on May 20, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–14756 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–35]

Proposed Establishment of Class E Airspace; Slayton, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Slayton, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 35 has been developed for Slayton 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 create controlled airspace for Slayton Municipal Airport.

DATES: Comments must be received on or before July 20, 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–35, 2300 East Devan 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–35.'' 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, APR–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 Slayton, MN, to accommodate aircraft executing the proposed GPS Rwy 35 SIAP at Slayton Municipal Airport by creating controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. 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 Federal 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 MN E5 Slayton, MN [New]

Slayton Municipal Airport, MN
(lat. 43°59′12″N, long. 95°46′57″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Slayton Municipal.

* * * * *

Issued in Des Plaines, Illinois on May 20, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–14755 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 70, 73, 74, 80, 81, 82, 101, 178, 201, and 701

[Docket Nos. 79N–0043 and 92N–0334]

Permanent Listing of Color Additive Lakes; Additions to the Administrative Record; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of certain documents that are being added to the administrative record for the agency's proposal to permanently list certain color additive lakes as suitable and safe for use in foods, drugs, and cosmetics. The proposal was published in the **Federal Register** of March 4, 1996 (61 FR 8372). The documents being added to the administrative record pertain to a modified in situ manufacturing process for D&C Red No. 34 lakes. FDA is also reopening the comment period for this proposal until July 6, 1998, for the sole purpose of providing an opportunity for public comment on these documents.

DATES: Written comments by July 6, 1998.

ADDRESSES: Submit written comments and requests for single copies of the documents added to the administrative record and 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: Julie N. Barrows, Center for Food Safety and Applied Nutrition (HFS–105), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4662.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 4, 1996 (61 FR 8372), FDA published a proposal to permanently list certain color additive lakes as suitable and safe for use in foods, drugs, and cosmetics. The agency proposed this action in response to the requirements of section 721(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(b)) and the transitional provisions of the Color Additive Amendments of 1960. Among other things, the agency proposed to require the preparation of lakes, including lakes that are currently prepared in situ, from previously certified batches of straight color. Lakes currently prepared in situ are lakes of D&C Red Nos. 6, 7, 31 and 34. In the proposal, the agency tentatively concluded that the lack of adequate analytical methods to determine levels of intermediates and other impurities in lakes prepared from uncertified batches of straight color precludes the agency from prescribing conditions of safe use for such lakes, including lakes prepared in situ.

Interested persons were initially given until June 3, 1996, to comment on the proposal. In the **Federal Register** of June 5, 1996 (61 FR 28525), the comment period was extended to August 3, 1996.

FDA is announcing that it has received a letter from a color additive manufacturer, Sun Chemical Corp., concerning the results of a modified in situ manufacturing process for D&C Red No. 34 lakes. (D&C Red No. 34 is the calcium salt of 3-hydroxy-4-[(1-sulfo-2-naphthalenyl)azo]-2-naphthalenecarboxylic acid.) The letter, accompanied by samples, provided information on the total color and levels of intermediates in the isolated and purified sodium salt of 3-hydroxy-4-[(1-sulfo-2-naphthalenyl)azo]-2-naphthalenecarboxylic acid and in the calcium lake prepared from this sodium salt. FDA has analyzed the samples provided with the letter from Sun Chemical Corp. and has confirmed the results in the letter. The following documents have been added to the administrative record for the proposal: The letter from Sun Chemical Corp.; a memorandum summarizing the agency's analytical results for the samples received with the letter; two memoranda summarizing telephone conversations between FDA and Sun Chemical Corp. regarding the modified in situ manufacturing process for D&C Red No. 34; and a memorandum summarizing a telephone conversation between FDA and Kingfisher Colours, Ltd., in which FDA sought information on the same subject.

FDA is reopening the comment period for 30 days to allow interested persons the opportunity to comment specifically on issues raised by the documents being added to the record. Only comments pertaining to such issues will be considered. This action will not delay the issuance of a final rule.

Interested persons may, on or before July 6, 1998 submit to the Dockets Management Branch (address above) written comments regarding these document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with Docket No. 79N–0043. Send a self-addressed adhesive label to assist in processing your requests. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14719 Filed 6–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–98–003]

RIN–2115–AE47

Drawbridge Operation Regulations; Sheboygan River, WI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the City of Sheboygan, WI, the Coast Guard proposes to revise the operating hours of the Eighth Street bridge at mile 0.69 over the Sheboygan River in Sheboygan, WI. The proposed changes would restrict bridge openings for vessel traffic during peak vehicular traffic hours. Additionally, this proposal would establish a permanent winter operating schedule for the bridge.

DATES: Comments must be received on or before August 3, 1998.

ADDRESSES: Comments may be mailed or delivered to: Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Room 2019, Cleveland, OH 44199–2060 between 6:30 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT:

Mr. Scot M. Striffler, Project Manager, at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting data, views or arguments for or against this rule. Persons submitting comments should include their name, address, identify this rulemaking (CGD09–98–003), the specific section of this NPRM to which each comment applies, and the reason(s) for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½ x 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), Ninth Coast Guard District, listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The City of Sheboygan, WI, has requested that the Coast Guard initiate changes to the permanent regulations that govern the operations of the Eighth Street bridge at mile 0.69 over the Sheboygan River in Sheboygan, WI. The bridge is currently required to open on signal at 10 minutes after the hour, on the half-hour, and at 10 minutes before the hour, Monday through Saturday, between the hours of 6:10 a.m. and 7:10 p.m. There is no requested change to this schedule, but the City has additionally asked that the bridge not be required to open between 7:30 a.m. and 8:30 a.m., between 12:00 p.m. and 1:00 p.m., and between 4:30 p.m. and 5:30 p.m., Monday through Friday, to relieve vehicular traffic congestion.

The City has asserted that the Eighth Street bridge is the primary roadway to the downtown central business district, which has grown considerably since 1995, attracting an increase in vehicle traffic across the bridge.

Vehicular traffic count data supplied by the City indicates that traffic volume is at its highest during the hours identified above. Corresponding bridge opening data submitted for the same period shows random openings, with no distinct pattern for requests to open the bridge.

The City also maintains that the number of bridge openings has decreased since a new marina, located in the outer harbor of Sheboygan, was constructed and opened in 1995. No data was submitted to support this statement. There are still existing facilities located above the bridge that require openings for passage.

Finally, the City claims that a newly created ''rotary intersection'' in the vicinity of the bridge contributes to significant traffic congestion during morning and evening rush hour, and at mid-day.

In addition to the opening restrictions requested above, the City wishes to establish a permanent winter operating schedule between October 31 and April 30. Vessels requesting openings of the bridge during this period would be required to provide a 12-hour advance notice to the City prior to the intended time of passage.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed 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 (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. There are no major commercial navigation facilities located above this bridge. The federal navigation channel is only maintained to the outer basin of the harbor, with a shallow channel approaching the bridge and going beyond it.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard identified small commercial fishing entities located above this bridge during the preliminary fact-finding phase of this proposal. The requested bridge opening restriction times would be for no more than one hour at a time, at three different times of the day. The requested bridge opening restrictions, if approved, would eliminate openings only during peak vehicular traffic periods. Bridge logs submitted by the City do not indicate a set pattern of times that these entities require the bridge to open.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This proposed rule 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 proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, 33 CFR part 117 is proposed to be amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.1097 is revised to read as follows:

§ 117.1097 Sheboygan River.

The draw of the Eighth Street bridge, mile 0.69 at Sheboygan, shall open as follows:

(a) From May 1 through October 31—

(1) Between the hours of 6:00 a.m. and 10:00 p.m., the bridge shall open on signal, except that:

(A) From 6:10 a.m. to 7:10 p.m., Monday through Saturday, the draw need open only at 10 minutes after the hour, on the half-hour, and 10 minutes before the hour; and

(B) From Monday through Friday, except Federal holidays, the draw need not open between 7:30 a.m. and 8:30 a.m., between 12:00 p.m. and 1:00 p.m., and between 4:30 p.m. and 5:30 p.m.

(2) Between the hours of 10:00 p.m. and 6:00 a.m., the draw shall open on signal if at least 2 hours advance notice is provided.

(b) From November 1 through April 30, the draw shall open on signal if at least 12 hours advance notice is provided.

(c) At all times, the draw shall open as soon as possible for public vessels of the United States, state or local government vessels used for public safety, vessels in distress, vessels seeking shelter from rough weather, or any other emergency.

Dated: May 2, 1998.

J.F. McGowan,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 98–14702 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

Glacier Bay National Park, Alaska; Commercial Fishing Regulations and Environmental Assessment

AGENCY: National Park Service, Interior.

ACTION: Proposed rule and environmental assessment, extension of public comment period.

SUMMARY: The National Park Service (NPS) announces that the public comment period for the proposed rule concerning commercial fishing at Glacier Bay National Park and the associated environmental assessment (EA) is being extended 169 days to November 15, 1998. The proposed rule was published on April 16, 1997 (62 FR 18547). This is the third extension of the public comment period on the proposed rule.

The proposed rule, intended to provide a framework for enhanced review and comment by all interested parties, would implement fair measures to ensure protection of the values and purposes of Glacier Bay NP, including the preservation, enjoyment, and scientific value of the park's unique marine ecosystem. In general, the proposed rule would prohibit all commercial fishing in Glacier Bay proper but provide certain limited exemptions over a 15 year phase-out period, and authorize established commercial fishing in the park's marine waters outside Glacier Bay proper subject to reexamination at the end of 15 years.

DATES: Comments on the proposed rule and EA will be accepted through November 15, 1998.

ADDRESSES: Comments on the proposed rule and EA should be submitted to: Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

Copies of the environmental assessment and an executive summary are available by writing Glen Yankus, National Park Service, Alaska Support Office, 2525 Gambell St., Anchorage, AK 99503–2838. A copy of the Executive Summary for the EA will be available on the park's web site at http://www.nps.gov/glba in the management issues section.

FOR FURTHER INFORMATION CONTACT: Glen Yankus, National Park Service, Alaska Support Office, (907) 257–2645.

Dated: May 28, 1998.

Chris Andress,

Chief, Ranger Activities Division.

[FR Doc. 98–14624 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AI92

Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) loan guaranty regulations concerning the requirements for Interest Rate Reduction Refinancing Loans (IRRRLs) by generally limiting these loans to instances where the veteran's monthly mortgage payment will decrease, and by requiring that the loans being refinanced either be current in their payments or meet certain credit standard provisions. This appears to be necessary to ensure that these loans are made only when they provide a real benefit to the veteran, and to protect the financial interest of the Government.

DATES: Comments must be received on or before August 3, 1998.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI92.'' All written comments received will be available for public inspection at the above address, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: Under the authority of 38 U.S.C. chapter 37, VA guarantees loans made by lenders to eligible veterans to purchase, construct, improve, or refinance their homes (the term veteran as used in this document includes any individual defined as a veteran under 38 U.S.C. 101 and 3701 for the purpose of housing loans). This document proposes to amend VA's loan guaranty regulations by revising the requirements for VA-guaranteed Interest Rate Reduction Refinancing Loans (IRRRLs).

This proposed rule addresses the same issues that were addressed in an interim final rule which was established in a document published in the **Federal Register** on October 8, 1997 (62 FR 52503) and rescinded in a document published in the **Federal Register** on December 1, 1997 (62 FR 63454). The interim final rule requested comments. The comments submitted in response to the interim final rule, in addition to those comments received in response to this proposed rule, will be considered and will be discussed in the final rule document. Also, we note that every lender that participates in the VA home loan guarantee program was sent a copy of the provisions of the interim final

rule and information about the rescission. Further, information about this proposed rule is also included on the VA Home Loan Guaranty Home Page on the Internet (http://www.va.gov/vas/loan/lenders.htm).

Background

IRRRLs are designed to assist veterans by allowing them to refinance an outstanding VA-guaranteed loan with a new loan at a lower rate. The provisions of 38 U.S.C. 3703(c)(3) and 3710(e)(1)(C) allow the veteran to do so without having to pay any out-of-pocket expenses. The veteran may include in the new loan the outstanding balance of the old loan plus reasonable closing costs, including up to two discount points. Over the years, IRRRLs have provided nearly one million veterans an opportunity to reduce the interest rates and, thus, the monthly payments on their home mortgages.

We have recently learned that a small number of lenders have been urging veterans to apply for loans under conditions that increase the risk of loss to both the veteran and the Government, and do not provide the benefit that IRRRLs were enacted to give. In some cases, these loans involve exorbitant costs in relation to the small reduction in the interest rate. Thus, veterans actually experience an increase in their monthly payment notwithstanding the lower rate. In other cases, lenders are urging veterans to default on their current loan, then refinance the delinquent loan with a new loan including the past due interest and late charges.

In one case, a veteran obtained a 30-year loan for a new home in Georgia in August of 1994. The fixed-rate mortgage was for $90,270 (including funding fee) at an interest rate of 9.00 percent with a principal and interest payment of $726.33. In May of 1997 he obtained an IRRRL with an interest rate of 8.50 percent. This loan was for $97,800 and has a principal and interest payment amount of $752.00. The loan included $3676.41 in allowable closing costs, 2.0 discount points totaling $1956.00 and the VA funding fee of $486.00. The remaining amount of the new loan, $91,681.59, exceeds the original loan amount by $1411.59 and means that at least that amount in delinquent payments and late charges were also rolled in, further increasing both the new loan and the new loan payment. Thus, 2 years and 9 months after buying the house the veteran again has a full 30 years to pay, has a home loan that has increased by $7530.00, and has a monthly payment approximately $26.00 greater than the original payment.

In order to assist veterans who were delinquent on their original loan to refinance to a lower rate, VA permitted them to include their past due payments in the new loan. Because loan instruments normally provide that any past due interest and late charges are capitalized and added to the loan balance, VA considered such past due charges to be part of ''the balance of the loan being refinanced'' and, therefore, eligible to be refinanced under the provisions of 38 U.S.C. 3710(e)(1). Some lenders have abused this interpretation by actually encouraging veterans to skip a few payments on the old loan. VA has become aware of a number of lenders publishing advertisements telling veterans to skip two or three house payments. Ads VA has viewed contain statements such as: ''Need Holiday Cash? Skip two mortgage payments on VA loans when you refinance.'' ''[I]f you simply wish to skip making one or two payments to utilize the cash for other purposes.'' ''SKIP TWO HOUSE PAYMENTS!!'' ''SKIP UP TO THREE PAYMENTS * * * on all applications received prior to May 31, 1997 * * * your next payment will not be due until July, freeing up cash for the upcoming summer vacations.'' ''Furthermore, you can skip up to three months payments * * *. This will represent a substantial amount of money you can put in your pocket.''

In order to insure that IRRRLs continue to provide a true benefit to the veteran, and to protect the financial interest of the Government, we are proposing to make the changes discussed below to the IRRRL program by revising the provisions of 38 CFR 36.4306a and 36.4337(a).

Monthly Payment Reduction

Under the proposal, we generally would require that the monthly payment (principal and interest) on the new loan be lower than the monthly payment on the loan being refinanced. This would prevent cases in which the veteran's monthly payment actually increases because of extensive costs added to the loan (including closing costs), even though the interest rate is lowered slightly. However, this proposed requirement would not apply to four situations where VA believes that other factors offset the risk of loss from an increase in monthly payment. These four situations are cases in which an ARM is being refinanced with a fixed-rate loan; cases in which the term of the new loan is shorter than the term of the loan being refinanced; cases in which the increase in monthly payment is attributable to the inclusion of energy efficient improvements, as provided in § 36.4336(a)(4); and cases in which the Secretary approves the new loan, on a case-by-case basis, in order to prevent an imminent foreclosure. With regard to ARMs, there is already a possibility that the monthly payment will increase in future years. The certainty that the payment on the new loan will not increase in future years offsets the increased risk associated with the immediate increase over the veteran's current payment. VA may establish limits on the amount of such increase in future rulemaking. Although the monthly payments on shorter term loans are higher, they amortize faster, thus reducing the risk of loss to both the veteran and the Government. In future rulemaking, VA may address minimum term reduction. Current law allows veterans to include additional costs of energy efficient improvements in IRRRLs; thus, this exception would merely continue current law. Finally, with regard to imminent foreclosure, the risk of loss to the Government and veteran from such foreclosure could be greater than permitting a new loan at a higher monthly payment. VA would have to approve each such loan on a case-by-case basis under existing credit underwriting standards set forth at 38 CFR 36.4337 to ensure that it is in the best interest of the Government and that the veteran is able to afford the new payment.

Delinquent Loans

We are proposing, with respect to delinquent loans, that in any case where the loan being refinanced is delinquent, the new loan will be guaranteed only if it is approved by the Secretary in advance after determining that the veteran has provided reasons for the loan deficiency, has provided information to establish that the cause of the delinquency has been corrected, and qualifies for the loan under the credit standards contained in 38 CFR 36.4337. We are also proposing, consistent with industry standards, to state that a loan is delinquent if the scheduled monthly payment of principal and interest is more than 30 days past due.

Regardless of other factors affecting loan-to-value ratio, any addition of missed payments and delinquent interest and late charges to a loan would increase the loan-to-value ratio and, consequently, would raise the Government's potential liability on a VA-guaranteed loan. Further, missed payments raise questions regarding the ability of the borrower to make future payments. Under these circumstances, the proposed process appears to be

necessary to protect the interest of the Government.

Also, the proposed rule would clarify the regulations to make clear the existing VA interpretation that delinquent interest and late charges are considered part of the balance of the loan being refinanced.

Credit Underwriting Standards

In addition, we propose to make a conforming amendment to 38 CFR 36.4337. That section contains the current credit underwriting standards. Currently, paragraph (a) of that section provides that the standards do not apply to IRRRLs. We are proposing to amend this to state the standards do not apply to IRRRLs unless under 38 CFR 36.4306a the loan must be submitted to VA for prior approval. As discussed above, under the proposal, loans to prevent imminent foreclosure where the monthly payment on the new loan exceeds the payments on the loan being refinanced, and cases where the loan being refinanced is delinquent, would be required to be approved in advance.

Executive Order 12866

This proposed rule has been reviewed by OMB under Executive Order 12866.

Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis is provided to meet the requirements of the Regulatory Flexibility Act. (5 U.S.C. 601 *et. seq.*)

a. A description of the reasons why action by VA is being considered.

Response: These reasons are set forth and discussed above.

b. A succinct statement of the objectives of, and legal basis for, the proposed rule.

Response: The objectives of this proposed rule are to insure that IRRRLs continue to provide a real benefit to veterans and to protect the financial interest of the Government.

The legal basis of the proposed rule is contained in 38 U.S.C. 3703(c)(1), which provides that ''Loans guaranteed (by VA) * * * shall be payable upon such terms and conditions as may be agreed upon by the parties thereto, subject to the provisions of this chapter and regulations of the Secretary issued pursuant to this chapter * * *.'' The provisions of 38 U.S.C. 3710(a)(8) authorize VA to guarantee loans to veterans to refinance existing guaranteed mortgage loans which are secured by a dwelling or farm residence and still owned by the veteran. Furthermore, 38 U.S.C. 3710(e)(1)(C) provides, with respect to IRRRLs, that the loan balance may include such closing costs (including discounts) ''as may be authorized by the Secretary (under regulations which the Secretary shall prescribe).''

The intent of Congress in amending 38 U.S.C. chapter 37 to permit veterans to refinance outstanding loans previously guaranteed by VA is spelled out in a House Veterans Affairs Committee Report (Report 96–1165 which accompanied H.R. 7458). This Report at page 3 stated that the IRRRL program is ''solely intended to assist veterans by allowing their monthly payments to be reduced'' and that ''a veteran would not be permitted under th[is legislation] to obtain cash from the proceeds of the refinancing loan for other purposes.''

c. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

Response: The proposed rule would apply to all lenders who make VA IRRRLs. In Fiscal Year 1997, 1476 lenders made at least one IRRRL. We believe a number of these lenders are small entities; however, we are unable to make an informed estimate of the number because we do not know how much of the total business each of the lenders would be affected by the adoption of this proposed rule.

d. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which would be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

Response: Any reporting or recordkeeping requirements are discussed in the Paperwork Reduction Act portion of this document. The requirements of the proposed rule are set forth above. As noted above, we are unable to make an informed estimate of the number of small entities that would be affected by the adoption of the proposed rule. To comply with the provisions of the proposed rule, employees of lenders would not need any professional skills that would be additional to those skills already needed to process IRRRLs.

e. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

Response: We are unaware of any Federal rules which may duplicate, overlap or conflict with the proposed rule.

f. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Response: Generally, limiting IRRRLs to instances where the veteran's monthly mortgage payment will decrease and requiring that the loans being refinanced either be current in their payments or meet certain credit standard provisions is intended to ensure that IRRRLs are made only when they provide a real benefit to the veteran and to protect the financial interest of the Government. One alternative would be to allow IRRRLs to be made only when the veteran's monthly mortgage payment would decrease. However, as explained above, this document proposes to establish exceptions in those cases when it appears that the objectives could still be met. Another alternative would be to require that all IRRRLs meet the credit standard provisions. However, as explained above, we believe this is necessary only when the loan is delinquent. We are aware of no alternatives which could be considered that would allow the objectives to be met and provide less stringent rules for small businesses.

The adoption of the proposed rule would not have a significant impact on the resources available to small entities. The type of actions that would be required are the same or similar to types of actions already being handled by employees of small entities.

We are unaware of any alternatives that would accomplish the intended purposes. Further, we are unaware of any changes we could consider regarding clarification, consolidation, or simplification that could be made for small entities and still protect veterans and the interests of the Government. The proposed rule does not include performance standards because we believe there is no means to ensure compliance without design standards. Further, we believe there is no good reason for any lender to act contrary to the proposed rule.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a collection of information is set forth in the provisions of the proposed § 36.4306a(a)(3) and (a)(5). In this regard, these provisions require the submission of information concerning IRRRLs to refinance delinquent loans and require the submission of information to establish that they meet credit standards set forth in 38 CFR 36.4337. The credit standards in § 36.4337 prescribe the information to be submitted for approval of a VA loan guaranty and contains material which further explains the quality of the

information needed for approval. As required under section 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to the Office of Management and Budget (OMB) for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA 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.

Comments on the collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI92.''

Title: Requirements for Certain Interest Rate Reduction Refinancing Loans.

Summary of collection of information: Pursuant to 38 U.S.C. 3710, VA may guarantee loans to veterans to refinance existing mortgage loans previously guaranteed by VA provided the veteran still owns the property used as security for the loan. Lenders must collect certain information concerning the veteran and the veteran's credit history (and spouse or other co-borrower, as applicable), in order to properly underwrite the IRRRL. Collection of this type of information is normal business practice for mortgage lenders.

Description of need for information and proposed use of information: VA requires the lender to provide the Department with the credit information to assure itself that IRRRLs to refinance loans that are delinquent are underwritten in a reasonable and prudent manner.

Description of likely respondents: Mortgage lenders who make IRRRLs.

Estimated number of respondents: 350 in FY 1998; 350 in FY 1999.

Estimated frequency of responses: This is a ''one-time'' request for each application for an IRRRL.

Estimated average burden per collection: 30 minutes.

Estimated total annual reporting and recordkeeping burden: 175 hours in FY 1998 and 175 hours in FY 1999.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

The Catalog of Federal Domestic Assistance Program number is 64.114.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: May 19, 1998.

Togo D. West, Jr.,

Secretary.

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4306a, paragraphs (a)(3) through (a)(5) are revised and paragraphs (a)(6) and (a)(7) are added, to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) * * *

(3) The monthly principal and interest payment on the new loan must be lower than the payment on the loan being refinanced, except when the term of the new loan is shorter than the term of the loan being refinanced; or the new loan is a fixed-rate loan that refinances a VA-guaranteed adjustable rate mortgage; or the increase in the monthly payments on the loan results from the inclusion of energy efficient improvements, as provided by § 36.4336(a)(4); or the loan is approved by the Secretary in advance after determining that the new loan is necessary to prevent imminent foreclosure and the veteran qualifies for the new loan under the credit standards contained in § 36.4337.

(4) The amount of the refinancing loan may not exceed:

(i) An amount equal to the balance of the loan being refinanced, which must not be delinquent, except in cases described in paragraph (a)(5) of this section, and such closing costs as authorized by § 36.4312(d) and a discount not to exceed 2 percent of the loan amount; or

(ii) In the case of a loan to refinance an existing VA-guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, the amount referred to with respect to the loan under paragraph (a)(4)(i) of this section, plus the amount authorized by § 36.4336(a)(4).

(Authority: 38 U.S.C. 3703, 3710)

(5) In any case where the loan being refinanced is delinquent (delinquent means that the scheduled monthly payment of principal and interest is more than 30 days past due), the new loan will be guaranteed only if it is approved by the Secretary in advance after determining that the borrower, through the lender, has provided reasons for the loan deficiency, has provided information to establish that the cause of the delinquency has been corrected, and qualifies for the loan under the credit standards contained in § 36.4337. In such cases, the term ''balance of the loan being refinanced'' shall include any past due installments, plus allowable late charges.

(6) The dollar amount of guaranty on the 38 U.S.C. 3710(a)(8) or (a)(9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(7) The term of the refinancing loan (38 U.S.C. 3710(a)(8)) may not exceed the original term of the loan being refinanced plus ten years, or the maximum loan term allowed under 38 U.S.C. 3703(d)(1), whichever is less. For manufactured home loans that were

previously guaranteed under 38 U.S.C. 3712, the loan term, if being refinanced under 38 U.S.C. 3710(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 3703(d)(1).

(Authority: 38 U.S.C. 3703(c)(1), 3710(e)(1))

* * * * *

3. In § 36.4337, paragraph (a) is revised to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility and lender certification.

(a) *Use of standards.* The standards contained in paragraphs (c) through (j) of this section will be used to determine that the veteran's present and anticipated income and expenses, and credit history are satisfactory. These standards do not apply to loans guaranteed pursuant to 38 U.S.C. 3710(a)(8) except for cases where the Secretary is required to approve the loan in advance under § 36.4306a.

(Authority: 38 U.S.C. 3703, 3710)

* * * * *

[FR Doc. 98–14644 Filed 6–2–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 159

[OPP–60010I; FRL–5792–1]

RIN 2070–AB50

Reporting Requirements for Risk/Benefit Information, Final Rule and Corrections; Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a final regulation and notice of corrections under section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The rule is to make a minor amendment and several technical corrections to the final regulations published on September 19, 1997 (62 FR 49370)(FRL–5739–1) which codified EPA's interpretation and enforcement policy regarding the requirement of pesticide registrants to report information concerning unreasonable adverse effects of their products as mandated in section 6(a)(2) of FIFRA. EPA is issuing a final rule to amend the definition of a registrant in the regulation to comport with that which is in the statute. The Agency is also making several technical corrections to the regulation for clarification purposes.

FOR FURTHER INFORMATION CONTACT: by mail: Carol Peterson, Policy and Regulatory Services Branch, Field and External Affairs Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, e-mail address: Room 1114D, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA; telephone number: 703–305–6598; e:mail address: peterson.carol@epa.gov.

SUPPLEMENTARY INFORMATION: Section 25(a)(2) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture a copy of any final regulation at least 30 days before signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the final regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the **Federal Register** anytime thereafter.

I. Regulatory Assessment Requirements

This action does not impose any requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

List of subjects

Environmental protection, Pesticides and pest, Policy statements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136 et seq.

Dated: May 21, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 98–14438 Filed 6–2–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Chapter IV

[HCFA–3250–NOI]

RIN 0938–AI92

Medicare Program; Coverage and Administrative Policies for Clinical Diagnostic Laboratory Tests; Intent to Form Negotiated Rulemaking Committee

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Intent to Form Negotiated Rulemaking Committee and Notice of Meetings.

SUMMARY: The Balanced Budget Act of 1997 requires the Secretary to establish a Negotiated Rulemaking Committee under the Negotiated Rulemaking Act and the Federal Advisory Committee Act. The Negotiated Rulemaking Committee's (the Committee) purpose will be to negotiate national coverage and administrative policies for clinical diagnostic laboratory tests under Part B of the Medicare program as required by the Balanced Budget Act of 1997 (BBA). The Committee will consist of representatives of interested parties that are likely to be significantly affected by the proposed rule. The Committee will be assisted by a neutral facilitator.

The BBA outlines the scope of issues to be negotiated by the Committee. We specifically request pubic comment as to whether we have identified the interests that will be affected by key issues listed below.

DATES: Comments and requests for representation or for membership on the

Committee will be considered if we receive them at the appropriate address provided below, no later than 5 p.m. on July 6, 1998.

The first meeting will be held at Turf Valley Hotel in Ellicott City (Baltimore) at 9 a.m. on July 13, 14, and 15, 1998; (410) 465–1500.

ADDRESSES: Mail written comments and requests for representation or for membership on the Committee, or nominations of another person for membership on the Committee (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of health and Human Services, Attention: HCFA–3250–N, P.O. Box 26688, Baltimore, MD 21207–5187.

Mail a separate copy of written comments to the following address: Grant Bagley, M.D., Director, Coverage and Analysis Group, Office of Clinical Standards and Quality, Mail Stop S3–02–01, Health Care Financing Administration, 7500 Security Blvd., Baltimore, Maryland 21244–1850.

If you prefer, you may deliver your written comments, applications, or nominations (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on electronic filing, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Grant Bagley, M.D., (410) 786–7176, or Jackie Sheridan (410) 786–4635, for general issues related to clinical diagnostic Laboratory tests. Judy Ballard, (202) 690–7419, or Nancy Rubenstein, (202) 690–8246, Conveners.

SUPPLEMENTARY INFORMATION: Comments may also be submitted electronically to the following e-mail address: (filecode hcfa3250noi)hcfa.gov. E-mail comments must include the full name and address of the sender, and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comment will be available for public inspection at the Independence Avenue address, below. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3250–NOI. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 300 Independence Avenue, SW, Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register.**

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I. Balanced Budget Act of 1997

Section 4554(b)(1) of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, mandates adoption, by January 1, 1999, of national coverage and administrative policies for clinical diagnostic laboratory tests under Part B of title XVIII of the Social Security Act using negotiated rulemaking. Section 4554(b)(2) provides that these national policies must be ''designed to promote program integrity and national uniformity and simplify administrative requirements with respect to clinical diagnostic laboratory tests'' payable under Part B in connection with the following:

- Beneficiary information required to be submitted with each claim or order for laboratory tests;
- The medical conditions for which a laboratory test is reasonable and necessary;
- The appropriate use of procedure codes in billing for a laboratory test, including the unbundling of laboratory services;
- The medical documentation that is required by a Medicare contractor at the time a claim is submitted for a laboratory test;
- Recordkeeping requirements in addition to any information required to be submitted with a claim, including physicians' obligations regarding such requirements;
- Procedures for filing claims and for providing remittances by electronic media; and
- Limitation on frequency of coverage for the same tests performed on the same individual.
- The legislative history of BBA suggests that section 4554 was enacted in response to variations among carriers' requirements for laboratories filing claims for payment.

II. Negotiated Rulemaking Process

Section 4554 of the BBA provides that these negotiations take place within the framework of the Negotiated Rulemaking Act (Pub. L. 101–648, 5 U.S.C. 561–570). Under the Negotiated Rulemaking Act, the head of an agency generally must consider whether—

- There is a need for a rule;
- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—

+ Can adequately represent the interests identified; and

+ Are willing to negotiate in good faith to reach a consensus on the proposed rule;

- There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule;
- The agency has adequate resources and is willing to commit such resources, including technical assistance, to the Committee; and
- The agency, to the maximum extent possible, consistent with the legal obligations of the agency, will use the consensus of the Committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

Negotiations are conducted by a Committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The Committee includes

an agency representative and is assisted by a neutral facilitator. The goal of the Committee is to reach consensus on the language or content of a rule. If consensus is reached, it is used as the basis of the agency's proposal. The process does not affect otherwise applicable procedural requirements of the FACA, the Administrative Procedure Act, and other statutes.

The Negotiated Rulemaking Act permits (but does not require) an agency to use the services of an impartial convener to assist the agency in identifying interests that will be significantly affected by the proposed rule, including residents of rural areas, and conducting discussions with persons representing the identified interests to ascertain whether the establishment of a negotiated rulemaking committee is feasible and appropriate in the particular rulemaking. At the agency's request, the convener also ascertains the names of persons who are willing and qualified to represent interests that will be significantly affected by the rule. The agency may also ask the convener to recommend a process for the negotiations. The convener submits a written report, which is available to the public. Pursuant to this procedure authorized by the Negotiated Rulemaking Act, we asked Judy Ballard and Nancy Rubenstein, who are with the Departmental Appeals Board (DAB) to act as convener for the negotiated rulemaking on laboratory policies. Over the last several months, they met with a wide range of organizations that were identified as having a possible interest in this negotiated rulemaking. They submitted to HCFA a report based on those convening interviews, which serves as a basis for this notice. This report lists the proposed representatives on the Committee. The convening report is a public document and may be found on the HCFA Internet website at http://www.hcfa.gov/quality/qlty-8a.

III. Subject and Scope of the Rule

A. General

During the convening process, a number of issues were presented by the interested parties for negotiations as described below. We believe it is important to have an opportunity to engage in discussions with the interested parties on the issues that were presented. Many of these issues need clarification and a common understanding before regulations can be developed. We believe it is important that the Committee meetings include ample opportunity for such clarifications.

Many of the issues raised by identified interested parties were based on the current laboratory coverage policies and claims processing systems. It is important to take into consideration how these current processes have been affected by the changes mandated by other subsections of section 4554 of the BBA. This provision of the law likely will mitigate some of the problems identified. For example, the law permits a carrier to develop and implement interim policies for laboratory services when there is a demonstrated need for a policy due to aberrant utilization or provision of unnecessary tests. The law provides that interim national policies developed by carriers are effective for no more than two years when no national policies exist, and provides an opportunity for public participation in the biennial review of national policies.

As outlined in section 4554(b) of the BBA, the scope of the rule will be the development of coverage and administrative policies for clinical laboratory services that are designed to promote program integrity and national uniformity while simplifying administrative requirements. Consensus related to administrative simplification for laboratory services must comply with the limitations imposed by the administrative simplification provisions in section 261 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA requires the Secretary to establish standards and requirements for the electronic transmission of claims and other information that will be used throughout the health insurance industry.

Given that there are limited time and resources for these negotiations, it is critical that a process for coverage policy concerning laboratory tests be developed. Clearly, time constraints may prevent the development of test-specific policies for all laboratory tests. HCFA, therefore, proposes that the Committee negotiate a process for coverage and administration capable of uniform application throughout the country that takes into account the statutory boundaries within which HCFA must administer the Medicare program.

Many of the issues identified during the convening interviews related to administrative policies associated with claims submission, documentation, and recordkeeping. These administrative issues will be negotiated to the extent that they are within the framework of section 4554(b) of the BBA as discussed below.

B. Issues and Questions to be Resolved

1. Beneficiary Information on Claims

Under current Medicare policy, laboratory tests furnished in physicians' offices and by independent laboratories are reported on a HCFA–1500, while hospital laboratory services are reported on a UB–92 form. Virtually all claims from independent clinical laboratories, hospital laboratories, and a substantial number of claims for laboratory services performed in physician office laboratories are submitted using electronic versions of these forms.

During the convening process, interested parties raised issues regarding application of general Medicare coverage and administrative policies to the laboratory industry. Two specific issues interviewees wished to negotiate concerned the documentation necessary to substantiate that skilled nursing care patients were in beds certified as skilled nursing facilities for Medicare purposes (and consequently, subject to rebundling), and the use of the standard form HCFA–1500 for submitting Medicare claims for laboratory services. To the extent that these issues are directly related to the categories of items delineated in section 4554(b)(2) of the BBA, they are within the scope of the negotiations. Thus, the applicability of general Medicare policies regarding beneficiary information required on claims for laboratory services is within the framework of these negotiations.

2. Medical Conditions for Which a Laboratory Test is Covered

Section 4554 of the BBA mandates that HCFA use the negotiated rulemaking process to develop national coverage and administrative policies for clinical diagnostic laboratory tests under Medicare Part B. While HCFA and the clinical laboratory industry understand and support the need for national uniformity in terms of policy, both recognize the practical difficulty of addressing and developing coverage policies for all laboratory tests within the time provided in the negotiated rulemaking process. As a result, the Committee will focus on negotiating the medical conditions for which specific tests are covered for a subset of tests that have been identified as priorities by the Committee members after the process for making this determination has been negotiated.

In the interest of expediting this phase in the negotiation process, HCFA proposes that the facilitator work with Committee members prior to the first meeting to develop a recommended list of tests that will be specifically discussed during the negotiations. We

expect that those tests designated as priorities by the Committee will likely fulfill at least one of the following criteria:

- It is subject to wide divergence in coverage among local Medicare carriers,
- It is a high-volume test, or
- Its medical utility or clinical effectiveness is considered controversial.

The Committee will negotiate and reach consensus on a list of priority tests. Using a process developed by the Committee, the Committee will then negotiate and attempt to reach consensus on the medical condition for which these specific tests will be covered.

3. Use of Appropriate Procedure Codes in Billing

Laboratory services are reported to HCFA using the HCFA Common Procedure Coding System (HCPCS). A major component of this system is the American Medical Association's Current Procedural Terminology (CPT). In addition, HCFA requires diagnosis reporting on all claims. Diagnosis is coded using the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM).

Medicare contractors that process claims are charged with the development of local medical review policies to apply safeguards against inappropriate expenditures of program funds. Local policies are a means of applying local coverage decisions where national policies do not exist. Unlike most national coverage policies, which are generally narrative statements, nearly all local medical review policies are at the code-specific level.

We recognize that the level of understanding of coding conventions is not uniform among the laboratory industry, community physicians ordering clinical diagnostic testing, and our contractors. Clearly, there is some confusion and misunderstanding among the parties with regard to application of the coding guidelines to specific circumstances. For example, during convening, interviewees reported that historically there have been problems with coding multichannel automated testing.

This is an issue of application of general Medicare policies to the laboratory industry. HCFA believes that it is appropriate for the Committee to discuss specific coding guidelines to seek clarification as part of the development of specific national coverage and administrative policies for laboratory tests identified as priorities. Thus, for example, it may be appropriate for the Committee to negotiate policies for automated multichannel testing, including clarification of coding guidelines. To the extent that coding issues are related to the coverage policies under discussion, they are within the scope of the negotiations.

4. Medical Documentation Required with Claim

During the convening interviews, interested parties identified issues with respect to the medical documentation required on a claim. One issue dealt with the documentation the physician should submit to the laboratory in order for the laboratory to submit the claim. Another issue concerned assuring consistent action by the contractors when the documentation submitted with the claims is insufficient.

We believe the first issue of medical documentation requirements would be an inherent part of the negotiations of individual coverage policies. That is, if the Committee determines that coverage policy for a given tests should be developed on a diagnosis code-specific level, then reporting of the diagnosis code would be required for that policy. In other situations, the Committee could determine that a code was not satisfactorily specific for the coverage policy, so alternative documentation may be required. The Committee may also determine that coverage policy should be established more broadly using a narrative format rather than a detailed policy developed on a code-specific level. Clearly, this issue will be discussed in depth as part of the negotiations on the national coverage policies.

The second issue concerning contractor actions in response to insufficient documentation was suggested as an issue for negotiation. A broad view of the language of section 4554(b) of the BBA places this issue within the scope of the negotiations. Therefore, we are willing to have this matter brought before the Committee for discussion.

5. Recordkeeping Requirements in Addition to Claims Information

During the convening interviews, the issue of recordkeeping and retention by laboratories and physicians who order laboratory tests was raised. We believe that it is appropriate to negotiate with respect to the types of records that should be maintained, who bears responsibility for maintaining documentation, and the period of time that records should be stored. In this regard, we are currently working under an initiative to reduce paperwork burden on the public, including clinical laboratories. We share the sentiment expressed by many interested parties that the recordkeeping requirements should be nationally uniform, simple, consistent with patient confidentiality requirements, and that a balance should be developed between program integrity concerns and the burden placed on the provider.

6. Procedures for Filing Claims and Providing Remittances Electronically

Electronic claims submission is within the scope of these negotiations as outlined by section 4554(b)(2) of the BBA. Consensus related to administrative simplification must comply with section 261 of HIPAA. Two specific issues were presented in regard to this topic. First, interested parties have voiced concern about the lack of uniformity among the carriers in the way claims are reviewed. For example, there is variation in how many and in what order the ICD–9–CM diagnosis codes are reviewed to determine if they justify medical necessity. Second, there is a concern that there may be a future requirement for electronic filing of claims. While cost laboratories already file claims electronically, small laboratories, including physician office laboratories, are concerned that such electronic filing may become mandatory in the future and would be burdensome.

With regard to the lack of uniformity in the way in which carrier systems review claims, we acknowledge that differences exist in the way contractor systems analyze claims and that these differences do result in inconsistencies that are particularly problematic for the Laboratory industry. We note that the two events will significantly improve this situation over the next several years. First, under section 4554(b), we will be implementing new national laboratory coverage and administrative policies that will be negotiated by this Committee. Second, Medicare contractors will be moving to a single standard carrier claims processing system and a single standard fiscal intermediary claims processing system over the next several years. It is our intention that modifications to the local standard systems will be minimal and based on need. Use of uniform claims processing systems will significantly increase the uniformity in claims review.

Labroatories within a carrier jurisdiction will be informed of the transition as it becomes imminent in the area so that they can prepare for the change. HCFA believes that it is important for the interested parties to be well informed about the transition. We

appreciate the opportunity to discuss this further with the interested parties.

It should be noted that there have been several legislative proposals over recent years that would require electronic claims filing or provide for a service fee for processing of paper claims. However, we are not adverse to discussing the possibility of administrative policies related to mandatory electronic claims filing.

7. Limitations on Frequency of Coverage

Several of the interested parties raised the issue of disclosure of utilization parameters used as a trigger to perform medical review as a topic for negotiation. They believe that some contractors are using utilization parameters as a frequency limit on coverage, which makes them de facto coverage policies and subject to negotiations. They noted the lack of uniformity among the contractors complicates this issue further because providers may be submitting claims to more than one contractor and have no assurances that these claims will be similarly reviewed. A test that may be paid by one contractor may not be paid by another.

We recognize that differences among Medicare contractors in frequency limits on coverage pose difficulties, especially for large national laboratories that deal with a variety of Medicare contractors. We expect that frequency limits as they apply to coverage policies will be negotiated by the interested parties as part of the discussions.

It should be noted that the Department of Health and Human Services, which includes HCFA and the Office of the Inspector General (OIG), has concerns related to disclosure of utilization parameters and its impact on our ability to assure program integrity and manage program expenditures. Nonetheless, we acknowledge that section 4554(b)(2) of the BBA does require negotiations related to frequency limitations. We appreciate the opportunity to discuss alternatives for meeting the needs of the program to assure program integrity while also addressing the industry's concerns.

Moreover, section 4554(b)(4) provides: ''the Secretary shall permit any carrier to develop and implement interim policies of the type described in paragraph (1) [coverage and administrative polices under negotiation], in accordance with guidelines established by the Secretary, in cases in which a uniform national policy has not been established under this subsection and there is a need for a policy to respond to aberrant utilization or provision of unnecessary tests.''

C. Other Issues and Questions

Section 4554(b)(2) of the BBA and the Negotiated Rulemaking Act provide the framework for determining the scope of issues to be negotiated. Issues that are not included within the seven issues directly specified in section 4554(b)(2), such as Food and Drug Administration (FDA) approval of laboratory tests, Medicare payment policies, and Clinical Laboratory Improvement Act (CLIA) matters are not within the scope of these negotiations. Based on a review of the BBA and the Negotiated Rulemaking Act, we have concluded that the following issues specifically raised in the convening report are not within the scope of the negotiated rulemaking mandated by Congress, and thus will not be subject to negotiations by the Committee.

1. Use of Requisition Forms

During the convening interviews, some of the interested parties raised the issue of a standard requisition form for ordering laboratory services as a means of standardizing information exchange. If the laboratory community believes that standardized requisition forms are needed, HCFA would appreciate the opportunity to provide input in developing these forms to assure that the information collected on the standard requisitions meets all the Medicare claim requirements.

However, we believe that the Medicare program's interest is limited to information necessary to allow a determination regarding Medicare benefits and does not extend to how information is exchanged among providers, physicians and suppliers.

2. Enforcement of Physician Reporting

The interested parties suggested discussing sanctions or other enforcement mechanisms for physicians who do not provide the required documentation to the laboratory. We do not believe this is within the areas authorized for rulemaking outlined under section 4554 (b)(2) of the BBA. Moreover, we do not believe the law authorizes such enforcement. That is, section 4317 of the BBA requires physicians and other practitioners to include diagnostic information with their laboratory orders when such information is required by HCFA or a contractor in order for the laboratory performing the test to get paid. However, the statute does not expressly authorize sanctions for violations of this requirements. Further, HCFA does not have the resources to monitor and develop the necessary record to pursue sanctions or other disciplinary mechanisms.

3. Advance Beneficiary Notice

When a determination is made under section 1862(a)(1) that a service is not reasonable or necessary, a beneficiary may have liability waived under section 1879 of the Social Security Act. The beneficiary will be liable, however, if he or she has received written notice of noncoverage in advance of receiving the service. These provisions are already in regulations at 42 CFR 411.404. The written notice is called advance beneficiary notice (ABN).

Interested parties to these negotiations told the convener that there is a wide divergence in practices regarding when ABNs are obtained for noncovered laboratory services. Moreover, since laboratories seldom have direct patient contact, they have little to no control over the information that is provided to the beneficiary.

Although we are also concerned about this issue, we do not believe that the policies related to ABNs are within the scope of these negotiations. It does not appear related to the provisions identified in Section 4554(b)(2) of the BBA. However, we understand there appears to be significant confusion related to the ABN policies. We agree that it would be beneficial to the negotiations to provide time for clarification of these policies and discuss their applicability to the laboratory industry. As a result, we would be agreeable to a discussion on ABNs if the Committee requests it.

4. Elimination of Local Coverage Policy

Most of the interested parties contacted raised the issue of consistency in local coverage policies for laboratory services as an area for negotiation. Some strongly believe that local policies should not be permitted as they are inconsistent with the goal of promoting national uniformity. Other interested parties believe there may be local practice patterns or other conditions that would justify differences in evaluating medical necessity.

Section 4554(b) clearly authorizes local coverage policies as necessary to assure program integrity. Specifically, section 4554(b)(4) states: ''After the date the Secretary first implements such national policies, the Secretary shall permit any carrier to develop and implement interim policies * * *, in cases in which a uniform national policy has not been established under this subsection and there is a demonstrated need for a policy to

respond to aberrant utilization or provision of unnecessary tests.''

Since the statute clearly authorizes local policies when there is a demonstrated need to respond to aberrant utilization or the provision of unnecessary tests, we believe it would be inappropriate to open the issue of eliminating local policies to negotiation.

We are confident that the policies resulting from these negotiations and the provisions in section 4554(b) of the BBA will be extremely beneficial in mitigating the inconsistencies in laboratory coverage policies throughout the country. Since one of the likely criteria for prioritization of laboratory tests for discussion is the extent of national inconsistency, we believe that the negotiation on specific laboratory tests will likely address tests where there is currently the greatest variation in coverage among local carriers. However, we also believe the statute is clear in its intent to provide the authority for carriers to institute local policies in areas where there is demonstrated need to respond to potential abuse.

5. Screening Tests

Section 1862(a)(7) of the Act prohibits payment for routine physical checkups. In addition, section 1862(a)(1)(A) of the Act prohibits payment for services that are not reasonable and necessary for the treatment of illness or injury. HCFA has interpreted these provisions as supporting the exclusion of coverage for general screening services under the Medicare program. Historically, HCFA has interpreted ''screening'' as those services furnished in the absence of signs or symptoms indicating potential illness or injury. We believe the Congress' actions in adding coverage of specific screening services, such as pap smears, mammography, colorectal screening, through legislation rather than extending coverage to all screening services, supports its continuing intent to exclude other screening services from Medicare coverage.

Several of the interested parties reported during the convening process that HCFA's policy on what constitutes screening is unclear and misunderstood. For example, one representative suggested distinguishing screening tests from those tests used to establish a baseline value, tests for a population that is susceptible to a particular condition, tests used to rule out a condition, and tests used to monitor medication. Other representatives cited coding conventions and testing results as complicating issues.

HCFA acknowledges that there has been confusion and inconsistency among the contractors in interpreting the policy regarding screening testing. For example, baseline testing is not considered screening where an illness or injury is identified and baseline testing is necessary prior to initiation of therapy to monitor the effectiveness of the treatment. Similarly, testing used for monitoring the effectiveness of a medication that the patient is taking would not be considered screening.

The issue of interpretive guidelines for screening services involves a broader consistency of the medical community than the interested parties identified for this clinical laboratory negotiated rulemaking. For example, radiologists may be affected by any provision that would be negotiated regarding screening tests, yet not have a sufficient interest in this rulemaking proceeding to be included on this Committee. We believe that it would be inappropriate to engage in negotiation without the participation of all parties that would be significantly affected. Given that the Committee for this negotiated rulemaking does not include the full complement of interested parties for development of a rule related to screening services and that this item is not within the guidelines explicit in section 4554(b)(2) of the BBA, we do not believe that screening services should be included within the scope of the negotiations.

In determining that the general interpretation of screening services is not within the scope of these negotiations, we do not intend to preclude the development of individual laboratory coverage policies related to specific screening testing. If the Committee decides to develop laboratory coverage policy that distinguishes between screening and diagnostic uses of a specific test, that action would be within the scope of these negotiations.

IV. Affected Interests and Potential Participants

In addition to our participation on the Committee, the Conveners have proposed and we agree to accept representatives from the following organizations as negotiation participants, some of which are coalitions of two or more groups:

- American Association of Bioanalysts
- American Association for Clinical Chemistry
- American Association of Retired Persons
- American Clinical Laboratory Association
- American Health Information Management Association
- American Medical Association
- American Medical Group Association
- American Society of Clinical Pathologists
- American Society of Internal Medicine
- College of American Pathologists
- Clinical Laboratory Management Association
- Health Industry Manufacturers Association
- Medical Group Management Association
- National Medical Association

We have determined that various types of laboratories, laboratory managers, physicians, and Medicare beneficiaries are likely to be significantly affected by the rule. These groups would be significantly and directly affected by coverage policies for clinical diagnostic laboratory tests, as well as by documentation and administrative policies for such tests. Group practices would be affected both because they operate laboratories and because they would be subject to any physician documentation or recordkeeping requirements imposed. Coding and recordkeeping issues also affect medical record specialists. Finally, to the extent that coverage of new tests will be affected by this rule to be negotiated, manufacturers of clinical diagnostic laboratory tests are like to be significantly affected.

We would also like to note that Medicare contractors, which are those entities that adjudicate claims in local regions, will provide technical information to the negotiator representing HCFA. Since we consider the contractors to be agents of HCFA, we believe that they are most efficiently and effectively utilized in this manner rather than as negotiators in the process.

This document gives notice of this process to other potential participants and affords them the opportunity to request that they be considered for membership on the Committee. Persons who will be significantly affected by this rule may apply for or nominate another person for membership on the Committee to represent such interests by submitting comments to this notice. Any application or nomination must include:

- The name of the applicant or nominee and a description of the interests such person represents;
- Evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent;
- A written commitment that the applicant or nominee will actively participate in the negotiations in good faith; and
- The reasons that the applicant or nominee believe that their interests are

sufficiently different from the persons or entities listed above so as not to be adequately represented on the Committee as currently proposed.

Individuals representing the proposed organizations and health industry sectors should have practical experience, be recognized in their particular community, have the ability to engage in negotiations that lead to consensus, and be able to fully represent the views of the interests they represent. We reserve the right to refuse representatives who do no possess these characteristics. Given the limited time frame for the development of this rule, we expect that the negotiations will be intensive. Representatives must be prepared and committed to fully participate in the negotiations in an attempt to reach consensus on the issues discussed. We are establishing an Internet site on our home page (http://www.hcfa.gov/quality), which will carry the names of Committee members as well as other meeting information. We invite public comment on this list of negotiation participants.

The intent in establishing the Committee is that all interests are represented, not necessarily all parties. We believe this proposed list of participants represents all interests associated with adoption of national coverage and administrative policies for clinical diagnostic laboratory tests. In determining whether a party had a significant interest and was represented, we considered groups who have and will continue to actively represent the main provider groups, Lastly, while we are obligated to assure that all interests that are significantly affected are adequately represented, it is critical to the Committee's success that it be kept to a manageable size, particularly because of the short time frame in which the Committee must complete its task.

V. Schedule for the Negotiations

We have set a deadline of six months beginning with the date of the first meeting for the Committee to complete work on the proposed rule.

The first meeting of the negotiated rulemaking Committee is scheduled for July 13, 14, and 15, 1998, at Turf Valley Hotel in Ellicott City (Baltimore) beginning at 9 a.m. The purpose of this meeting will be to discuss in detail how the negotiations will proceed and how the Committee will function. The Committee will agree to ground rules for Committee operations, will determine how best to address the principal issues, and, if time permits, will begin to address those issues.

A second meeting is scheduled for July 28, 29, and 30, 1998 at the Turf Valley Hotel in Ellicott City (Baltimore). Again, the meetings will begin at 9 a.m. We expect that by this meeting the Committee can complete action on any procedural matters remaining from the organizational meeting and either begin or continue to address the issues. Six subsequent meetings will be held as follows: August 25, 26, and 27 at the Phoenix Park Hotel in Washington, DC (1–800–824–5419); September 14, 15, and 16 in Washington, DC; October 6, 7, and 8 at the Turf Valley Hotel in Ellicott City (Baltimore); October 26, 27, and 28 at the Turf Valley Hotel in Ellicott City; November 18, 19, and 20 at the Phoenix Park Hotel in Washington, DC and December 8, 9, and 10 at the Phoenix Part Hotel in Washington, DC.

All meetings will begin at 9 a.m. and end at approximately 5 p.m. During these meetings, the Committee will continue to address the issues within the scope of the negotiations as described in this document. More detailed agenda for each meeting will be available on the HCFA Internet Home Page (http://www.hcfa.gov/quality/qlty–8a) preceding each meeting date.

VI. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal Government is required to comply with the requirements of FACA when it establishes or uses a group that includes non-Federal members as a source of advice. Under FACA, an advisory committee begins negotiations only after it is chartered. This process is underway.

B. Participants

The number of participants in the group is estimated to be 15 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations within the timeframe required by the statute. One purpose of this notice is to determine whether the proposed rule would significantly affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, each interest must be adequately represented. Moreover, the group as a whole should reflect a proper balance of mix of interests.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation on the Committee, we will determine, in consultation with the conveners, whether that individual or representative should be added to the Committee. We will make that decision based on whether the individual or interest—

- Would be significantly affected by the rule, and
- Is already adequately represented in the negotiating group.

D. Establishing the Committee

After reviewing any comments on this Notice and any requests, applications or nominations for representation, we will take the final steps to form the Committee.

VII. Negotiation Procedures

The following procedures and guidelines will apply to the Committee, unless they are modified as a result of comments received on this notice or during the negotiating process.

A. Facilitator

We will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role will be to—

- Chair negotiating sessions in an impartial manner;
- Help the negotiation process run smoothly;
- Help participants define issues and reach consensus; and
- Manage the keeping of the Committee's minutes and records.

We propose to use Judy Ballard and Nancy Rubenstein of the HHS Departmental Appeals Board as the facilitators.

B. Good Faith Negotiations

Participants must be willing to negotiate in good faith and be authorized to do so. We believe this may best be accomplished by selecting senior officials as participants. We believe senior officials are best suited to represent the interests and viewpoints of their organizations. This applies to us as well, and we are designating Grant Bagley, M.D., Director of the Coverage and Analysis Group, in our Office of Clinical Standards and Quality to represent HCFA.

C. Administrative Support

We will supply logistical, administrative, and management support. We will provide technical support to the Committee in gathering

and analyzing additional data or information as needed.

D. Meetings

Meetings will be held in the Baltimore/Washington area at either the Phoenix Park Hotel in Washington, DC, or at the Turf Valley Hotel in Ellicott City (Baltimore area) on the dates noted above. More detailed agenda for each meeting will be publicly available on the HCFA Home Page of the Internet (http://www.HCFA.gov/quality/qlty–8a). Unless announced otherwise, meetings are open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meetings that they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. Under the Negotiated Rulemaking Act, consensus generally means that each interest concurs in the result unless the term is defined otherwise by the Committee. We expect the participants to fashion their working definition of this term.

G. Failure of Advisory Committee to Reach Consensus

If the Committee fails to reach consensus, the Committee may transmit a report specifying any areas on which consensus was reached, and may include in the report any information, recommendations, or other materials that it considers appropriate. Additionally, any Committee member may include such information in an addendum to a report.

If any Committee member withdraws, the remaining Committee members will evaluate whether the Committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, minutes of all committee meetings will be kept. The minutes will be placed in the public rulemaking record and Internet site on our home page.

I. Other Information

In accordance with the provisions of Executive Order 12866 this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: May 1, 1998.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

Approved: May 28, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–14798 Filed 6–2–98; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–71, RM–9266]

Radio Broadcasting Services; Newell, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Robert J. Maines, Jr., seeking the allotment of Channel 265A at Newell, Iowa, as the community's first local aural transmission service. Channel 265A can be allotted to Newell in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7 kilometers (3.5 miles) west in order to avoid a short-spacing conflict with the licensed operation of Station KJYL, Channel 264C3, Eagle Grove, Iowa. The coordinates for Channel 265A at Newell are 42–36–04 NL and 95–04–21 WL.

DATES: Comments must be filed on or before July 13, 1998, and reply comments on or before July 28, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerold L. Jacobs, Rosenman & Colin, LLP, 1300 19th Street, NW, Washington, DC 20036 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–71, adopted May 13, 1998, and released May 22, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR PART 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–14683 Filed 6–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–74; RM–9269]

Radio Broadcasting Services; Eatonville, Wenatchee and Moses Lake, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Barbara J. Geesman proposing the substitution of Channel 285C3 for Channel 285A at Eatonville, Washington, and the modification of Station KKBY–FM's license accordingly. To accommodate the upgrade, petitioner also proposes the substitution of Channel 262C2 for Channel 285C2 at Wenatchee, Washington, and the modification of Station KKRV(FM)'s license accordingly; the substitution of Channel 285C1 for Channel 262C1 at Moses Lake, Washington, and the modification of Station KWIQ–FM's license accordingly. Channel 285C3 can be substituted at Eatonville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 285C3 at Eatonville are North Latitude 46–50–19

and West Longitude 122–11–53. See Supplementary Information, *infra*.

DATES: Comments must be filed on or before July 13, 1998, and reply comments on or before July 28, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Matthew H. McCormick, Esq., Reddy, Begley, & McCormick, 2175 K Street, NW., Suite 350, Washington, DC 20037 (Counsel for Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 98–74, adopted May 13, 1998, and released May 22, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Additionally, Channel 262C2 can be substituted at Wenatchee in compliance with the Commission's minimum distance separation requirements at Station KKRV(FM)'s presently licensed site; and Channel 285C1 can be substituted at Moses Lake at Station KWIQ–FM's presently licensed site. The coordinates for Channel 262C2 at Wenatchee are North Latitude 47–28–44 and West Longitude 120–12–49; and the coordinates for Channel 285C1 at Moses Lake are North Latitude 47–06–09 and West Longitude 119–14–26.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980427104–8104–01; I.D. 072897B]

RIN 0648–AK29

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Certification of Bycatch Reduction Devices

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to prescribe additional procedures for the testing and certification of bycatch reduction devices (BRDs) for use in penaeid shrimp trawls in the exclusive economic zone (EEZ) in the South Atlantic. The use of BRDs in all such trawls became mandatory under the final rule implementing Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). In addition, the proposed rule would add a paragraph to the Testing Protocol for BRD Certification providing details on the additional testing and certification procedures. The proposed rule also would add four measures to the list of measures that may be implemented or modified through the framework procedures contained in Amendment 2 for adjusting management measures. The additional testing and certification procedures that would be prescribed by the proposed rule should foster the development of alternative BRDs that meet the bycatch reduction criterion for Spanish mackerel and weakfish, while minimizing inconvenience to fishermen and/or loss of shrimp. The addition of management measures that may be adjusted via the framework procedures is intended to enhance the ability of the South Atlantic Fishery Management Council (Council) and NMFS to react in a timely manner to changes in the fishery or to new data.

DATES: Written comments must be received on or before July 6, 1998.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirement contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of the *Bycatch Reduction Device Testing Protocol Manual*, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 803–571–4366; Fax: 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The shrimp fishery in the EEZ of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 50 CFR part 622.

The availability of Amendment 2 to the FMP was announced in the **Federal Register** on November 25, 1996 (61 FR 59856). The final rule implementing Amendment 2 to the FMP (62 FR 18536, April 16, 1997) requires the use of certified BRDs in all penaeid shrimp trawls in the EEZ in the South Atlantic, identifies the three BRDs certified by NMFS for such use, and sets forth administrative procedures and a testing protocol for certifying additional BRDs meeting Amendment 2's bycatch reduction criterion for Spanish mackerel and weakfish. The criterion for certification of a BRD for use in shrimp trawls in the South Atlantic EEZ is a reduction of at least 40 percent in the number of weakfish and Spanish mackerel caught incidentally in shrimp trawls or a reduction of at least 50 percent in the bycatch component of fishing mortality for Spanish mackerel and weakfish. The Testing Protocol for BRD Certification was published as an uncodified appendix to the final rule, and was corrected on September 4, 1997 (62 FR 46679). This rule proposes to establish additional testing and certification procedures and to add a paragraph to the Testing Protocol for BRD Certification regarding those

procedures. Specifically, this rule would require a person seeking certification of a BRD for use in shrimp trawls in the South Atlantic EEZ to apply for and obtain a letter of authorization from the Regional Administrator, Southeast Region, NMFS (Regional Administrator) before conducting any tests in the EEZ, to test the BRD in accordance with the Testing Protocol for BRD Certification, and to submit the test results to the Regional Administrator. The paragraph that would be added to the Testing Protocol for BRD Certification would require notification of state directors where appropriate and would add details regarding the application and letter of authorization process.

The existing Testing Protocol for BRD Certification describes the background and rationale for BRD testing, details basic testing procedures, requires that all tests be conducted with an approved observer onboard, specifies the type of data to be collected, and describes the statistical procedures and approach for analyzing the data. The Testing Protocol for BRD Certification requires that a trawl fitted with a BRD and a trawl without a BRD be towed simultaneously under commercial conditions and that the total catch, finfish catch, and shrimp catch from each trawl be compared. The Testing Protocol for BRD Certification requires that tow times, time of day, and fishing techniques simulate commercial fishing conditions. A minimum sample size of 30 successful tows is required. A successful tow is defined as one in which at least five weakfish or one Spanish mackerel are caught, regardless of which trawl they were caught in. Additional tows may be needed to obtain an adequate statistical sample. Data collected under the Testing Protocol for BRD Certification is analyzed using a modified paired t-test, which is a method for determining whether the average of two sets of observations is significantly different, especially with small sampling sizes. A 95–percent confidence interval must be calculated for the bycatch reduction estimate.

The Testing Protocol for BRD Certification as well as standardized forms for describing the tests and reporting their results have been included in a *Bycatch Reduction Testing Protocol Manual* (Manual) available from NMFS (see **ADDRESSES**). Appendices to the Manual contain data entry codes, illustrations of fish measurements, statistical reporting zones, proper techniques for statistical analyses, illustrations of key species, and other information concerning the proper conduct of testing, including data management instructions. Additional details are contained in the Manual.

Amendment 2 contains framework procedures for establishing or modifying specified types of management measures. The procedures for certifying BRDs and publishing their specifications was discussed in the preamble to the initial proposed rule (62 FR 720, January 6, 1997) and is not repeated here. In this rule, NMFS proposes to add at 50 CFR 622.48(h) four other measures listed in Amendment 2 that may be established or modified in accordance with the FMP's framework procedures: the BRD certification criteria, the BRD testing protocol, nets required to use BRDs, and times and locations for the required use of BRDs. The procedures for establishing or modifying these four measures are set forth in Amendment 2 and require that changes be initiated by the Council's BRD Advisory Panel, reviewed by the Council and its Science and Statistical Committee, discussed at a public hearing, submitted for the Regional Administrator's concurrence that they are consistent with the FMP and the Magnuson-Stevens Act, and published as proposed and final rules.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities as follows:

Testing of BRDs is expected to be undertaken by state agencies of Georgia, North Carolina and South Carolina, by the University of Georgia, and by owners of vessels that harvest shrimp in South Atlantic waters. The state agencies and the University of Georgia are not small entities.

For the 1994 fishing season, about 1,400 large shrimp vessels were licensed in Florida, Georgia, North Carolina and South Carolina. In addition, there were probably 1,000 or more small vessels that have a significant dependence on shrimp trawling off these states, mostly in North Carolina waters. These entities are considered small entities for purposes of the Regulatory Flexibility Act.

Although owners of shrimp vessels who voluntarily conduct BRD certification testing can be expected to incur significant costs, less than 1 percent of such owners are expected to attempt to certify new BRDs. Accordingly, the provisions for BRD certification would not have a significant economic impact on a substantial number of small entities.

The addition of measures that may be established or modified in accordance with the framework procedures would have no economic impacts. The economic impacts on small entities of any measures that would be proposed for establishment or modification under the framework procedures would be evaluated when they are proposed.

As a result, a regulatory flexibility analysis was not prepared.

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

This rule contains a collection-of-information requirement subject to the PRA—namely, the BRD certification process, consisting of an application for the testing of a new BRD, the testing itself, and the submission of the test results. This requirement has been submitted to OMB for approval. The public reporting burden for this collection of information is estimated at 151 hours per application, testing, and submission of results. Send comments regarding this burden estimate or any other aspect of the data requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or of other forms of information technology.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 27, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.7, paragraph (aa) is added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(aa) Falsify information submitted on the testing of a BRD or the results of such testing, as specified in § 622.41(g)(3)(i).

3. In § 622.41, the first sentence of paragraph (g)(1) is revised and paragraph (g)(3) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) * * *

(1) * * * Except as exempted in paragraph (g)(3)(ii) of this section, on a penaeid shrimp trawler in the South Atlantic EEZ, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m), must have a certified BRD installed. * * *

* * * * *

(3) *Certification of BRDs*—(i) A person who seeks to have a BRD certified for use in the South Atlantic EEZ must submit an application to test such BRD, conduct the testing, and submit to the RD the results of the test conducted and recorded in accordance with the Testing Protocol for BRD Certification, which along with forms and procedures, is included in the *Bycatch Reduction Device Testing Protocol Manual* which is available from the SAFMC, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, and from the RD. A BRD that meets the certification criterion, as determined under the Testing Protocol for BRD Certification, will be added to the list of certified BRDs in paragraph (g)(2) of this section.

(ii) A penaeid shrimp trawler that is authorized to test a BRD in the EEZ for possible certification, has such authorization on board, and is conducting such test in accordance with the Testing Protocol for BRD Certification is exempt from the BRD requirement specified in paragraph (g)(1) of this section.

4. In § 622.48, paragraph (h) is revised to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(h) *South Atlantic shrimp*. BRD certification criteria, BRD specifications, BRD testing protocol, certified BRDs, nets required to use BRDs, and times and locations when the use of BRDs is required.

The Testing Protocol for BRD Certification published as an uncodified appendix to the final rule implementing Amendment 2 to the FMP on April 16, 1997 (62 FR 18536) is revised by adding the following paragraph at the end thereof:

Appendix—Testing Protocol for BRD Certification

Before conducting any certification test, or series of tests, the appropriate state director or designee, must be notified. In the event that the applicant plans to submit the certification proposal directly to the RD, the applicant must notify the RD in writing. This notification should identify the sponsor of the tests, when and where the tests will be conducted, the vessel or vessels involved, any special conditions or requirements of the tests, the statistical design that will be followed, the names and affiliations of the observers, data that will be collected, a complete description of the BRDs including detailed descriptions of how the BRDs will be installed in the nets, and types of TEDs that will be used. The appropriate state director or designee, will review the notification and if adequate will authorize the applicant to conduct tests in state waters. Similarly, if testing in the EEZ is required, the state director will submit the applicant's notification to the RD, with the director's recommendation. Once the RD determines that the notification is complete and all applicable regulations are satisfied, the RD will issue the applicant a letter of authorization to conduct BRD testing in Federal waters.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 052698E]

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Public hearings; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene six public hearings on its Draft Habitat Plan, Draft Habitat Comprehensive Amendment (Draft Habitat Amendment), and associated Draft Environmental Impact Statement (DEIS) and Draft Supplemental Environmental Impact Statement (DSEIS); and on its Draft Sustainable Fisheries Act Amendment (Draft SFA Amendment). Public meetings on the NMFS draft Essential Fish Habitat (EFH) recommendations will be held following two of the public hearings.

DATES: Written comments will be accepted until 5 p.m. on July 15, 1998. The public hearings will be held from June 15 to June 26, 1998; see **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments on the Council's documents should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699. Copies of the Draft Habitat Amendment, DSEIS, and DEIS are available from Susan Buchanan at (843) 571-4366 and will also be available to the public at the hearings.

Written comments on the NMFS draft EFH recommendation will be accepted at the public meetings, or may be sent to: Habitat Conservation Division, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432, Attn: Draft EFH Recommendation to SAC. Copies of the draft EFH recommendations may be obtained by calling (813) 570–5317.

The hearings will be held in Florida, Georgia, South Carolina, and North Carolina. See **SUPPLEMENTARY INFORMATION** for locations of the hearings and for special accommodations.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer, South Atlantic Fishery Management Council, 843-571-4366; fax: 843-769-4520; e-mail address: susan.buchanan@noaa.gov.

SUPPLEMENTARY INFORMATION: The Council will hold public hearings on the Draft Habitat Plan, the Draft Habitat Amendment and its DEIS and DSEIS, and the Draft SFA Amendment. These amendments have been prepared to satisfy the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended in October 1996 by the Sustainable Fisheries Act.

Draft Habitat Plan and Draft Habitat Amendment

The Draft Habitat Plan includes background and additional rationale for the Draft Habitat Amendment.

The Draft Habitat Amendment would amend the Council's existing Fishery Management Plans (FMPs) to include EFH provisions and would create, in part, two new FMPs for sargassum and calico scallops. The Draft Habitat Amendment includes the following management measures:

1. Amendment 4 to the FMP for the Shrimp Fishery of the South Atlantic Region would:

Action 1. Identify EFH for penaeid and rock shrimp.

Action 2. Establish Essential Fish Habitat-Habitat Areas of Particular Concern (EFH-HAPCs) for penaeid shrimp.

Action 3. Require use of transponders by rock shrimp vessels fishing in the South Atlantic exclusive economic zone (EEZ).

The following two options are being considered, with no preferred option:

Option A. Require use of transponders by shrimp vessels in the South Atlantic EEZ.

Option B. Require use of transponders by shrimp vessels fishing in the South Atlantic EEZ south of 28°30' N. lat.

2. Amendment 1 to the FMP for the Red Drum Fishery of the South Atlantic Region would:

Action 1. Identify EFH for red drum.

Action 2. Establish EFH-HAPCs for red drum.

3. Amendment 10 to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region would:

Action 1. Identify EFH for species in the snapper-grouper management unit.

Action 2. Establish EFH-HAPCs for species in the snapper-grouper management unit.

Action 3. Prohibit all fishing within the Experimental Closed Area.

4. Amendment 10 to the FMP for the Coastal Migratory Pelagics Fishery of the South Atlantic Region would:

Action 1. Identify EFH for coastal migratory pelagics.

Action 2. Establish EFH-HAPCs for coastal migratory pelagics.

Action 3. Prohibit fishing for coastal migratory pelagics in the Experimental Closed Area.

5. Amendment 1 to the FMP for the Golden Crab Fishery of the South Atlantic Region would:

Action 1. Identify EFH for golden crab.

Action 2. Establish EFH-HAPCs for golden crab.

6. Amendment 5 to the FMP for the Spiny Lobster Fishery of the South Atlantic Region would:

Action 1. Identify EFH for spiny lobster.

Action 2. Establish EFH-HAPCs for spiny lobster.

Action 3. Prohibit fishing for spiny lobster in the Experimental Closed Area.

7. Amendment 4 to the FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region would:

Action 1. Identify EFH for coral, coral reefs, and live/hard bottom habitats of the South Atlantic Region.

Action 2. Establish EFH-HAPCs for coral, coral reefs, and live/hard bottom habitats.

Action 3A. Expand the Oculina Bank HAPC to an area bounded to the west by 80° W. long., to the north by 28°30' N. lat., to the south by 27°30' N. lat., and to the east by the 100–fathom (600–ft) (182–m) depth contour.

Action 3B. Expand the Oculina Bank HAPC by 1 to 5 miles on the western side between 27°30' N. lat. and 28°30' N. lat.

Action 4. Prohibit all fishing within the Experimental Closed Area.

8. The FMP for the Calico Scallop Fishery of the South Atlantic Region would:

Action 1. Identify EFH for calico scallops.

Action 2. Establish EFH-HAPCs for calico scallops.

Action 3. Establish an FMP for the calico scallop fishery of the South Atlantic Region.

Action 4. Prohibit harvest of calico scallops in the area bounded to the west by 80° W. long., to the north by 28°30' N. lat., to the south by 27°30' N. lat., and to the east by the 100–fathom (600–ft) (182–m) depth contour.

Action 5. Require use of transponders by calico scallop vessels.

The following two options are being considered, with no preferred option:

Option A. Require use of transponders by calico scallop vessels in the South Atlantic EEZ.

Option B. Require use of transponders by calico scallop vessels fishing in the South Atlantic EEZ south of 28°30' N. lat.

NMFS Draft EFH Recommendations

NMFS is in the process of developing EFH recommendations to the Council in accordance with the recent amendments to the Magnuson-Stevens Act. The NMFS draft EFH recommendation to the Council includes a review and comments on the draft EFH amendment. The NMFS draft EFH recommendation to the Council will be available for public distribution June 8, 1998, and will be available at all of the Council's public hearings. Copies may be requested (see **ADDRESSES**). NMFS will hold a public meeting on the draft NMFS EFH recommendations immediately following the Council's public hearings in St. Augustine, FL, on June 15, and in Charleston, SC, on June 22. Written comments on the NMFS draft EFH recommendations will be accepted at the two public meetings or may be sent to the NMFS Habitat Conservation Division (see **ADDRESSES**).

Draft SFA Amendment

The Draft SFA Amendment includes management measures that would address the subjects listed here. The Council approved this amendment for public hearing with no preferred options, given that the Magnuson-Stevens Act national standard guidelines had not been finalized at that time. The Draft SFA Amendment contains the following measures:

1. Definitions to address consistency with SFA section 102 definitions:

Action 1. No action to amend FMPs is required.

2. Other Required Provisions; Bycatch—bycatch management measures and bycatch reporting requirements.

Action 2. No action to amend the bycatch management measures in the FMPs is required.

3. Commercial, recreational, and charter fishing—sector descriptions, landing trends, and data specification.

Action 3. No action to amend FMPs is required.

4. Fishing communities—identification and definition of fishing communities.

Action 4. Amend the Shrimp, Red Drum, Snapper-Grouper, Coastal Migratory Pelagics, Golden Crab, Spiny Lobster, Coral and Coral Reefs and Live/Hard Bottom Habitat FMPs to include available information on fishing communities.

5. Maximum Sustainable Yield (MSY), Optimum Yield (OY), overfishing, and overfished.

Action 5. Amend the Shrimp, Red Drum, Snapper-Grouper, Coastal Migratory Pelagics, Golden Crab, Spiny Lobster, Coral and Coral Reefs and Live/Hard Bottom Habitat FMPs as required. (No preferred options—see the following options).

A. Shrimp FMP.

1. MSY.

Option 1. No action.

Option 2. MSY is equal to 30 to 40 percent of the static spawning potential ratio (SPR) (Council to specify).

Option 3. Other modifications to the proxy MSY values. Note: Under this option, one would have to develop the rationale for any such modification.

2. OY.

Option 1. No action.

Option 2. The Council's target level or OY is 30 to 100 percent of the static SPR (Council to specify).

Option 3. Other modifications to the OY specifications. Note: Under this option, one would have to develop the rationale for any such modification.

3. Overfishing level to meet Magnuson-Stevens Act mandate.

Option 1. No action.

Option 2. Modify the overfishing definitions.

Note: Under this option, one would have to develop the rationale for any such modification.

Option 3. Modify the rock shrimp definition to track brown and pink shrimp.

Option 4. Establish a rebuilding timeframe equal to 1 to 10 years, or within a time period equal to 1.5 times the mean generation time. Generation time is computed as the age at which the average female achieves half of her expected lifetime egg production (Council to specify).

B. Red Drum FMP.

1. MSY.

Option 1. No action.

Option 2. MSY is equal to 30 to 40 percent of the static SPR (Council to specify).

2. OY.

Option 1. No action.

Option 2. OY for the Atlantic Coast red drum fishery is the amount of harvest that can be taken by U.S. fishermen while maintaining the SPR at or above 40 to 100 percent of the static SPR (Council to specify).

Option 3. Other modifications to the OY specification. Note: Under this option, one would have to develop the rationale for any such modification.

3. Overfishing level to meet the Magnuson-Stevens Act mandate.

Option 1. No action.

Option 2. Specify a threshold level in the range of 1 to 20 percent of SPR, an overfished level in the range of 20 to 55 percent SPR, and a target (OY) level in the range of 30 to 100 SPR.

Option 3. Other modifications to the overfishing definitions.

Note: Under this option, one would have to develop the rationale for any such modification.

Option 4. Specify a threshold level of between 2 pounds (0.4 kg) and 1 million pounds (0.4 million kg) (Council to specify).

Option 5. Establish a rebuilding timeframe equal to 1 to 10 years or within a time period equal to 1.5 times the mean generation time. Generation time is computed as the age at which the average female achieves half of her expected lifetime egg production (Council to specify).

C. Snapper-Grouper FMP.

1. MSY.

Option 1. No action.

Option 2. MSY is equal to 30 to 40 percent of the static SPR (Council to specify).

Option 3. Other modifications to the proxy MSY values. Note: Under this option, one would have to develop the rationale for any such modification.

2. OY.

Option 1. No action.

Option 2. For snapper-grouper species that change sex, or for all snapper-grouper species (Council to specify), specify a target or OY level equal to $F_{0.1}$.

Option 3. Other modifications to the OY specifications. Note: Under this option, one would have to develop the rationale for any such modification.

3. Overfishing level to meet the Magnuson-Stevens Act mandate.

Option 1. No action.

Option 2. Redefine overfishing.

a. A snapper-grouper species (including jewfish) is considered to be overfished when the transitional SPR is below 20 percent.

b. When a stock is overfished (transitional SPR less than 20 percent), a rebuilding program that makes consistent progress toward restoring the stock condition must be implemented and continued until the stock is restored beyond the overfished condition. The rebuilding program must be designed to achieve recovery within an acceptable timeframe as specified by the Council (generally cannot exceed 10 years). The Council will continue to rebuild the stock until the stock is restored to the management target (OY).

c. When a stock is not overfished (transitional SPR equal to or greater than 20 percent), the act of overfishing is defined as a static SPR that exceeds 20 percent (i.e., F20%). If fishing mortality rates that exceed the level associated with the static SPR overfished level are maintained, the stock may become overfished. Therefore, if overfishing is occurring, a program to reduce fishing mortality rates toward management target levels (OY) will be implemented, even if the stock is not in an overfished condition.

d. The threshold level for snapper-grouper species is defined as 10 percent transitional SPR. If the stock(s) were to be overfished to such an extent that their transitional SPR was below the threshold level, the Council will take appropriate action, including, but not limited to, eliminating directed fishing mortality and evaluating measures to eliminate any bycatch mortality in a timely manner through the framework procedure.

e. For species where there is insufficient information to determine whether the stock is overfished (transitional SPR), overfishing is defined as a fishing mortality rate in excess of the fishing mortality rate corresponding to a default static SPR of 30 percent. If overfishing is occurring, a program to reduce fishing mortality rates to at least the level corresponding to management target levels will be implemented.

f. The timeframe for recovery of overfished stocks remains unchanged. For species that were not documented as overfished in Amendment 3 to the Snapper-Grouper FMP, Year 1 is the year in which the species is documented as being overfished. For example, gag were documented as being overfished in the 1996 assessment; therefore, Year 1 for gag is 1996.

Option 3. Specify a threshold level in the range of 5 to 30 percent SPR and a target level in the range of 30 to 50 percent SPR.

Option 4. Establish species-specific definitions of overfishing—target, overfished, and threshold. For example, jewfish—specify 50 percent SPR as a target level, 40 percent SPR as an overfished level, and 20 percent as the threshold level.

Option 5. Specify a threshold level in the range of 1 to 20 percent SPR, an overfished level in the range of 20 to 50 percent SPR, and a target (OY) level in the range of 30 to 100 percent SPR.

Option 6. Specify a threshold level of between 2 pounds (0.8 kg) and 1 million pounds (0.4 million kg) (Council to specify) for each species.

Option 7. For snapper-grouper species that change sex, or for all snapper-grouper species (Council to specify), specify an overfished level equal to F_{max}.

Option 8. The Snapper-Grouper Assessment Group concluded that rebuilding to OY should occur within a time period equal to 1.5 times the mean generation time. Generation time is computed as the age at which the average female achieves half of her expected lifetime egg production.

D. Coastal Migratory Pelagics FMP.

1. MSY.

Option 1. No action.

Option 2. MSY is equal to 30 to 40 percent static SPR (Council to specify).

2. OY.

Option 1. No action.

Option 2. Specify a target level or OY in the range of 30 to 100 percent SPR (Council to specify).

Option 3. Modifications to the OY specification.

Note: Under this option, one would have to develop the rationale for any such modification.

3. Overfishing level to meet the Magnuson-Stevens Act mandate.

Option 1. No action.

Option 2. Redefine overfishing (proposed action in Amendment 8 to the FMP).

a. A mackerel stock or migratory group is considered to be overfished when the transitional SPR is below 20 percent.

b. When a stock or migratory group is overfished (transitional SPR less than 20 percent), a rebuilding program that makes consistent progress toward restoring stock condition must be implemented and continued until the stock is restored beyond the overfished condition. The rebuilding program must be designed to achieve recovery within an acceptable timeframe as specified by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils). The Councils will continue to rebuild the stock until the stock is restored to the management target (OY) within an unspecified timeframe.

c. When a stock is not overfished (transitional SPR equal to or greater than 20 percent), the act of overfishing is defined as a static SPR that exceeds the threshold of 20 percent (i.e., $F_{20\neq}$). If fishing mortality rates that exceed the level associated with the static SPR overfished level are maintained, the stock may become overfished. Therefore, if overfishing is occurring, a program to reduce fishing mortality rates toward management target levels (OY) will be implemented, even if the stock is not in an overfished condition.

d. The Councils have requested that the Mackerel Stock Assessment Panel provide a range of possibilities and options for specifying an absolute biomass level that could be used to represent a depleted condition or state. In a future amendment, the Councils will describe a process whereby, if the biomass is below such a level, the Councils would take appropriate action, including, but not limited to, eliminating directed fishing mortality and evaluating measures to eliminate any bycatch mortality in a timely manner through the framework procedure.

e. For species like cobia, where there is insufficient information to determine whether the stock or migratory group is overfished (transitional SPR), overfishing is defined as a fishing mortality rate in excess of the fishing mortality rate corresponding to a default threshold static SPR of 30 percent. If overfishing is occurring, a program to reduce fishing mortality rates to at least the level corresponding to management target levels will be implemented.

Option 3. Specify a threshold level in the range of 1 to 20 percent SPR, an overfished level in the range of 20 to 55 percent SPR, and a target (OY) level in the range of 30 to 100 percent SPR.

Option 4. Specify a threshold level of between 2 pounds (0.8 kg) and 2 million pounds (0.8 million kg) (Council to specify) for each species.

Option 5. Rebuilding to OY should occur within a time period equal to 1.5 times the mean generation time. Generation time is computed as the age at which the average female achieves half of her expected lifetime egg production.

E. Golden Crab FMP.

1. MSY.

Option 1. No action.

Option 2. MSY is equal to 30 to 40 percent static SPR (Council to specify).

2. OY.

Option 1. No action.

Option 2. OY for the golden crab fishery is the amount of harvest that can be taken by U.S. fishermen while maintaining the SPR at or above 40 percent static SPR.

Option 3. Other modifications to the OY specification. Note: Under this option, one would have to develop the rationale for any such modification.

3. Overfishing level to meet the Magnuson-Stevens Act mandate.

Option 1. No action.

Option 2. Specify a threshold level of between 2 pounds (0.8 kg) and 2 million pounds (0.8 million kg) (Council to specify).

Option 3. Specify a threshold level in the range of 1 to 20 percent SPR, an overfished level in the range of 20 to 55 percent SPR, and a target (OY) level in the range of 30 to 100 percent SPR.

Option 4. Rebuilding to OY should occur within a time period equal to 1.5 times the mean generation time. Generation time is computed as the age at which the average female achieves half of her expected lifetime egg production.

F. Spiny Lobster FMP.

1. MSY.

Option 1. No action.

Option 2. MSY is equal to 30 to 40 percent static SPR (Council to specify).

2. OY.

Option 1. No action.

Option 2. OY for the spiny lobster fishery is the amount of harvest that can be taken by U.S. fishermen while maintaining the SPR at or above 40 to 100 percent (Council to specify).

Option 3. Other modifications to the OY specification. Note: Under this option, one would have to develop the rationale for any such modification.

3. Overfishing level to meet the Magnuson-Stevens Act mandate.

Option 1. No action.

Option 2. Specify a threshold level in the range of 1 to 20 percent SPR, an overfished level in the range of 20 to 55 percent SPR, and a target (OY) level in the range of 30 to 100 percent SPR.

Option 3. Specify a threshold level of between 2 pounds (0.8 kg) and 2 million pounds (0.8 million kg) (Council to specify) for each species.

Option 4. Rebuilding to OY should occur within a time period equal to 1.5 times the mean generation time. Generation time is computed as the age at which the average female achieves half of her expected lifetime egg production.

G. Sargassum Habitat FMP.

1. MSY.

Option 1. No action.

Option 2. MSY is equal to 30 to 40 percent static SPR (Council to specify).

Option 3. Given the limited data, do not specify a MSY at this time.

2. OY.

Option 1. OY for sargassum is the level of harvest specified or as may be authorized pursuant to the permitting criteria established in this plan.

Option 2. OY for the sargassum fishery is the amount of harvest that can be taken by U.S. fishermen while maintaining the SPR at or above 40 to 100 percent (Council to specify).

Option 3. OY is all sargassum that can be harvested legally under the provisions of the Sargassum FMP, which is equivalent to that level of sargassum harvest that would minimize user conflicts among vessels, minimize the cost of fishing, produce a stable level of landings that would maximize returns to the fishermen, provide for a stable supply, and minimize management costs.

Option 4. Other modifications to the OY specification. Note: Under this option, one would have to develop the rationale for any such modification.

3. Overfishing level to meet the Magnuson-Stevens Act mandate.

Option 1. No action.

Option 2. Specify a threshold level in the range of 1 to 20 percent SPR, an overfished level in the range of 20 to 55 percent SPR, and a target (OY) level in the range of 30 to 100 percent SPR.

Option 3. Specify a threshold level of between 2 pounds and 2 million pounds (Council to specify) for each species.

Option 4. Rebuilding to OY should occur within a time period equal to 1.5 times the mean generation time. Generation time is computed as the age at which the average female achieves half of her expected lifetime egg production.

DEIS and DSEIS Public Comment Period

NMFS intends to file the DSEIS and DEIS with the Environmental Protection Agency to initiate a 45-day public comment period pursuant to the requirements of the National Environmental Policy Act, prior to the Council's public hearings.

Public Hearings

The hearings will begin at 6 p.m. and will end when all business is completed. The dates and locations are scheduled as follows:

1. Monday, June 15, 1998--Ponce de Leon Resort, 4000 U.S. Highway 1, North, St. Augustine, FL; telephone: 904–924–2821;

2. Monday, June 22, 1998--Town & Country, 2008 Savannah Highway, Charleston, SC; telephone: 843–571–1000;

3. Tuesday, June 23, 1998--Carteret Community College, 3505 Arendell Street, Morehead City, NC; telephone: 919–247–3094;

4. Wednesday, June 24, 1998--Holiday Inn, Highway 17 South at I–95, Richmond Hill (near Savannah), GA; telephone: 912–756–3351;

5. Thursday, June 25, 1998--Holiday Inn, 7151 Okeechobee Road, Ft. Pierce, FL; telephone: 561–464–5000;

6. Friday, June 26, 1998--Hawk's Cay Resort, Mile Marker 61, Marathon, FL; telephone: 305–743–7000.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 9, 1998.

Dated: May 28, 1998.

George H. Darcy,

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

[FR Doc. 98–14739 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 052098C]

RIN 0648–AK21

Fisheries Off West Coast States and in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Draft Amendment 5

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

ACTION: Notice of availability of a draft amendment to a fishery management plan; request for comments.

SUMMARY: The Western Pacific Fishery Management Council (Council) is seeking comments on Draft Amendment 5 to the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region (FMP).

DATES: Comments on Draft Amendment 5 must be received by the Council office no later than July 20, 1998.

ADDRESSES: Written comments should be sent to, and copies of Draft Amendment 5 are available from, the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; 808–522–8220.

SUPPLEMENTARY INFORMATION: The Council is seeking comments on Draft Amendment 5 to the FMP, which would establish a limited access program for the Mau Zone bottomfish fishery in the Northwestern Hawaiian Islands (NWHI). The Mau Zone limited access program is intended to address the low economic returns in the fishery, the potential for excessive harvest capacity, and other conservation and economic concerns.

Draft Amendment 5 would specify a target number of vessels for the fishery; establish qualifying criteria for allocation of initial limited access permits based on historical and current landings; impose permit holder restrictions; establish a use-it-or-lose-it requirement for permit renewal; prohibit the transfer, lease, charter, and sale of permits to reduce the number of vessels in the fishery to the target number; direct the Council to assess periodically how effectively the limited access program meets the objectives of the FMP; and establish criteria to allow new entrants into the Mau Zone when the number of vessels falls below the target number specified for the fishery.

Since March 1997, there has been a 2-year moratorium on the issuance of new permits for harvesting bottomfish in the Mau Zone so that effort in the fishery can be stabilized while the Council develops a long-term limited access program (see the final rule published in the February 26, 1997, issue of the **Federal Register** at 62 FR 8637). The moratorium expires on March 27, 1999, at which time proposed Amendment 5 is expected to be implemented. The Council will be taking action on draft Amendment 5 at its 97th meeting to be held in July in Kailua-Kona, Hawaii.

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

Dated: May 28, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–14746 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 106
Wednesday, June 3, 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

Western Washington Cascades Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Casades PIEC Advisory Committee will meet on June 19, 1998, at the Mt. Banker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, Washington. The meeting will begin at 9:00 a.m. and continue until about 4:30 p.m. Agenda items to be covered include: (1) Monitoring: national and regional overview, sampling and statistical considerations, other agency monitoring in the Province, site-specific monitoring as viewed during the prior day's field trip (see below), and Fiscal Year 1998 implementation monitoring to be done during the summer as part of the regional implementation monitoring program; (2) overview and status of the proposed land exchange between the Forest Service and Plum Creek Timber Company; (3)—update and status of the Middle Fork Snoqualmie River Concept Design; (4) proposed listing of the Puget Sound chinook salmon under the Endangered Species Act; (5) tentative agenda and topics for a September field trip and meeting; (6) other topics as appropriate; and, (7) open public forum.

A field trip for Advisory Committee members will take place on Thursday, June 18, 1998. Members will tour thinning sites on the Skyomish Ranger District in the Beckler River and Heybrook Ridge areas where ecology plots have been established for monitoring purposes. The trip will commence about 9:00 a.m. at the Skykomisk Ranger District Office just east of Skykomish, Washington, on U.S. Highway 2 (74920 N.E. Stevens Pass Highway), and will finish around 4:30 p.m.

All Western Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Interested citizens are also welcome to join the June 18 field trip; however, they must provide their own transportation (a high-clearance vehicle is required; 2-wheel drive is sufficient).

FOR FURTHER INFORMATION CONTACT: Direct question regarding this meeting to Chris Hansen-Murray, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 425–744–4276.

Dated: May 28, 1998.

Terry L. Degrow,

Acting Forest Supervisor.

[FR Doc. 98–14657 Filed 6–2–98; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Notice of Cancellation of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission which was to have convened at 9:30 a.m. and adjourned at 1:00 p.m. on June 3, 1998, at the Clovis Public Library, 701 North Main Street, Clovis, New Mexico, has been canceled. The original notice for the meeting was announced in the **Federal Register** on May 1, 1998, vol. 62, no. 84, p. 24153.

Persons desiring additional information should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435).

Dated at Washington, DC, May 28, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–14699 Filed 6–2–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Current Population Survey (CPS) Computer Use Supplement

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Submit written comments on or before August 3, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Tim Marshall, Bureau of the Census, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Telecommunications and Information Administration (NTIA) is requesting clearance for the collection of data concerning the Computer Use Supplement to be conducted in conjunction with the December 1998 CPS, which is administered by the Bureau of the Census. Title 13, United States Code, Section 182; and Title 29 United States Code, Sections 1–9, authorize the collection of CPS information.

NTIA is the principal adviser to the President, Vice President, and Secretary of Commerce on domestic and international communications and information issues. This information is required to provide an objective and sound empirical basis for developing policies with respect to one of the NTIA's highest priorities: helping to ensure that all Americans are able to participate in the new Information Age.

This survey will provide a source of national and other geographic data on the demographic, social, and economic characteristics of Internet users and non-users. The development of statistical profiles of disadvantaged groups and specific geographic areas will permit public-private partnerships target assistance to those that are most in need. It will provide information on where users access the Internet (at home, work, school or other facility), the features used, and the reasons for non-use of the Internet.

II. Method of Collection

The computer use information will be collected by both personal visits and telephone interviews in conjunction with the regular December CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: Not Applicable.

Form Number: There are no forms. We conduct all interviews on computers.

Type of Review: Regular Submission.

Affected Public: Households.

Estimated Number of Respondents: 48,000.

Estimated Time Per Response: 8 minutes.

Estimated Total Annual Burden Hours: 6,400.

Estimated Total Annual Cost: The only cost to respondents is that of their time to answer the CPS questions.

Respondents' Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182; and Title 29 U.S.C., Sections 1–9.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collecting the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection and will become a matter of public record.

Dated: May 27, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–14603 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Dealer and Interview Family of Forms.

Agency Form Number: NOAA 88–12B and 88–30.

OMB Approval Number: 0648–0013.

Type of Request: Revision of a currently approved collection.

Burden: 2,937 hours.

Avg. Hours Per Response: Varies by requirement but generally between 10 and 15 minutes for completion of forms.

Needs and Uses: Landing statistics are needed for overall information on the trends and conditions in the fisheries managed by the Federal and state fishery management agencies. Quota monitoring data are needed in a timely manner to determine when and if a quota has been reached and the fishery should be closed. Size frequency and age data are critical components of good quality stock assessments. The information, therefore, is used to determine the overall trends in the fisheries.

Affected Public: Individuals or households, businesses or other for-profit organizations.

Frequency: Monthly, bi-weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker (202) 395–5871.

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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–14604 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Critical Technology Assessment; U.S. Assistive Technologies Industry

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 3, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Margaret Cahill, Trade and Industry Analyst, Bureau of Export Administration (BXA), Department of Commerce, Room 3876, 14th and Constitution Avenue, NW, Washington, DC 20230 (telephone no. (202) 482–3795).

SUPPLEMENTARY INFORMATION:

I. Abstract

Commerce/BXA is conducting an assessment of the domestic assistive technologies industry in order to determine the competitiveness of the U.S. industry and to facilitate the transfer of technologies from federal laboratories to firms in the industry.

The survey will collect information on the nature of the business performed by each firm; estimated sales and employment data; financial information; research and development expenditures and funding sources; capital expenditures and funding sources; and competitiveness issues.

II. Method of Collection

The information will be collected using a non-recurring, mandatory

survey. It will be collected in written form.

III. Data

OMB Number: N/A.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: Businesses or other for-profit organizations.
Estimated Number of Respondents: 2,000.
Estimated Time Per Response: 4.0 hours.
Estimated Total Annual Burden Hours: 8,000 hours.
Estimated Total Annual Cost: No cost other than the respondents' time to complete the survey.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 29, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–14728 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Request for public comment on the potential market impact of proposed revisions to certain material quantities under the FY 1999 Annual Materials Plan (AMP) of National Defense Stockpile disposals.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee seeks comments from the public concerning the potential market impact of the Department of Defense's planned disposals of excess materials currently held in the National Defense Stockpile. The FY 1999 AMP materials under review are Graphite (All), Columbium (Ferro), Bauxite (refractory, Jamaican, and Surinam), Tantalum (Carbide Powder), and Aluminum Oxide (Fused Crude).

DATE: Comments must be received by July 6, 1998.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; FAX (202) 482–5650.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Stephen H. Muller, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *.'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the Federal Emergency Management Agency and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to ''consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile.''

Because of current industry demand and favorable market conditions, DOD has requested the Committee to consider proposed revisions to AMP disposal levels for Graphite (All), Columbium (Ferro), Bauxite (refractory, Jamaican, and Surinam), Tantalum (Carbide Powder), and Aluminum Oxide (Fused Crude) from the National Defense Stockpile in Fiscal Year (FY) 1999. In order for the Committee to obtain sufficient information to prepare its recommendations to DOD, the Committee requests that interested parties provide comment on the potential market impact of the proposed revised disposals of these commodities.

Included with the AMP listing of materials below are the proposed maximum disposal quantity for each material. These quantities are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time as well as on the quantity of material approved for disposal by Congress.

PROPOSED REVISIONS TO FISCAL YEAR 1999 AMP

Material	Units	Current FY 1999 quantity	Revised FY 1999 quantity
Aluminum Oxide (Fused Crude)	ST	30,000	65,000
Bauxite (Jamaican)	LDT	1,200,000	2,000,000
Bauxite (Refractory)	LCT	80,000	90,000

PROPOSED REVISIONS TO FISCAL YEAR 1999 AMP—Continued

Material	Units	Current FY 1999 quantity	Revised FY 1999 quantity
Bauxite (Surinam)	LDT	800,000	1,500,000
Columbium (Ferro)	Lb Cb	200,000	400,000
Graphite (All)	ST	2,660	3,760
Tantalum (Carbide Powder)	Lb Ta	2,000	4,000

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by July 6, 1998 to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: May 29, 1998.

William J. Denk,

Acting Director, Strategic Industries and Economic Security.

[FR Doc. 98–14666 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Business Interest Questionnaire; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 3, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Thomas Nisbet, Trade Development, Office of Export Promotion Coordination, Room 2013, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–5657, and fax number: (202) 482–1999.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection allows U.S. firms participating in overseas trade events sponsored by the U.S. Department of Commerce's International Trade Administration (ITA) an opportunity to specifically identify their marketing objective for a specific event as well as current marketing activities and status in the specific foreign markets where the event will take place. The U.S. and Foreign Commercial Service/ITA overseas posts use the information to schedule business appointments during the trade event, arrange ''blue ribbon'' calls on key agents or distributors identified by participants prior to an event, and to issue specific show invitations appropriate prospective overseas business partners. It is critical to prearrange business appointments thus providing U.S. participants with a program of high caliber business appointments.

II. Method of Data Collection

Form ITA–471P is sent by request to U.S. firms. Applicant firms complete the form and forward it to the appropriate Department of Commerce trade event manager.

III. Data

OMB Number: 0625–0039.

Form Number: ITA–471P.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit companies; small to medium sized businesses or organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 490 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $20,000.00 ($18,000.00 for respondents and $2,000.00 for federal government).

IV. Request for Comments

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 (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 29, 1998.

Madeleine Clayton,

Management Analyst, Office of Management and Organization.

[FR Doc. 98–14729 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–811]

Certain Stainless Steel Wire Rods From France: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On January 26, 1998, the Department of Commerce (the Department) published the preliminary results of the third administrative review of the antidumping duty order on certain stainless steel wire rods from France. This review covers Imphy S.A. and Ugine-Savoie, two manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is January 1, 1996 through December 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Stephen Jacques, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 C.F.R. Part 353 (1997).

Background

On January 26, 1998, the Department published in the **Federal Register** the preliminary results of the third administrative review of the antidumping duty order on certain stainless steel wire rods from France (63 FR 3704, January 26, 1998). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this administrative review are certain stainless steel wire rod (SSWR) products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Imphy S.A. and Ugine-Savoie, manufacturers/exporters of the subject merchandise (respondents), and from Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and United Steelworkers of America, AFL-CIO/CLC (petitioners).

Comment 1: Respondents argue that the Department improperly resorted to constructed value (CV), instead of utilizing contemporaneous home market sales made in the ordinary course of trade. Respondents note that in the Department's preliminary results, the Department disregarded numerous home market sales that were below the cost of production and, therefore, outside the ordinary course of trade. In these instances, respondents contend that the Department inappropriately resorted to CV, despite the existence of contemporaneous home market sales of the foreign like product made in the ordinary course of trade. Consequently, respondents argue that the Department contravened the Court of Appeals for the Federal Circuit (CAFC) January 8, 1998 decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed. Cir. 1998) (*CEMEX*). Respondents state that in *CEMEX*, the Department disregarded home market sales of subject merchandise that was comparable to the merchandise sold in the United States, as not in the ordinary course of trade and, thus, ineligible as the basis for determining foreign market value. Therefore, the Department used CV as the basis for comparing U.S. sales.

Respondents note that although *CEMEX* was decided under pre-URAA law, the reasoning of the Court is applicable to the new statute. The new statute continues to subordinate CV to home market sales for determining normal value, therefore, allowing the Department to use CV only where price for home market sales of the foreign like product in the ordinary course of trade cannot be determined.

Respondents note that in recent Departmental decisions, the Department has referenced *CEMEX*, but never applied it's holding due to time constraints and the fact that the case was decided under pre-URAA law. Respondents contend that although *CEMEX* was decided under pre-URAA law, the principles are applicable and must be applied. Respondents argue that by applying its own matching hierarchy, the Department has the facts on the record to confirm that contemporaneous sales of foreign like product in the ordinary course of trade exist; therefore, the Department does not need to resort to CV in these instances.

Petitioners argue that the Department should not modify its preliminary results with regard to the *CEMEX* decision. Petitioners contend that the Department has examined and rejected arguments that it should depart from its normal methodology and base normal value on other models if the Department finds that all contemporaneous sales of the identical or most similar merchandise are made at below-cost prices, citing *Final Results of Antidumping Administrative Review: Canned Pineapple Fruit from Thailand;*

63 FR 7392, 7393 (February 13, 1998) (*Pineapple*). In the *Pineapple* case, petitioners note that the Department determined that it should not modify its preliminary methodology to conform to *CEMEX,* ''Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of the ''post-URAA'' case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of NV.'' Petitioners also state that a similar approach was applied in *Final Results of Antidumping Administrative Review: Silicon Metal from Brazil;* 63 FR 6899 (February 11, 1998).

Petitioners state that if the Department was to revise its model-match methodology, the Department should focus on the facts on the record because, when this review began, it was assumed that the Department would use constructed value when the identical or most similar matches identified were at below-cost prices. Thus, petitioners argue that the record of this case does not permit use of the *CEMEX* methodology. Petitioners point to the preliminary determinations in the investigations of stainless steel wire rod as evidence. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Taiwan;* 63 FR 10841 (March 5, 1998) (*SSWR from Taiwan*). Petitioners note that in *SSWR from Taiwan,* the Department stated that in order to apply the *CEMEX* methodology, it would need information on the appropriate product comparisons following application of the below-cost test. Additionally, petitioners argue that in *SSWR from Taiwan,* the Department did not rely on respondents' internal-code systems to identify the next most similar models as a means to implement *CEMEX.* Therefore, the Department issued a supplemental questionnaire in *SSWR from Taiwan* requesting additional information on product characteristics in order to be able to search for the next most similar model when a matched product was sold below cost.

Petitioners argue that the Department's approach in the *SSWR from Taiwan* is in contrast to this case. In this review, petitioners argue that the Department has accepted respondents' internal product-coding system, in lieu of Department-developed criteria. Thus, petitioners assert that by relying on respondents' internal product-coding system and using the *CEMEX* methodology, the Department would use sales of less similar models as the basis for normal value instead of CV. Moreover, petitioners contend that the Department has not obtained additional information regarding more precise physical characteristics of the subject merchandise, or alternative matches to the models proposed, that it would need in order to implement *CEMEX.* Petitioners note that the respondents offered no more than three similar types of merchandise as a basis for comparison. Additionally, petitioners claim that the record data does not provide adequate alternative matches for the Department to apply the *CEMEX* methodology. Finally, petitioners maintain that were the Department to apply *CEMEX* in this case, it would be inconsistent with its own conclusions in *SSWR from Taiwan.* For these reasons, petitioners argue that the Department should reject respondents' allegation that it should apply *CEMEX* and state that, given the short time since the Federal Circuit decision and the lack of adequate record data, the Department will continue to apply its normal methodology of resorting to CV where the model selected for comparison is not in the ordinary course of trade.

Department's Position: We agree with the respondents. In *CEMEX,* based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' The URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales disregarded under section 773(b)(1) of the Act. *See* section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for normal value if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.''

We will match a given U.S. sale to foreign market sales of the next most similar model when all sales of the most comparable model are below cost. The Department will use CV as the basis for normal value only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Review'' section of this notice, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted. Where there were neither identical nor similar matches reported by respondents, we have used CV as the basis for normal value.

Comment 2: Respondents argue that the Department should base CV profit only on information pertaining to the POR as stated in section 773(a)(4) of the Act. Further, respondents contend that in its preliminary results, the Department did not follow this methodology, but based CV on data from both within and outside the POR. They note that the Department used the cost of manufacturing (COM) and general and administrative expenses (G&A) for the POR, but calculated CV profit on all reported home market sales made in the ordinary course of trade. Finally, respondents argue that the approach taken by the Department was inaccurate and unfair because this approach encompassed the 26-month home market window.

Respondents contend that the purpose of this administrative review is to determine whether imports into the United States during the POR were sold at prices that would constitute dumping. Respondents assert that the statute requires that ''a fair comparison shall be made between the export price or constructed export price and normal value,'' and section 773(a)(1)(A) of the Act provides that in order to achieve a fair comparison with the export price or constructed export price, normal value shall be the price ''at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price.'' They argue that CV is a surrogate for price, and must be contemporaneous with the U.S. sale being compared. Thus, the Department should use information to calculate CV that corresponds to sales during the POR.

Respondents state that they reported actual costs incurred for the POR for both COP and CV as required by the Department's questionnaire. However, in calculating CV profit for this case, the Department did not use POR data, but

used all reported home market sales, which covered the period January 1995 through February 1997. Respondents argue that basing CV profit on market behavior and conditions outside the POR leads to distortions and is inappropriate, and the Department should revise its methodology for the final results to calculate CV profit based on home market sales in 1996.

Petitioners state that the Department's calculation of CV profit is consistent with the Act and past practice. Petitioners note that the calculation of CV profit is to be based on profits earned ''in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country.'' *See* section 773(e)(2)(A) of the Act.

Petitioners note that the home market sales identified in this review are consistent with the Department's established practice. The home market sales span the period from three months before the first U.S. sale to two months after the last U.S. sale in the POR. Thus, these sales fit the meaning of the Act. Petitioners contend that the fact that respondents reported and made U.S. sales in a 26 month period is not a flaw or unfair but merely reflects respondents' particular reporting period.

Petitioners assert that the Department may not use one database of home market sales for its determination of normal value sales comparisons and another for its determination of CV profit.

Furthermore, petitioners contend that, contrary to respondents' claim, the Department has traditionally interpreted the phrase ''at a time reasonably corresponding to the time'' found in section 773(a)(1)(A) to mean a home market sale within the 90–60 day window. Since respondents accepted this window, petitioners argue that respondents must also accept this same database in identifying home market sales from which to calculate CV profit.

Petitioners state that it is the Department's practice to rely on all home market sales reported in the foreign market sales database for determining normal value as the basis for calculating CV profit. Moreover, petitioners argue that the Department has used this approach in *Notice of Preliminary Results of Antidumping Duty Administrative Review: Tapered Roller Bearings from Japan;* 61 FR 25200 (May 20, 1996). Accordingly, petitioners assert that the Department should continue using respondents' reported home market sales as the basis for calculating CV profit.

Department's Position: We disagree with respondents. In this case, the respondents reported home market sales based on the standard 60-day/90-day contemporaneous window which, in this review, encompassed a 26-month period. The Department has used the home market sales during this 26-month period to form the basis of its normal value calculation. Thus, in accordance with its normal practice, the Department calculated CV profit based on the contemporaneous sales data. In this case, U.S. sales span a period of 21 months. It would not be appropriate to limit the CV profit calculation to 12 months of home market sales, since this would not reflect profit on all contemporaneous sales.

The fact that we used costs based on a different period (in this case, 12 months) does not render our CV profit calculation inappropriate or unreasonable. The respondents only reported cost of manufacture and general administrative expenses for the 1996 calendar year (the POR) as the basis for costs of all reported home market sales. The respondents did not claim that the costs reported for this period were in any way unrepresentative of the costs incurred for sales throughout the 26-month period. In fact, these same cost figures formed the basis for COP in determining whether any of the home market sales made during the 26-month sales reporting period had been sold at below-cost prices within the meaning of section 773(b) of the Act. Thus, it was not unreasonable for the Department to calculate CV profit using the same home market cost data that it used to test for below-cost sales.

Further, if the respondents believed that for any reason the submitted costs were not representative of the 26-month period, they should have informed the Department that the 12-month costs used to calculate CV profit were not representative of its 26-month costs. Respondents knew from past experience that it is the Department's practice, when calculating CV profit based on reported home market sales, to calculate CV profit based on all reported contemporaneous home market sales. The respondents have accepted this approach in past administrative reviews (*see Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review,* 61 FR 47874 (September 11, 1996); *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review,* 62 FR 7206 (February 18, 1997)) and have offered no compelling reason to alter it in this review.

Comment 3: Respondents argue that in calculating CEP profit in the preliminary results, the Department inappropriately excluded non-arm's length home market sales used in the calculation of CEP profit. Respondents contend that this methodology is contrary to both the statute and the Statement of Administrative Action (SAA), and is a departure from the methodology used in the prior review.

Respondents assert that section 772(f)(2)(C)(i) of the Act provides that CEP profit will be calculated based on expenses and profit for all sales in the United States and home market. Also, respondents note that the SAA states that ''the total profit is calculated on the same basis as the total expenses.'' *See* SAA at 155. Additionally, the SAA states that ''the total expenses are all expenses incurred by or on behalf of the foreign producer and exporter and the affiliated seller in the United States with respect to the production and sale of the first of the following alternatives which applies: (1) The subject merchandise sold in the United States and the foreign like product sold in the exporting country (if Commerce requested this information in order to determine normal value and the constructed export price).'' *See* SAA at 154. Therefore, respondents argue that the statute and the SAA are clear that both the expenses used to allocate the profit to the U.S. sales, and the profit to be allocated, should be based on all sales of the subject merchandise in the United States and the foreign like product in the foreign market. Respondents maintain the statute does not contain any provision for disregarding any sales in the calculation of CEP profit; and maintain that disregarding any such sales would be contrary to section 772(f) of the Act.

Respondents note that the Department's recent policy bulletin (''Calculation of Profit for Constructed Export Price'' Policy Bulletin No. 97/1 (''CEP Profit Policy Bulletin'')) is incorrect because the CEP profit calculation does not reflect actual profit or loss for actual market prices. Respondents maintain that section 772(f)(2)(D) of the Act states that ''actual profit'' represents the profit earned on all sales for which expenses were ''determined'' under section 772(f)(2)(C), and section 772(f)(2)(C) states that total expenses are all expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the home market if requested by the Department in order to determine normal value and constructed export price. Thus, because the Department

requested that respondents report all home market sales, and the Act states that the calculation of total actual profit and total expenses are made on the same basis, profits associated with non-arm's length sales must be included in determining actual profit.

Respondents argue that excluding non-arm's length home market sales from the calculation of CEP profit distorts the calculation of total actual profit and is inconsistent with the statute and the SAA. Although the Department includes unprofitable sales to an unaffiliated party in determining CEP profit—even if the sales are not in the ordinary course of trade—respondents contend that the Department has no justification for excluding sales with an affiliated party (including profitable sales) only because these sales do not pass the Department's arm's length test. Therefore, respondents argue that the Department should base its calculation of CEP profit on all home market sales, including sales found not to be made at arm's length.

Petitioners state that the Department should continue to exclude non-arm's length home market sales from its CEP profit calculation. Petitioners argue that the Department has carefully analyzed this issue in the past and has concluded that it would not be proper to consider the profit (or lack thereof) on non-arm's length sales when attempting to calculate total actual profit on CEP sales. Petitioners state that the Department provided several reasons for its decision in its ''CEP Profit Policy Bulletin.''

Petitioners state that the Department properly recognized that non-arm's length sales do not provide an indication of the actual profits associated with these sales. Thus, petitioners argue that relying on non-arm's length transfer prices affords respondents a chance to manipulate the profit calculations by shifting profit to downstream sales by affiliated customers. In order to avoid this manipulation, petitioners contend that the Department must exclude sales that are not at arm's-length prices from its calculation of CEP profit.

Furthermore, petitioners assert that the Department's policy of excluding sales that are not at arm's length from its calculation of CEP profit is consistent with the Act because it requires the calculation of total actual profit. Consequently, since the Act recognizes that non-arm's length sales are not reliable indicators of normal value or input costs, then they also are not reliable for calculating actual profit.

Department's Position: We agree with petitioners. As we stated in our CEP Profit Policy Bulletin, ''sales to affiliates made at non-arm's length prices . . . are excluded from the CEP profit calculation because they do not reflect actual market prices and, thus, do not represent actual profit (or loss).'' Further, the Department stated that ''non-arm's length sales are not a reliable indicator of 'actual profit,' just as they are not treated as a reliable indicator of normal value or input costs.'' *See* sections 773(a)(5) and 773(f) of the Act. Moreover, the Department's Bulletin states that ''inclusion of non-arm's length sales would inappropriately distort the calculation of total actual profit. Therefore, we include below-cost sales but exclude non-arm's length sales for purposes of computing sales revenues and expenses for CEP profit.''

Comment 4: Petitioners argue that the Department made a fundamental legal error in determining a CEP offset was appropriate by identifying the level of trade of CEP sales on an adjusted basis while identifying the level of trade of home market sales on an unadjusted basis. Petitioners argue that the comparison is inaccurate and leads to the wrong conclusion that CEP sales were at a different and less advanced level of trade than the home market sales. Petitioners argue that if the Department were to look at the levels of trade for sales in the U.S. and home market on the same basis, and rely on the unadjusted starting price for both sales as the proper levels of trade, the Department would conclude that the U.S. and home market levels of trade are the same and that a CEP offset would not be necessary.

Petitioners contend that the Department's position that the CEP level of trade is an adjusted price but the normal value level of trade is linked to the starting price is not supported by the statute. Section 772(b) of the Act states that CEP is ''the price the subject merchandise is first sold . . . to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). Therefore, petitioners contend that the starting price for a CEP sales comparison is the price at which the product is sold to an unaffiliated purchaser. Additionally, petitioners assert that the statute defines normal value as the price at which the foreign like product is first sold, under a variety of terms and conditions which provide for the price to be adjusted. *See* sections 773(a)(1)(A) and 773(a)(1)(B). Moreover, petitioners contend that section 773(a)(6)(C)(iii) of the Act requires that normal value be adjusted for ''other differences in the circumstances of sale,'' between the CEP and normal value sale, which includes adjustments for the same types of expenses deducted from CEP.

Accordingly, petitioners argue that it is not accurate for the Department to determine that CEP is a price that is exclusive of all selling expenses, since these expenses are required to be adjusted for pursuant to section 772(d) of the Act, but to describe normal value as a price that is inclusive of all selling functions and ignore the adjustments to normal value that are statutorily mandated by section 773(a)(6) of the Act. The Department must consider levels of trade in the same manner in order to arrive at a fair comparison. Furthermore, petitioners contend that Congress intended for the Department to look at the sale to an unaffiliated purchaser, when examining CEP sales. *See* section 772(b) of the Act. Petitioners argue that a CEP transaction is between the foreign producer/U.S. affiliate, and the unaffiliated U.S. producer. Petitioners argue that the Department has ignored these transactions and has incorrectly focused on the adjusted CEP sale. Consequently, they argue the Department is examining a level of trade between a foreign producer and U.S. affiliate that is artificial.

Respondents argue that the Department properly examined the CEP level of trade based on the price after adjustments under section 772(d) of the Act. Respondents argue that in the preliminary results, the Department properly determined that its CEP sales to MAC (*i.e.*, its U.S. super-distributor), were made at a different level of trade than home market sales (which were made to end-users).

Respondents maintain that petitioners argument is the identical argument from the first and second administrative reviews in which the Department granted a CEP offset. In fact, the argument also has been considered and rejected by the Department, in other administrative proceedings and in its final regulations. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27414 (May 19, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8919–8120 (February 23, 1998), *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan*, 61 FR 38139, 38143 (July 23, 1996). Respondents maintain that the Department's position is clear with

regard to identifying the level of trade of CEP sales. The Department has stated ''in those cases where a level of trade comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act . . . In every case decided under the revised antidumping statute, the Department has consistently adhered to this interpretation of the SAA and of the Act.'' *See Final Results of Antidumping Duty Administrative Review, Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea*; 62 FR 965, 966 (January 7, 1997). Therefore, respondents argue that the Department should continue its past practice of beginning its level of trade analysis for CEP sales after adjusting for U.S. selling expenses and profit, as required by the SAA and the statute. *See* SAA at 159, and section 772(d) of the Act.

Department's Position: We disagree with petitioners. The Department is continuing its practice, articulated in section 351.412(c) of the new regulations (see 62 FR 27296, 27414), of making the level of trade comparisons for CEP sales on the basis of the CEP after adjustments provided for in section 772(d) of the statute.

As we stated in the second administrative review (*see Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 62 FR 7206 (February 18, 1997) (''*SSWR II*'')) the starting price is not the basis for comparison for CEP sales. The comparison is based on the CEP, which is net of the CEP deductions (*i.e.*, those deductions provided for in section 772(d) of the Act which are only applicable to CEP sales). The statute requires the Department to make comparisons between NV and EP or CEP to the extent practicable, at the same level of trade. *See* section 773(a)(1)(B) of the Act. If the starting price is used to determine the level of trade for CEP sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. Similarly, using the unadjusted price to determine the level of trade of both EP and CEP sales would result in a finding of different levels of trade for an EP and a CEP sale when, after adjustment, the selling prices reflect the same selling functions. Moreover, using the adjusted CEP for establishing the level of trade is consistent with the purposes of the CEP adjustment; to determine what the sales price would have been had the transaction between the producer and its U.S. affiliate qualified as an export price sale. Accordingly, we have followed our practice from the previous administrative review, which specifies that the level of trade analyzed for EP sales is that of the unadjusted price, and for CEP sales it is the level of trade of the price after the deduction of U.S. selling expenses and profit associated with economic activity in the United States pursuant to section 772(d) of the Act. Therefore, for the final results, the Department has continued to apply the level-of-trade analysis from its preliminary results in this review.[1]

Comment 5: Petitioners argue that there are no differences in selling functions between the U.S. and home market sales. Consequently, even if the Department relies on an adjusted CEP to identify the U.S. level of trade, respondents are not entitled to a CEP offset. Petitioners maintain that the channels of distribution and the selling activities for home market sales made during the POR are comparable to the adjusted CEP sales.

Petitioners note that they informed the Department that sales in the home market were predominantly through a different channel of distribution and involved fewer selling functions than the Department had examined in past reviews. In prior reviews, petitioners stated that respondents' sales were primarily through Ugine Service (*i.e.*, channel 2) and involved an extra layer of selling expenses when compared to direct home market sales (*i.e.*, channel 1) or CEP sales, and it was the Ugine Service sales that respondents focused on to distinguish the level of trade of the CEP and the home market sales.

Petitioners assert that they ran a test on the data which showed that sales through Ugine Service are not predominate in terms of home market sales for comparison. Petitioners noted that respondents identify selling functions associated with channel 1 home market sales but not with CEP sales, such as, customer sales contacts, technical services and administrative functions. Nevertheless, petitioners contend that the record demonstrates that the selling functions and expenses associated with sales to both home market channel 1 and the CEP sales, on an adjusted basis, are the same. Petitioners maintain that the indirect selling expenses and their magnitude are the same for both home market sales through channel 1 and CEP sales. Thus, petitioners argue there can be no difference between the levels of trade for home market channel 1 and CEP sales based on the intensity or nature of the expenses for both home market channel 1 and U.S. CEP sales, citing *Professional Electric Cutting Tools from Japan: Final Results of Antidumping Duty Administrative Review*, 63 FR 6891, 6895 (February 11, 1998).

Moreover, petitioners note that the Department did not deduct indirect selling expenses in calculating the adjusted CEP price. Thus, petitioners argue that the selling functions must still be considered as selling functions associated with the CEP sale in the level of trade analysis. Petitioners contend that the indirect selling activities and expenses incurred by respondents (i.e., MAC and Techalloy) in the U.S. do not replace the selling activities and expenses incurred in the home market, but provide an extra layer of functions and expenses in the U.S. market.

Petitioners argue that the only difference in selling functions between the home market and the CEP sales is the indirect selling expenses associated with sales through channel 2 (Ugine Service). Petitioners maintain that these additional selling expenses cannot justify finding different levels of trade because the Department found that these additional selling expenses do not support a finding of different home market levels of trade between channel 1 and channel 2 sales. Therefore, petitioners argue that the record does not establish any differences in selling functions between channel 1 home market sales and CEP sales, and there are insufficient differences in selling functions between channel 2 sales and CEP sales to justify different levels of trade.

Respondents argue that they had different and fewer selling functions which were performed for the CEP sales than for home market sales to end-users, which are at a more advanced stage of distribution than the CEP sales. Therefore, respondents argue that pursuant to section 773(a)(7)(B) of the Act, the Department was correct in granting a CEP offset.

Respondents state that petitioners mischaracterize the Department's analysis of a CEP offset. Respondents assert that in the first and second administrative reviews of this case, the Department examined and compared the selling functions performed by Imphy and Ugine-Savoie for sales to its

[1] This approach was recently criticized by the Court of International Trade in *Borden, Inc.* v. *United States*, Slip Op. 98–36 (March 26, 1998), at 55–59 (*Borden*) (rejecting the Department's practice of adjusting the CEP starting price pursuant to section 772(d) of the Act prior to making the level of trade comparisons). The Department intends to appeal this decision and, thus, will continue to apply the methodology articulated in its new regulations (19 C.F.R. § 351.412).

U.S. affiliate (*i.e.*, MAC), and found the selling expenses in the home market to end-users were different than selling expenses in sales to MAC and involved different levels of trade. *See Preliminary Results of Antidumping Administrative Review: Certain Stainless Steel Wire Rods from France*, 61 FR 53199, 53201–53202 (September 11, 1996)(''*SSWR I*''). Specifically, the Department found that the record reflected that customer sales contacts, technical services, inventory maintenance, computer systems and other administrative functions were selling functions involved in home market sales to end-users and not in sales to MAC. The Department found these differences demonstrate a difference in level of trade. Respondents argue that the exact same selling functions exist in this review and more differences are apparent when the totality of selling functions are analyzed. Respondents assert that Imphy and Ugine-Savoie perform certain selling functions in the home market for direct sales, (*e.g.*, suggesting product improvements, developing sales strategy, providing information on market potential and competitors, pricing, scheduling production and delivery, visiting customers/potential customers and receiving orders, promoting new products, etc.) but only to a limited extent or not at all, for CEP sales.

Respondents assert that petitioners' argument that respondents' home market sales involved the same selling functions as CEP sales is the exact same argument from the first administrative review. Respondents argue that, in this administrative review, they have more responsibility for generating, administering and servicing sales to end-users in the home market than for U.S. sales to MAC. According to respondents, MAC's role as a super-distributor is to remove and assume virtually all of the risks and selling functions involved in selling to the U.S. market. Thus, these differences in selling functions support the Department's determination of two different levels of trade.

Respondents argue that petitioners' allegation that there is no difference in indirect selling expenses incurred by Imphy and Ugine-Savoie between home market channel 1 and CEP sales is a false allegation. Respondents state that they allocated their headquarters indirect selling expenses based on worldwide net sales revenue for the purpose of this administrative review, because respondents do not separately book selling expenses by market. Additionally, headquarters indirect selling expenses are difficult to separate by market. Any separation of these expenses could produce rough and potentially unverifiable estimates. Payroll expense is the predominant expense which is difficult to separate by market since many of the same headquarters personnel support sales to various markets. Nevertheless, respondents contend that this allocation does not negate the differences in the selling functions for sales to home market end-users, compared to sales to MAC. Respondents maintain that in responding to the Department's questionnaire, they tried to avoid obtaining any advantage through their headquarters selling expenses, and should not be penalized for the documented and verified differences in selling functions between the two markets.

Moreover, respondents argue that petitioners' argument that direct sales predominate in the home market is inaccurate because their analysis examined raw information, not what was actually used in the margin calculation. Analysis of the preliminary results shows that sales through Ugine Service predominated in the comparisons, particularly in comparisons to CEP. Respondents assert that this is important, because the Department calculates CV using home market selling expenses to derive a weighted average expense factor to add to the cost of manufacture, citing Department of Commerce, Import Administration Policy Bulletin, ''Treatment of adjustments and selling expenses in calculating the cost of production (COP) and constructed value (CV)'' (March 25, 1994). Respondents note that the selling expense factor included selling expenses attributable to sales through Ugine Service, which were greater than the selling expenses involved in direct sales. Lastly, respondents state that more than half of the CEP sales were compared to prices or CV reflecting the selling expenses of Ugine Service. Therefore, respondents argue that they are entitled to a CEP offset for comparisons to home market sales to end-users because the home market sales involve a different and more advanced level of distribution than sales to MAC and petitioners have not provided any evidence to reverse the level of trade analysis.

Department's Position: We disagree with petitioners. We reviewed respondents' selling functions and activities, and found that no single selling function was sufficient to warrant a separate level of trade in the home market. Specifically, we analyzed the respondents' level of trade chart for the home market and found that only three selling functions differed between the two home market channels of trade (visiting customers/receiving orders, promoting new products, and contacting customers/preparing claim reports). Additionally, we found that the vast majority of the selling functions were either identical or only differed moderately in intensity (*i.e.*, order evaluation for production of specific products, analyzing and paying warranty claims, pre-sale inventory, packing, post-sale warehousing, suggesting potential product improvements, developing sales strategy, providing information on market potential and competitors, pricing, scheduling production and delivery, follow-up on unpaid invoices, technical advice regarding use, general administrative support including personnel, advertising, computer systems and arranging freight and delivery). Therefore, we have determined that the selling functions reported for the home market channels of distribution are not different enough to warrant two levels of trade in the home market.

To determine whether separate levels of trade exist between the U.S. market and home market, we examined the respondents' level of trade claims. In order to make this determination, we reviewed the selling activities associated with each channel of distribution. The Department compared EP sales to home market sales, and determined that sales were made at the same LOT (*i.e.*, to end-users) in both markets. *See* May 7, 1997, Questionnaire Response, Exhibit 11.

For CEP sales, consistent with our practice, discussed above in Comment 4, we consider only the selling activities reflected in the constructed price, *i.e.*, after the expenses and profit are deducted under section 772(d) of the Act. Whenever sales are made by or through an affiliated company or agent in CEP situations, we consider all selling activities of both affiliated parties, except for those selling activities related to the expenses deducted under section 772(d) of the Act to determine the CEP level of trade.

The record indicates that the following selling functions were performed for HM sales to end users (at varying levels of intensity) but are not reflected in CEP: developing sales strategy, providing information on market potential and competitors, order evaluation for pricing and production scheduling, promoting new products, following-up on unpaid invoices, providing technical services, and performing administrative functions.

See May 7, 1997, Questionnaire Response, Exhibit 11.

The differences between the CEP level of trade and the home market level of trade are sufficient to constitute different levels of trade. We found that the data on the record did not allow the Department to determine whether the differences in levels of trade affect price comparability. Since there is only one home market level of trade which has no equivalent to the CEP level of trade, price differences between the relevant levels of trade can not be quantified. Further, the Department has determined that home market sales involved a more advanced stage of distribution (to end-users) as compared to respondents' CEP sales in the United States (MAC and Techalloy).

Section 773(a)(7)(B) of the Act states that a CEP ''offset'' may be made when two conditions exist: (1) normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

The Department has considered petitioners' argument that there is no difference between the home market channel 1 and CEP sales with regard to indirect selling expenses and we do not find it persuasive. Record evidence indicates that there are differences in selling activities between home market sales to end users and CEP sales. Notwithstanding these different activities, the indirect selling expenses reported by Imphy and Ugine-Savoie are the same for home market channel 1 and CEP. This does not mean, however, that the selling activities are the same for these two groups of sales. The amount of selling expenses in itself is not a dispositive indicator of whether different levels of trade exist. In this case, there clearly are sufficient differences in selling activities despite similar amounts of expenses.

Comment 6: Petitioners argue that in calculating CEP, the Department failed to deduct all selling expenses incurred in selling the subject merchandise to the United States. Petitioners assert that the Department did not deduct certain selling expenses (*i.e.*, indirect selling expenses and inventory carrying costs) that were incurred with respect to U.S. sales.

Petitioners argue that section 772(d)(1) of the Act states that the Department is required to deduct all direct and indirect selling expenses ''incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise.'' Additionally, petitioners maintain that the SAA states that indirect selling expenses are to be deducted from CEP, citing SAA at 824. Also, petitioners maintain that the Department should read the SAA, at page 823, to mean that it should deduct indirect selling expenses incurred by the producer with respect to U.S. sales of subject merchandise in the home market or expenses incurred in selling to its affiliated U.S. importer.

Lastly, petitioners argue that the Court of International Trade upheld the Department's past practice of deducting indirect selling expenses incurred in the home market or in selling to an affiliated importer in the calculation of exporter's sales price (ESP), the predecessor to CEP. *See Silver Reed America, Inc.* v. *United States*, 683 F. Supp. 1393 (1988). Also, petitioners note that the URAA did not substantively amend the CEP provision to alter the deductions from CEP as compared to ESP. In fact, petitioners argue the URAA was more explicit than the prior statute in requiring all selling expenses be deducted from CEP, citing section 772(d)(1) of the Act.

Respondents argue that petitioners made the same allegations in the first and second administrative reviews of this proceeding and the Department has rejected the argument in both instances. Further, respondents contend that these expenses were not incurred with respect to U.S. sales.

Respondents assert that in the first and second administrative reviews, the Department did not deduct indirect selling expenses incurred in France or inventory carrying costs imputed to the country of manufacture in determining CEP, and there is no new information in this review to cause the Department to reconsider its decision. Respondents argue that the Department decided this exact issue in the second administrative review, wherein the Department stated that section 772(d)(1) of the Act provided for the deduction of specified expenses incurred in selling in the United States; it did not provide for the deduction of indirect expenses incurred in the home market. *See SSWR II*, 62 FR at 7210. Therefore, respondents contend that pursuant to section 772(d)(1) of the Act, home market expenses are not properly deducted from the starting price in determining CEP and they do not represent expenses associated with economic activities occurring in the United States. *See* SAA at 153.

Moreover, respondents assert that the Department's approach is consistent with its past practice and with section 351.402(b) of its new regulations. *See Preliminary Results of Antidumping Administrative Review: Calcium Aluminate Flux from France*, 61 FR 40396, 40397 (August 2, 1996). Respondents note that section 351.402(b) indicates that the Secretary will deduct only expenses associated with a sale to an unaffiliated customer in the United States. Hence, the indirect expenses reported in the DINDIRSU field are expenses associated with selling to MAC, Imphy and Ugine-Savoie's affiliated reseller in the U.S., and are not deducted in the calculation of CEP. Additionally, respondents assert that home market inventory carrying costs for sales to the U.S. reported in the DINVCARU field are imputed inventory carrying costs related to selling to MAC. Respondents argue that deducting these expenses would be inconsistent with the statute. Finally, respondents argue that petitioners' citation to *Silver Reed* is not appropriate because, as the Department previously has found, ''cases addressing pre-URAA practice are not applicable.'' See *SSWR I*, 61 FR at 47882. Therefore, respondents argue that the Department should reject petitioners' arguments and not deduct these expenses in calculating CEP.

Department's Position: We disagree with petitioners. As we stated in the final results of the first and second administrative review of this order (see *SSWR I*, 61 FR at 47874; *SSWR II*, 62 FR at 7206), the Department does not deduct indirect expenses incurred in selling to the affiliated U.S. importer under section 772(d) of the Act. Section 772(d) of the Act is intended to provide for the deduction of expenses associated with economic activities occurring in the United States. *See* SAA at 823; see also, GATT 1994 Antidumping Agreement, article 2.4; see also, *Final Results of Antidumping Duty Administrative Review; Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands:* 63 FR 13204, 13212 (March 18, 1998).

The Department's practice regarding deductions from CEP under section 772(d) of the Act is articulated in its new regulations. Section 351.402(b) of these regulations state that ''the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid.'' 62 FR 27296, 27411. Additionally, the Department's regulations state that ''the Secretary will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States.'' *Id.* The inventory carrying costs petitioners refer to are expenses related solely to the sale to the affiliated importer (*i.e.*, MAC). Similarly, the indirect selling expenses

incurred in the home market do not represent expenses associated with economic activities in the United States. Therefore, for the final results, the Department has not deducted the indirect selling expenses and inventory carrying costs referred to by petitioners in its calculation of CEP.

Comment 7: Petitioners argue that if the Department does not deduct certain selling expenses (*i.e.*, indirect selling expenses and inventory carrying costs) from the CEP calculation, it may not deduct the same expenses from normal value through the CEP offset. Petitioners assert that the CEP offset is used to balance deductions for selling expenses made to CEP where there are different levels of trade. Petitioners maintain that certain indirect selling activities undertaken by Imphy and Ugine-Savoie in connection with their home market sales and CEP sales are the same. *See* Comment 5 above. Petitioners contend that because Department did not deduct indirect selling expenses and inventory carrying costs in the calculation of CEP, they should not be deducted from normal value as part of the CEP offset.

Respondents argue that the Department's calculation of the CEP offset in the preliminary results is in accordance with the Act. Further, respondents contend that the CEP offset can include indirect selling expenses and inventory carrying costs incurred in the home market even if those expenses are not deducted from CEP. Respondents assert that there is no statutory or other basis to consider whether a particular home market indirect expense is also incurred with CEP sales. Moreover, respondents cite to section 773(a)(7)(B) of the Act and argue that the test is whether the home market indirect expenses are incurred on sales in the home market. On that basis, all of the indirect expenses incurred in the home market (*i.e.*, indirect selling expenses for Imphy's and Ugine-Savoie's commercial departments (INDIRS1H), product liability premiums (PRLBPRMH), and inventory carrying costs (INVCARH)) should be taken into account in calculating the CEP offset for all home market sales. Additionally, respondents argue that the indirect selling expenses for Ugine Service (INDIRS2H) should be considered in calculating the CEP offset.

Department's Position: We agree with the respondents. Section 773(a)(7)(B) of the Act states that when the constructed export price offset is applicable, ''normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D).'' Accordingly, the statute directs the Department to make deductions for the CEP offset for home market indirect expense(s) incurred on sales in the home market. The statue does not require that the indirect selling expenses deducted from normal value be identical or comparable in nature to the direct or indirect selling expenses deducted from CEP.

Section 351.412(f)(2) of the Department's new regulations similarly reflect the Department's practice that the amount of the CEP offset ''will be the amount of indirect selling expenses included in normal value, up to the amount of indirect selling expenses deducted and determining constructed export price.'' 62 FR 27296, 27415. This regulation goes on to define indirect selling expenses as ''selling expenses * * * that the seller would incur regardless of whether particular sales were made, but that reasonably may be attributed, in whole or in part, to such sales.'' *Id.* These regulations are consistent with the Department's practice that the CEP offset is composed of home market indirect selling expenses and there is no requirement that the same or comparable types of expenses be deducted from CEP in order for the expenses to be included in the CEP offset. For these reasons, the Department has deducted all of the indirect expenses incurred in the home market in calculating the CEP offset for home market sales matched to CEP transactions.

Comment 8: Petitioners argue that the Department should deny respondents' adjustment for negative billing adjustments for certain home market sales. Petitioners contend that respondents have failed to correct double-counting errors with regard to these billing adjustments and warranty costs in their revised questionnaire response, and to prove that billing adjustments were due to billing errors or link the billing adjustments to billing errors.

Petitioners note that respondents stated in their July 28, 1997 supplemental questionnaire response, that ''[f]or certain sales, Ugine-Savoie erroneously reported the associated warranty claim as a billing adjustment.'' Also, petitioners note that the questionnaire response indicated that ''on the revised HM Sales File submitted with this response, the billing adjustment has been removed for these sales, as the claim was included within warranty expense.'' *See* July 28, 1997 Supplemental Questionnaire Response at page 12. Thus, petitioners note that respondents acknowledged that certain warranty expenses were double-counted in their original response because certain billing expense adjustments were also reported as warranty expenses, and the billing adjustments were made to invoice prices (BILLADPH), not quantities (BILLADQH). Therefore, petitioners contend that respondents should have made corrections to the BILLADPH computer field. However, petitioners assert that respondents did not correct the double-counting error in their amended home market sales listing. *See* Petitioners' letter of December 4, 1997.

Petitioners note that respondents stated the double-counting error was corrected in the amended home market sales listing because the double-counted amounts were removed from the BILLADQH field. *See* Respondents' letter of December 15, 1997 at pages 8–10. However, petitioners argue that the amounts reported under BILLADQH related to quantity adjustments for warranty claims, not the prices. Petitioners assert that removing the quantity amounts cannot correct the error of double-counting warranty expenses because the amounts associated with warranty claims are still reported in the invoice prices (*i.e.*, BILLADPH) and warranty expenses. Therefore, petitioners argue the Department should deny respondents' claimed negative billing adjustments because they failed to correct the double-counting of billing adjustments and warranty expenses and did not provide the Department the information needed to correct the errors.

Petitioners also argue that respondents have failed to demonstrate that the claimed billing adjustments were due to billing errors. Petitioners have identified examples of where billing adjustments took place for some sales but not others of the same product made on the same day.

Respondents argue that petitioners wrongly asserted that respondents failed to correct the double-counting of reported warranty expense in its revised sales listing (*i.e.*, July 28, 1997 supplemental questionnaire response) and failed to substantiate that the reported billing adjustments were due to billing errors or to link the billing adjustments to the billing errors. Respondents state that petitioners are confusing invoice revenue and invoice unit price. Respondents note, as stated in their December 15, 1997 letter to the Department, that billing revisions relating to warranty expense items involved adjustments to quantity (BILLADQH), rather than price (BILLADPH), and affected the QTYH

and BILLADQU fields. Respondents stated that they corrected errors in their billing adjustments and warranty expenses in their July 28, 1997 supplemental response. To correct the errors, respondents made corrections to their BILLADQH and QTYH fields to correct the errors. The warranty field was not revised.

Respondents contend that petitioners have not commented on or acknowledged their calculation example in their December 15, 1997 letter which illustrated the correction of the double-counting. In reply to petitioners' identification of eight observations (which are four pairs of transactions) that further question respondents' billing adjustments, respondents state that for two pairs of the transactions, Imphy should have reported billing adjustments in the BILLADPH field, and that Imphy had a computer programming error that caused the omission of the billing adjustments from these sales. Additionally, respondents explain that this mistake was due to credit memos against certain invoice numbers resulting from calculating invoice price on the original invoices.

Nevertheless, respondents argue that all of the other records alleged to be errors by petitioners are reported correctly. Respondents stated that for the other two pairs of observations that petitioners alleged included errors in billing adjustments to price, respondents provided the following explanations: one transaction reflected a special price adjustment granted by Ugine-Savoie, which the customer requested to meet a specific market condition, while the other transaction was a price adjustment that the customer requested. Therefore, respondents assert that petitioners have no basis to request the Department to deny any of the billing adjustments reported.

Department's Position: We agree with respondents. The Department has examined the respondents' home market sales database, specifically the sales that petitioners alleged were double-counted with regard to billing adjustments and warranty expenses, and found that the billing adjustments had been revised and correctly reported. In its analysis, the Department examined respondents' July 28, 1997 supplemental questionnaire response, home market sales database, and letter of December 15, 1997. From the information on the record, we found that respondents had eliminated the billing adjustment quantity from the BILLADQH field which respondents used to report credit memos associated with warranty claims. In addition, we found that they subsequently revised the quantity reported in the QTYH field, increasing it by the amount that had been reported in the BILLADQH field. Further, the Department performed mathematical calculations on the relevant home market sales to ensure that respondents had corrected the double-counting error. We found that respondents had indeed corrected their double-counting error, and found that their explanation that the double-counting error effected the invoice revenue and not the invoice price was consistent with the reported data.

Additionally, the Department has determined that respondents have properly reported all of their billing adjustments. We examined respondents' December 15, 1997 letter and related home market sales and found that the alloy surcharge and billing adjustments were reported correctly. Therefore, we have determined that respondents have properly reported all of their billing adjustments with the exception of the two invoices (fifteen home market sales observations) that did not have adjustments reported due to a computer programming error. Respondents reported these errors in their case briefs. The information submitted regarding the correction of these errors constituted new factual information which was untimely submitted. Petitioners did not have an opportunity to comment on this new factual information which was submitted too late for consideration by the Department. For these reasons, the Department did not take this information into account for these final results.

Comment 9: Petitioners argue that the Department incorrectly categorized certain U.S. sales as sales that were made outside the POR, and excluded these sales from its model match program. Petitioners state that the Department's computer program indicates that even though the subject merchandise of these sales entered the U.S. prior to the POR, the sales were made during the POR. Moreover, they contend that the Department's past practice has been to examine CEP sales during the POR, considering there is a significant lag between entry date and sale date for the CEP sales. *See Gray Portland Cement and Clinker from Japan: Final Results of Antidumping Duty Administrative Review,* 58 FR 48826 (1993).

The respondents did not comment on this argument.

Department's Position: We agree with the petitioners. The Department incorrectly categorized certain U.S. sales as sales that were made outside the POR, and excluded these sales from its model match program. Therefore, for the final results, the Department has corrected its computer program to include these sales.

Comment 10: Respondents argue that the Department incorrectly recalculated its reported home market credit expenses for sales with missing payment and shipment dates. In the preliminary results, respondents note that the Department stated that it intended to calculate the missing payment or shipment date based on the average time period between invoice date and payment or shipment date, respectively. Respondents argue, however, that the Department committed two programming errors in this recalculation. Therefore, respondents stated that the Department should correct its errors and provided programming language to fix the alleged errors.

The petitioners did not comment on this argument.

Department's Position: We agree with respondents and have corrected the home market credit expense calculation for sales with missing payment and shipment dates for the final results.

Comment 11: Respondents argue that the Department did not include indirect selling expenses related to EP sales in the total expenses used to calculate CEP profit pursuant to section 772(d)(3) of the Act, because the Department set indirect selling expenses for EP sales to zero before calculating the CEP profit rate. Respondents maintain that the Department requested indirect selling expenses related to both EP and CEP sales, and the Department's recent policy bulletin on the calculation of CEP profit states that the calculation of total actual profit under section 772(f)(2)(D) includes all revenues and expenses from EP sales. Thus, indirect expenses related to EP sales should have been included in the expenses used to calculate CEP profit.

The petitioners' did not comment on this argument.

Department's Position: We agree with the respondents in part. We agree that the calculation of total actual profit under section 772(f)(2)(D) of the statute includes all revenues and expenses resulting from the respondent's U.S. sales and home market sales. *See Final Results of Antidumping Duty Administrative Review; Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands;* 63 FR 13204, 13211 (March 18, 1998). The Department, however, has not adopted the computer programming changes suggested by respondents. Instead, in the final margin program, the Department changed the definition of a variable (INDEXUS) to be

the sum of indirect selling expenses and inventory carrying costs incurred in the United States, and deleted another variable (INDEXPU) from the final margin program. For a complete listing of the changes the Department has made to its final margin program, please see the Department's analysis memorandum and final margin computer program.

Comment 12: Respondents argue that the Department did not calculate CV profit consistent with its determination of the CV profit rate. Respondents assert that the Department calculated the CV profit rate as the ratio of total home market profit on above-cost sales to the sum of the total cost of manufacture, G&A, net financial expense, and packing expenses. However, the Department applied the CV profit rate to a larger base, in calculating the profit amount used to calculate profit for CV. Respondents maintain that the CV profit rate should be applied to the same expenses that were included in the denominator used to calculate the CV profit rate. Therefore, respondents state that the Department should correct its program to exclude direct and indirect selling expenses from the base to which the CV profit ratio was applied.

The petitioners did not comment on this argument.

Department's Position: We agree with respondents and have corrected this error for the final results.

Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manufacturer/ exporter	Time period	Margin (per-cent)
Imphy/Ugine-Savoie	1/1/96—12/31/96	7.46

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. For duty assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain stainless steel wire rods from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) if the exporter is not covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent for stainless steel wire rods, the all others rate established in the LTFV investigation. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Wire Rods from France* (59 FR 4022, January 28, 1994).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation or the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.33(c)(5).

Dated: May 26, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–14759 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 970520119–7284–02]

RIN 0693–ZA15

Grant Funds—Materials Science and Engineering Laboratory—Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the Materials Science and Engineering Laboratory (MSEL), National Institute of Standards and Technology (NIST), is continuing its program for grants and cooperative agreements in the following fields of research: Ceramics, Metallurgy, Polymer Sciences, Neutron Scattering Research and Spectroscopy. Each applicant must submit one signed original and two copies of each proposal along with a Grant Application, (Standard Form 424 REV. 7/95 and other required forms), as referenced under the provisions of OMB Circular A–110 and 15 CFR 24.

DATES: Applications must be received no later than the close of business September 30, 1998.

ADDRESSES: Applications should be submitted to the National Institute of Standards and Technology, Materials Science and Engineering Laboratory, Building 223, Room A305, Gaithersburg, Maryland 20899–0001; Attention: Patty Salpino. Each application package should be clearly marked to identify the field of research.

FOR FURTHER INFORMATION CONTACT: Technical inquiries should be directed to the following Program Managers: Dr. Ronald Munro—(301) 975–6127 [Ceramics Division], Bruno Fanconi—(301) 975–6762 [Polymers Division], John Manning—(301) 975–6157 [Metallurgy Division—transformations, phases, microstructure and kinetic processes in metals and their alloys], Dr. Neville Pugh—(301) 975–5960 [Metallurgy Division—sensors for analytical models for metallurgical processes], Richard Ricker—(301) 975–6023 [Metallurgy Division—degradation of materials in their service environment], John Rush—(301) 976–6220 [NIST Center for Neutron Research]. Inquiries should be general in nature.

Specific inquiries as to a laboratory's needs, the usefulness or merit of any particular project, or other inquiries with the potential to provide and

competitive advantage to an applicant are not acceptable.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance: ''Measurement and Engineering Research and Standards'', No. 11.609.

Eligibility: Academic institutions, non-Federal agencies, independent and industrial laboratories are eligible to apply.

Authority: As authorized under 15 U.S.C. 272(b)(6) and (c)(16), the MSEL conducted a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Funding Availability: Approximately $500,000 is available to support grants and cooperative agreements under this program. All awards are contingent on the availability of funds.

Type of Funding Instrument: The MSEL Grants Program is limited to innovative ideas generated by the proposal writer on what research will be performed and how. Grants awarded under the MSEL program will generally provide financial assistance to the recipient without substantial NIST involvement in the projects. Cooperative agreements awarded for MSEL projects will generally involve a close working relationship between a group of NIST experts and the recipient.

Award Period: Proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, in relation to the mission of the MSEL program, and the availability of funds. The annual awards must have scopes of work that are clearly severable and can be easily separated into annual increments of meaningful work, which represent solid accomplishments if prospective funding is not made available to the applicant, (i.e., the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Program Objectives

All proposals submitted must be in accordance with the program objectives listed below. The appropriate Program Manager for each field of research may be contacted for clarification of the program objectives.

I. Ceramics Division, 852—The primary objective is to supplement division activities in the area of ceramic processing, tribology, composites, machining, interfacial chemistry, and microstructural analysis.

II. Polymers Division, 854—The primary objective is to support division programs in polymer blends, composites, electrical applications, as well as, dental and medical polymeric materials through participation in research on metrology, synthesis, processing and characterization of structure, mechanical, thermal and electrical properties.

III. Metallurgy Division, 855—The primary objective is to develop techniques to predict, measure and control transformations, phases, microstructure and kinetic processes as well as mechanical, physical and chemical properties in metals and their alloys.

IV. Metallurgy Division, 855—The primary objective is to develop new and improved sensors, measurement techniques, and analytical models for metallurgical structures and processes in order to facilitate the development and adoption of intelligent processing systems for materials.

V. NIST Center for Neutron Research, 856—The primary objective is to develop high resolution cold and thermal neutron research approaches and related physics, chemistry, macromolecular and materials applications.

Proposal Review Process

Proposals will be reviewed in a two-step process. First, a panel of at least three individuals knowledgeable about the particular scientific area described above that the proposal addresses, and that are not employed by the applicable division, will conduct a technical review of proposals. Second, the chief of each division will make final award selections.

Technical Evaluation Criteria

The criteria the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality*. Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

3. *Resources Availability*. Reviewers will consider the extent to which the proposer has access to necessary facilities and other support to accomplish project objectives.

4. *Technical Merit of Contribution*. Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of materials science and engineering.

Each of these factors will be given equal weight in the evaluation process.

Selection Procedure

In making final award selections, the chief of each division will take into account the score received by the applicant and the compatibility of the applicant's proposal with the program objectives of the particular division that the proposal addresses. These objectives are described above in the ''Program Objectives'' section. If an award is made to an applicant that does not receive the highest score in its category by technical reviewers, the division chief shall justify the selection in writing.

Application Process

Matching Requirements: There are no matching requirements.

Application Kit: An application kit, containing all required applications forms and certifications is available by calling Patty Salpino at (301) 975–5731. An application kit includes the following:

SF 424 (Rev 7/97)—Application for Federal Assistance

SF 424 A (Rev 7/97)—Budget Information—Non-Construction Programs

SF 424B (Rev 7/97)—Assurances—Non Construction Programs

CD 511 (7/91)—Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying

CD 512 (7/91)—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions and Lobbying

SF–LLL—Disclosure of Lobbying Activities

Paperwork Reduction Act: The Standard Form 424 and Standard Form LLL mentioned in this notice are subject to the requirements of the Paperwork Reduction Act and have been approved by OMB under Control Numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply

with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number.

Primary Application Certification: all primary applicants must submit a completed form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

3. *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

4. *Anti-Lobbying Disclosure.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

5. *Lower-Tier Certifications.* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

Preaward Activities: Applicants who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover preaward costs.

No obligation for Future Funding: If an application is accepted for funding, NIST has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

Past Performance: Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Name Check Reviews: All for-profit and nonprofit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

False Statements: A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Delinquent Federal Debts: No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,

2. A negotiated repayment schedule is established and at least one payment is received, or

3. Other arrangements satisfactory to DoC are made.

Purchase of American-Made Equipment and Products: Applicants are hereby notified that they are encouraged to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

Indirect Costs: The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Federal Policies and Procedures: Awards under the MSEL Grants Research Program shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards. The MSEL Grants Program does not directly affect any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372 is not applicable to the MSEL Grants Program.

This funding notice has been determined not to be not significant for purposes of Executive Order 12866.

Dated: May 27, 1998.

Robert E. Hebner,

Acting Deputy Director, NIST.

[FR Doc. 98–14733 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Final Regulations for Deep Seabed Mining Commercial Recovery

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 3, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to James P. Lawless, Office of Ocean and Coastal Resources Management, SSMC–4, 1305 East-West Highway, Silver Spring, MD 20910 (telephone 301–713–3155, ext. 194).

SUPPLEMENTARY INFORMATION:

I. Abstract

Public Law 96–283, the Deep Seabed Hard Mineral Resources Act, authorizes the Administrator of NOAA to permits to eligible U.S. citizen applicants for the commercial recovery of deep seabed mineral resources. Information must be submitted as part of a permit application so that NOAA can determine if statutory requirements for

eligibility are met. Permit holders are required to do environmental monitoring and to submit reports to allow NOAA to track activities and their impact on the environment. As of this time no permit applications have ever been received.

II. Method of Collection

The requirements are contained in 15 CFR 971. No forms are used.

III. Data

OMB Number: 0648–0170.

Form Number: N/A.

Type of Review: Regular submission.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 0.

Estimated Time Per Response: No estimates have yet been made. No applications or reports have been received and none are expected during the period of the OMB clearance being requested.

Estimated Total Annual Burden Hours: 1 hour (no actual burden is expected, but one hour is being requested for book-keeping purposes)

Estimated Total Annual Cost: $0.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–14602 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052198C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: Groundfish Stock Assessment Review (STAR) Panels will hold three work sessions which are open to the public.

DATES: The Blackgill/Chilipepper Review Panel and the Pacific Ocean Perch/Black Rockfish Review Panel meetings will meet concurrently, beginning at 1:00 p.m., June 15 and continue until 12:00 Noon on June 19 or as necessary to complete business. The Sablefish/Shortspine Thornyhead Review Panel will begin at 8:00 a.m., July 6 and continue until 5:00 p.m. on July 10, or as necessary to complete business.

ADDRESSES: The Blackgill/Chilipepper Review Panel and the Pacific Ocean Perch/Black Rockfish Review Panel meetings will be held in the Library Building at the Evergreen State College, 2700 Evergreen Parkway NW, Olympia, WA 98505. The Blackgill/Chilipepper Review Panel will meet in Room 1600 of the Library Building and the Pacific Ocean Perch/Black Rockfish Review Panel will meet in Room 1612 of the Library Building. The Sablefish/Shortspine Thornyhead Review Panel meeting will be held in the Library Seminar Room, The Guinn Library, Hatfield Marine Science Center, 2030 SE Marine Science Drive, 909 Bldg., Newport, OR 97365.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review draft stock assessment documents and any other pertinent information, work with Stock Assessment Teams to make necessary revisions, and produce STAR Panel reports for use by the Council family and other interested persons.

Although other issues not contained in this agenda may come before these Panels for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 27, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–14592 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052798A]

South Atlantic 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 South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee; Joint Mackerel Committee and Advisory Panel; Marine Reserves Workshop; Personnel Committee (Closed Session); Marine Reserves Workshop; Marine Reserves Committee Meeting; Advisory Panel Selection Committee (Closed Session); Public hearings; Golden Crab Committee and Advisory Panel; Dolphin/Wahoo Committee; Bluefish Committee; and a Council Session.

DATES: The meetings will be held from June 15–19, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Radisson Ponce de Leon Conference Resort, 4000 US Hwy 1 North, St. Augustine, FL; telephone: (904) 824-2821.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (843) 571-4366; fax: (843) 769-4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

June 15, 1998, 8:30 a.m. to 6:00 p.m.—Scientific and Statistical Committee (SSC):

The SSC will review the Scamp Assessment, the Trends Report, the Retrospective Assessment and the Bluefish Assessment and determine if they are the best scientific information on the status of the various species addressed in the reports, hear a mackerel stock assessment presentation, discuss the assessment and make recommendations to the Council, review and comment on the Sustainable Fisheries Act Comprehensive Amendment, the Habitat Plan and the Habitat Comprehensive Amendment;

June 16, 1998, 8:30 a.m. to 12:00 noon—Joint Mackerel Committee and Advisory Panel:

The committee and advisory panel will develop recommendations for total allowable catch (TAC) and bag limits and other framework items as necessary for the 1998-99 king and Spanish mackerel fishing year, review Gulf Council actions on Mackerel Amendment 9 and develop recommendations for this amendment, and discuss the composition and function of the stock assessment panel;

June 16, 1998, 1:30 p.m. to 5:00 p.m.—Marine Reserves Workshop:

The Council will be holding a workshop on marine fishery reserves to develop the concept for the possible use of reserves in the South Atlantic. The workshop is open to the public. Invited participants will be giving presentations, and there will be an opportunity for anyone attending the meeting to ask questions. There will also be an opportunity for public participation during the group discussion.

This workshop is organized in four sessions and continues through June 17, 1998.

From 1:30 p.m. - 5:00 p.m.—Session I: Scientific justification and purposes for marine fishery reserves.

June 16, 1998, 5:00 p.m. to 6:00 p.m.—Personnel Committee (Closed Session):

The committee will discuss Council staff personnel issues and develop recommendations on necessary changes to the Council.

**June 16, 1998, 6:00 p.m.*—Public Hearings (Habitat Plan, Habitat Comprehensive Amendment, and Sustainable Fisheries Act Comprehensive Amendment)

*This hearing is noted in a separate **Federal Register** Notice, along with the rest of the public hearing schedule

June 17, 1998, 8:30 a.m. to 12:00 noon—Marine Reserves Workshop (continued):

Session II: Marine reserve criteria and direct experiences with reserve.

June 17, 1998, 1:30 p.m. to 4:30 p.m.—Marine Reserves Workshop (continued):

Session III: Effects of reserves and perspectives by various sectors;

Session IV: Group Discussion on draft marine reserves criteria and description of timeframe for Council action;

June 17, 1998, 4:30 p.m. to 6:30 p.m.—Advisory Panel Selection Committee (Closed Session):

The committee will review applications to Council advisory panels and develop recommendations foe appointments;

June 18, 1998, 8:30 a.m. to 10:30 a.m.—Golden Crab Committee and Advisory Panel:

The committee and advisory panel will hear a presentation of the assessment reports, hear the status of the 1997-98 Golden Crab Framework action and the technical change on degradable fasteners, and develop committee and advisory panel recommendations on 1998-99 framework measures;

June 18, 1998, 10:30 a.m. to 12:00 noon—1:30 p.m. to 2:30 p.m.-Dolphin/Wahoo Committee:

The committee will hear an overview of the dolphin workshop, review the dolphin/wahoo management options paper, hear the status of the Council's request to the Secretary to be designated lead Council for the management of dolphin and wahoo on the Atlantic coast, the Gulf of Mexico and the Caribbean, discuss interaction with other Councils concerning dolphin and wahoo management, and discuss and define the scope of management measures for dolphin and wahoo;

June 18, 1998, 2:30 p.m. to 3:30 p.m.—Bluefish Committee:

The committee will discuss the Bluefish Stock Assessment and develop committee recommendation on Amendment 1 to the Bluefish Plan.

June 18, 1998, 4:00 p.m. to 6:15 p.m.—Council Session.

From 4:15 p.m. - 5:15 p.m., the Council will hear the Mackerel Committee Report.

At 4:15, the Council will take public comment on TACs, bag limits and other framework actions, and on Amendment 9 to the Mackerel Fishery Management Plan (FMP) before setting the TACs and bag limits and taking action on other framework items as necessary, and approving Amendment 9 for submission to the Secretary.

From 5:15 p.m. - 5:45 p.m., the Council will hear the Golden Crab Committee Report.

At 5:15 p.m., the Council will take public comment on the 1998-99 Framework before approving measures in the framework for submission to the Secretary.

From 5:45 p.m. - 6:15 p.m., the Council will hear the Personnel Committee Report in closed session and take action as necessary on staff personnel issues.

June 19, 1998, 8:30 a.m. to 3:00 p.m.—Council Session;

From 8:30 a.m. - 9:00 a.m. the Council will hear the Advisory Panel Selection Committee report in closed session and select advisory panel members.

From 9:00 a.m. - 3:00 p.m., the Council will hear the Dolphin Committee Report and the Bluefish Committee Report before finalizing Council comments on Amendment 1 to the Bluefish FMP, hear a report of the Atlantic Coastal Cooperative Statistics Program and develop Council recommendations on the program, consider Florida's request for management authority of calico scallops, hear reports on the NMFS document review process, the status of fishery quotas, the status of nighttime shrimp closures, the status of the Snapper Grouper Amendment 8 final rule, the Snapper Grouper Amendment 9 interim rule request, and Snapper Grouper Amendment 9, hear reports on the Coast Guard Law Enforcement Workshop, the Billfish and Highly Migratory Species Advisory Panel meetings, and hear a presentation on cannonball jellyfish. The Council will also receive agency and liaison reports and discuss other business.

Although other issues not contained in this agenda may come before these groups for discussion, according to the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 8, 1998.

Dated: May 28, 1998.

Richard W. Surdi,

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

[FR Doc. 98–14740 Filed 5–29–98; 4:43 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052698D]

Endangered Species; Permits

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

ACTION: Receipt of application for a scientific research permit (1155); Issuance of scientific research permits (1092, 1124, 1127, 1132, 1134) and modifications to scientific research permits (822, 895, 946).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from Dr. Tim King, Supervisory Fishery Biologist of Leetown Science Center, USGS (LSC-USGS) (1155); NMFS has issued permits subject to certain conditions set forth therein, to: Sierra Pacific Industries (SPI) (1092), Idaho Department of Fish and Game at Boise, ID (IDFG) (1124), Shoshone-Bannock Tribes at Fort Hall, ID (SBT) (1127), Mr. S. Gordon Rogers, of Satilla Management Associates, Inc. (SMA) (1132), and the Columbia River Inter-Tribal Fish Commission at Portland, OR (CRITFC) (1134); and NMFS has issued permit modifications to: Fish Passage Center at Portland, OR (FPC) (822), U.S. Army Corps of Engineers at Walla Walla, WA (Corps) (895), and the Fish Ecology Division of the Northwest Fisheries Science Center, NMFS at Seattle, WA (NWFSC) (946).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before July 6, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permit 822, 895, 946, 1124, 1127, and 1134: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

For permit 1092: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

For permit 1132: Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

For permit 1155: Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Glouster, MA, 01930–2298 (978–281–9250).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permit 822, 895, 946, 1124, and 1127: Robert Koch, Portland, OR (503–230–5424).

For permit 1092: Thomas Hablett, Protected Resources Division, (707–575–6066).

For permits 1132 and 1155: Terri Jordan, Endangered Species Division, Office of Protected Resources, (301–713–1401).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of these permits and modifications as required by the ESA, was based on a finding that such permits, modifications, and amendments (1) were applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits, modifications, and amendments were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in This Notice

The following species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Coho salmon (*Oncorhynchus kisutch*), Shortnose sturgeon (*Acipenser brevirostrum*), Sockeye salmon (*Oncorhynchus nerka*) and Steelhead trout (*Oncorhynchus mykiss*).

New Application Received

LSC-USGS (1155) requests a 5 year permit to possess 90 samples of shortnose sturgeon DNA obtained from Dr. Isaac Wirgin (Permit #1107) for analysis of microsatellite DNA variation collected from three geographic populations of the species. Microsatellite analysis will be performed by polymerase chain reaction (PCR). The genetic analysis will help determine the presence of a reproducing shortnose sturgeon population in the Chesapeake Bay. The genetic analysis is part of a larger project (Permit #1051) being undertaken by the US Fish and Wildlife Service, National Marine Fisheries Service, Maryland Department of Natural Resources, US Army Corps of Engineers, US Geological Survey and State University of New York entitled ''Determination of whether a resident shortnose sturgeon population exists in Chesapeake Bay and assessment of sturgeon use of proposed dredged material placement sites''. Knowledge of this population and its relationship to other geographic populations will aid in development of conservation plans.

Permits and Modifications Issued

Notice was published on March 6, 1998 (63 FR 11221), that an application had been filed by FPC for modification 5 to scientific research permit 822. Modification 5 to permit 822 was issued to FPC on May 26, 1998. Permit 822 authorizes FPC annual takes of juvenile, endangered, Snake River sockeye salmon; juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; and juvenile, threatened, Snake River fall chinook salmon associated with the Smolt Monitoring Program (SMP). The objective of the SMP is to generate information on the migrational characteristics of various salmon and steelhead stocks in the Columbia River Basin and to provide advice on the implementation of flow and spill measures to improve fish passage conditions in the Snake and Columbia Rivers. For modification 5, FPC is authorized annual takes of juvenile, endangered, naturally produced and artificially propagated, upper Columbia River (UCR) steelhead associated with the SMP. Modification 5 is valid for the duration of the permit. Permit 822 expires on December 31, 1998.

Notice was published on February 24, 1998 (63 FR 9204), that an application had been filed by the Corps for modification 4 to enhancement permit 895. Modification 4 to permit 895 was issued to the Corps on May 26, 1998. Permit 895 authorizes the Corps annual

takes of juvenile, endangered, Snake River sockeye salmon and juvenile, threatened, Snake River spring/summer and fall chinook salmon associated with the transport of fish around mainstem dams and downstream reservoirs on the Snake and Columbia Rivers. The purpose of the fish transportation program is to increase anadromous fish survival over the alternative of in-river passage, given current in-river migratory conditions. Permit 895 also authorizes the Corps annual incidental takes of ESA-listed adult fish associated with the operation of the juvenile fish transportation facilities. For modification 4, the Corps is authorized an annual direct take of juvenile, endangered, naturally produced and artificially propagated UCR steelhead associated with the juvenile fish transportation program. Also for modification 4, the Corps is authorized an annual incidental take of adult, endangered, UCR steelhead associated with fallbacks through hydropower dam juvenile bypass systems. Indirect and incidental mortalities of ESA-listed steelhead are authorized. Permit 895 is also extended through December 31, 1999. Modification 4 is valid for the duration of the permit.

Notice was published on March 24, 1998 (63 FR 14069), that an application had been filed by NWFSC for modification 4 to scientific research permit 946. Modification 4 to permit 946 was issued to NWFSC on May 19, 1998. Permit 946 authorizes NWFSC annual takes of juvenile, endangered, Snake River sockeye salmon; adult and juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; and juvenile, threatened, Snake River fall chinook salmon associated with two scientific research studies. The studies are designed to assess the migration timing and relative survival of chinook salmon smolts transported by barge to below Bonneville Dam on the Columbia River with the survival to adulthood of smolts migrating volitionally inriver to Bonneville Dam and to the mouth of the Columbia River. For modification 4, NWFSC is authorized an increase in the takes of ESA-listed juvenile fish associated with the studies. Also for modification 4, NWFSC is authorized an annual take of juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with one of the studies. Modification 4 is valid for the duration of the permit. Permit 946 expires on December 31, 1999.

Notice was published on January 13, 1998 (63 FR 2364), that an application had been filed by SPI for a scientific research permit. Permit 1092 was issued to SPI on May 26, 1998. Permit 1092 authorizes takes of juvenile, threatened, southern Oregon/northern California coastal coho salmon associated with fish population and habitat studies within the California portion of the evolutionarily significant unit. ESA-listed fish will be captured, handled, and released. Indirect mortalities associated with the research are also authorized. Permit 1092 expires on June 30, 2003.

Notice was published on February 19, 1998 (63 FR 8435), that an application had been filed by IDFG for a scientific research permit. Permit 1124 was issued to IDFG on May 19, 1998. Permit 1124 authorizes IDFG annual takes of adult and juvenile, endangered, Snake River sockeye salmon; adult and juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; and juvenile, threatened, Snake River fall chinook salmon associated with seven research tasks: (1) General fish population inventory; (2) Spring/summer chinook salmon natural production monitoring and evaluation; (3) Spring/summer chinook salmon supplementation research; (4) Redfish Lake, Pettit Lake, Alturas Lake kokanee/sockeye research; (5) Salmon and steelhead fish health monitoring; (6) Steelhead natural production monitoring and evaluation; and (7) Steelhead supplementation research. Permit 1124 expires on December 31, 2002.

Notice was published on February 19, 1998 (63 FR 8435), that an application had been filed by SBT for a scientific research permit. Permit 1127 was issued to SBT on May 19, 1998. Permit 1127 authorizes SBT annual takes of adult and juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon associated with scientific research conducted throughout the Salmon River Basin in the state of ID. SBT will conduct six research tasks: (1) Snorkel surveys; (2) spawning ground surveys; (3) juvenile chinook salmon outmigrant monitoring in the East Fork and the West Fork Yankee Fork using a rotary screw trap and passive integrated transponder tags; (4) juvenile fish migration timing and movement at the Yankee Fork using fyke nets; (5) juvenile chinook salmon and steelhead abundance and condition factor estimates at the Yankee Fork using seines and electrofishing; and (6) juvenile chinook salmon parr monitoring. Permit 1127 expires on December 31, 2002.

Notice was published on Febrary 25, 1998 (63 FR 9505), that an application had been filed by SMA, for a scientific research permit. Permit 1132 was issued to SMA on May 27, 1998. Permit 1132 authorizes the take of a maximum of 40 shortnose sturgeon from the Ogeechee (10) and Altamaha (30) rivers in Georgia to collect tissue samples of shortnose sturgeon in these rivers for genetic analysis in conjunction with previously permitted researchers. The sturgeon will be examined, measured, photographed, and tagged with conventional and PIT tags. Tissue samples will be taken from the right pectoral spine. The sturgeon will be released immediately following the above procedure. Permit 1132 expires on May 31, 2000.

Notice was published on March 2, 1998 (63 FR 10198), that an application had been filed by CRITFC for a scientific research permit. Permit 1134 was issued to CRITFC on May 27, 1998. Permit 1134 authorizes CRITFC annual takes of juvenile, endangered, Snake River sockeye salmon; adult and juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; adult and juvenile, threatened, Snake River fall chinook salmon; and adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with scientific research in the Columbia and Snake River Basins in the Pacific Northwest. CRITFC will conduct eight research tasks: (1) Juvenile chinook salmon, steelhead, and coho salmon surveys; (2) juvenile anadromous salmonid outmigration studies; (3) chinook salmon and steelhead escapement surveys; (4) scale sampling at Bonneville Dam; (5) cryopreservation of chinook salmon and steelhead gametes; (6) gas bubble trauma sampling; (7) subyearling fall chinook salmon research; and (8) westslope cutthroat trout genetic inventory. Permit 1134 expires on December 31, 2002.

Dated: May 29, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–14738 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052298C]

Marine Mammals; File No. 782–1447

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Douglas P. DeMaster, Ph.D., Director, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070, has been issued a permit to take Steller sea lions, *Eumetopias jubatus*, and northern fur seals, *Callorhinus ursinus*, for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070; and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 18, 1998, notice was published in the **Federal Register** (63 FR 13228) that a request for a scientific research permit to take Steller sea lions and northern fur seals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 28, 1998.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–14734 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052698B]

Marine Mammals; File No. 455–1445

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Bruce Carlson, Director, Waikiki Aquarium, 2777 Kalakaua Avenue, Honolulu, HI 96815, has been issued a permit to take Hawaiian monk seals, *Monachus schauinslandi*, for purposes of scientific research and enhancement.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; and

Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 18, 1998, notice was published in the **Federal Register** (63 FR 13228) that a request for a scientific research permit to take Hawaiian monk seals, *Monachus schauinslandi*, had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for a good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 28, 1998.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–14744 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052298B]

Marine Mammals; P66J

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 Alaska Department of Fish and Game, has requested an amendment to scientific research Permit No. 965.

DATES: Written or telefaxed comments must be received on or before July 6, 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); and

Alaska Region, NMFS, P.O. 21668, Juneau, AK 99802–1668 (907/586–7221).

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 13130, 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: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 965, issued on June 19, 1995 (60 FR 34233) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit no. 965 authorizes the permit holder to: to take a maximum of 150 Steller sea lions (*Eumetopias jubatus*) by trapping, darting, sampling, and gas anesthesia (including a maximum of 20 by recapture for follow-up blood sampling and removal of instruments); a maximum of 400 Steller pups over 6 months old by hand capture, gas anesthesia, and marking; a maximum of 10,000 Stellers by harassment during the course of capturing suitable animals; a maximum of 15 Stellers by unintentional mortality during the course of capture and chemical immobilization and salvaged specimens of stranded animals, premature pups, and mortalities associated with this and other research activities. The holder is also authorized to take up to 30 rehabilitated California sea lions (*Zalophus californianus*) by injection with experimental immobilization drugs and a maximum of 3 for unintentional mortality. All takes will be over a 5-year period.

The permit holder requests an amendment to the permit to take an additional 25 juvenile Stellers to adequately describe the basic life history and ecology of this age class.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 28, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–14745 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 28, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Upon a request from the Government of the Dominican Republic, the U.S. Government agreed to increase the current guaranteed access levels for certain textile products.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67622, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 28, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on June 3, 1998, you are directed to increase the guaranteed access levels for the following categories:

Category	Guaranteed access level
338/638	5,150,000 dozen.
339/639	3,150,000 dozen.
443	90,000 numbers.
633	140,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–14680 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

May 28, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Upon a request from the Government of Jamaica, the U.S. Government agreed to increase the current guaranteed access levels for certain textile products.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 63522, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 28, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 24, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textile products, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on June 3, 1998, you are directed to increase the guaranteed access levels for the following categories:

Category	Guaranteed access level
338/339/638/639	4,500,000 dozen.
352/652	13,000,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–14679 Filed 6–2–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of submission of information collection No. 3038–0025, practice by former members and employees of the Commission.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038–0025, Practice by Former Members and Employees of the Commission, to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The information collected pursuant to 17 CFR 140.735–6 is designed to keep the Commission aware of any conflicts of interest that may exist, and to ensure compliance with the requirements of 18 U.S.C. 207 concerning restrictions in this regard placed upon certain former federal officers and employees.

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Persons wishing to comment on this information collection should contact The Desk Officer, CFTC, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the submission are available from the Agency Clearance Officer, (202) 418–5160.

Title: Practice by Former Members and Employees of the Commission.

Control Number: 3038–0025.

Action: Extension.

Respondents: Former Commission Members and Employees.

Estimated Annual burden: .45 hours.

Respondents		Estimated number of respondents	Annual responses	Est. avg. hours per responses
Former Commission member and employees	.....	3	1.5	.10

Issued in Washington, DC, on May 28, 1998.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 98–14606 Filed 6–2–98; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the ''Corporation'') , has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, NCCC Selection and Placement Officer, Attn: Ms. Heather Davenport, (202) 606–5000, Extension 496. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C., 20503. (202) 395–7316, by July 6, 1998.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Applicant Medical Prescreening Form.

OMB Number: 3045–0025.

Frequency: One time per selected applicant.

Affected Public: 18—24 year old AmeriCorps*NCCC applicants.

Number of Respondents: Approximately 2,500.

Estimated Time Per Respondent: .5 hrs.

Total Burden Hours: 1,250 hrs.

Total Annualized capital/startup costs: 0.

Total Annual Cost (operating/maintaining systems or purchasing services): 0.

Description: The Corporation seeks to renew the revised Applicant Medical Prescreening Form. This form is utilized by the AmeriCorps*NCCC medical consultant in determining whether applicants will need special accommodation and if so, whether these accommodations, if available, will be sufficient to enable a participant to perform the essential functions of an NCCC Corps Member.

Dated: May 29, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–14731 Filed 6–2–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Technology Reinvestment Project (TRP) Review Project; OMB Number 0704–[to be determined].

Type of Request: New Collection.

Number of Respondents: 140.

Responses per Respondent: 1.

Annual Responses: 140.

Average Burden per Response: 2 hours.

Annual Burden Hours: 280.

Needs and Uses: The Technology Reinvestment Project (TRP) is no longer receiving Federal funding, but new initiatives have begun to broaden and normalize the application of dual-use technologies and products. As part of its support of these initiatives, the Defense Advanced Research Projects Agency (DARPA) is sponsoring this review project to quantitatively express the status and performance of the TRP projects and to document lessons learned. This review will also provide an opportunity to present TRP products and technologies to the Services for adoption. The information collected will be used by DARPA's Joint Dual Use Program Office (JDUPO) and the Office of the Secretary of Defense (OSD) to define and document the status of each TRP project and to derive performance metrics suitable for the Government Performance and Results Act (GPRA). TRP project successes and failures and lessons learned from the TRP will be compiled from the information gathered as well as materials for education and training. Because the TRP projects are nearing completion, this data must be collected now or it will become nearly impossible to access. If that happens, the opportunity will be lost to assess the benefits of the TRP and to learn lessons that will help to expand dual-use and embed it into the Military Services. Respondents will be the TRP consortia: for-profit businesses, defense contractors, and universities.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 28, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–14698 Filed 6–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:

DATES: 2 June 1998 (800 am to 1600 pm).

ADDRESSES: The Missile & Space Intelligence Center, Redstone-Arsenal, AL 35898–5500.

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advised the Director, DIA, on related scientific and technical matters.

Dated: May 27, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–14694 Filed 6–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 11 June 1998 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: May 27, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 98–14695 Filed 6–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board as been scheduled as follows:

DATES: 12 June 1998 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: May 27, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–14696 Filed 6–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, As amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:

DATES: 3–4 June 1998 (800am to 1600pm).

ADDRESSES: The Missile & Space Intelligence Center, Redstone-Arsenal, AL 35898–5500.

FOR FURTHER INFORMATION CONTACT: Maj. Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advised the Director, DIA, on related scientific and technical matters.

Dated: May 27, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–14697 Filed 6–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision For The Disposal and Reuse of Naval Station Long Beach and Long Beach Naval Shipyard, Long Beach, California

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C), and the regulations of the Council on Environmental Quality that implement NEPA, 40 CFR Parts 1500–1508, hereby announces its decision to dispose of Naval Station Long Beach and Long Beach Naval Shipyard in Long Beach, California.

This disposal decision does not apply to the Navy Fuel Depot, which Navy will retain and operate, or to property that will revert to the City of Long Beach in accordance with the judgment of the United States District Court for the Southern District of California in *United States of America* v. *1,039 Acres of Land*, Civil No. 63–1204 HW (S.D. Cal. 1963).

Navy intends to dispose of the Naval Station and the Naval Shipyard property in a manner that is consistent with the Redevelopment Plan for Reuse of Surplus Naval Property, dated July 1995, the Redevelopment Plan for Reuse of Surplus Naval Property, dated December 1995, and the Long Beach Naval Shipyard Comprehensive Reuse Plan, dated July 1996. The City of Long Beach (City), the Local Redevelopment Authority (LRA) for both installations, prepared and approved these three reuse plans.

The LRA Reuse Alternative, identified in the Final Environmental Impact Statement/Environmental Impact Report (FEIS/EIR) as the Preferred Reuse Alternative, reflects the City's three reuse plans and proposes to use the Navy property as a marine container terminal facility with an intermodal railyard, a ship repair facility at Drydock 1, a liquid bulk terminal, breakbulk and neobulk terminals, a Sea Launch facility, an oil production relocation area, and a roadway network. Under this alternative, the City of Long Beach would use Building 300 and the surrounding Naval Shipyard property to relocate the City's police headquarters and police training academy.

In deciding to dispose of the Naval Station and the Naval Shipyard in a manner consistent with the LRA's reuse plans, Navy has determined that the LRA Reuse Alternative will meet the goals of achieving local economic redevelopment and creating new jobs, while ensuring land uses that are generally compatible with adjacent property. This Record Of Decision does not mandate specific land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entity and the local land use planning authority.

Navy and the City analyzed the impacts of the disposal and reuse of these properties in a Joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR), as required by NEPA and the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code, § 21000, *et seq.*, as amended. For purposes of the analysis required by CEQA, the Joint EIS/EIR serves as an EIR for reuse of the Naval Shipyard and a Subsequent EIR for reuse of the Naval Station.

Background

The Naval Station and the Naval Shipyard are bounded on the north and east by the Port of Long Beach (Port), on the west by the Port of Los Angeles, and on the south by San Pedro Bay. The Naval Station is composed of the Station proper, the Navy Mole, Site 6A in Long Beach (6A–LB), Site 6A in Los Angeles (6A–LA), part of the West Basin, and the Taper Avenue, Savannah and Cabrillo housing areas. The Naval Shipyard is

composed of the Shipyard proper, the remainder of the West Basin, Site 6B, the water tank parcel, and the San Pedro, Palos Verdes, Whites Point, and Los Alamitos housing areas. With the exception of the housing areas, all of these properties are located on Terminal Island.

This Record of Decision addresses the disposal and reuse of the surplus Navy property on Terminal Island that lies within the corporate limits of the City of Long Beach. This property covers 1,140 acres and contains about 225 buildings and support structures. It includes administrative offices, warehouses, industrial space, an Officers' Club, a medical clinic, a chapel, 11 piers, three drydocks, a heliport, and recreational facilities. The area known as the Roosevelt Base Historic District is located on the Naval Station.

Although located on Terminal Island, Site 6A–LA, Site 6B, the water tank parcel, and a sliver of the Navy Mole lie within the City of Los Angeles, which is the LRA for these properties. Consequently, Navy treated these properties separately when it evaluated the impacts of disposal and reuse.

None of the associated housing area is located on Terminal Island. The Taper Avenue, San Pedro, Palos Verdes, and Whites Point housing properties are located within the City of Los Angeles. The Los Alamitos housing property is located within the City of Los Alamitos. The Savannah and Cabrillo housing properties are located in the western part of the City of Long Beach. As a result of their physical separation and functionally independent uses, the impacts of disposal and reuse of the housing properties are being addressed in separate environmental documents.

In accordance with the judgment in *United States of America* v. *1,039 Acres of Land*, Civil No. 63–1204 HW (S.D. Cal. 1963), 602 acres of the West Basin and 84 acres Known as Navy Pier E in the Naval Shipyard will revert to the City. Navy has no discretion regarding the disposal of reversionary property, nor any authority to control its use following reversion. Therefore, in this Record of Decision, the Federal action is the disposal of 454 acres of nonreversionary Naval Station and Naval Shipyard property.

Under the authority of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, 10 U.S.C. § 2687 note, the 1991 Defense Base Closure and Realignment Commission recommended the closure of Naval Station Long Beach. This recommendation was approved by President Bush and accepted by the One Hundred Second Congress later in 1991. While Navy ceased operating most of the Naval Station on Station on September 30, 1994, part of the Naval Station remained open to support activities at the still active Naval Shipyard. Navy declared the Naval Station property surplus to the needs of the Federal Government in September 1995.

On July 1, 1995, the 1995 Defense Base Closure and Realignment Commission recommended by closure of Long Beach Naval Shipyard. This recommendation was approved by President Clinton and accepted by the One Hundred Fourth Congress later in 1995. The mission of the Naval Shipyard ceased in 1996, and Navy closed the remaining Naval Station facilities that had supported the Naval Shipyard on September 30, 1996. Navy closed Long Beach Naval Shipyard on September 30, 1997. Navy declared the Naval Shipyard surplus to the needs of the Federal Government in August 1997.

In 1992, the City of Long Beach formed the Naval Properties Reuse Committee (NPRC) to conduct background briefings, fact-finding visits, and public meetings and to solicit requests for redevelopment concepts in the event that the Naval Station property became available. On July 27, 1993, the City accepted and endorsed a plan prepared by NPRC to use the Naval Station property to expand the Port of Long Beach's capacity to handle cargo.

In 1994, Navy determined that the Navy Mole, Site 6A–LB, and an access corridor to Ocean Boulevard were not needed to support operations at the Naval Shipyard and would be available for reuse. On July 18, 1995, the City approved the reuse plan for these parcels that had been prepared by NPRC. This reuse plan recommended that the Port of Long Beach use the Navy Mole and the access corridor for cargo handling activities. The plan also proposed to use Site 6A–LB as a multipurpose center managed by homeless assistance providers.

Navy declared the Mole, Site 6A–LB, and the access corridor surplus to the needs of the Federal Government on September 8, 1995. Navy declared the remaining 70 acres of the Naval Station surplus to the needs of the Federal Government on September 28, 1995. The Department of Defense's Office of Economic Adjustment (OEA) designated the City of Long Beach as the LRA for the Naval Station on May 30, 1995. On December 12, 1995, the LRA approved NPRC's recommendation to use this 70 acres of Naval Station property as a marine container terminal facility.

In 1995, the City established the Shipyard Reuse Advisory Committee (SRAC) to prepare a reuse plan for Long Beach Naval Shipyard. In order to meet the projected demand for expanded port facilities and to satisfy the need for new police facilities, the City expanded its reuse planning to include land adjacent to the Naval Shipyard that was owned by the Port of Long Beach.

The Office of Economic Adjustment designated the City of Long Beach as the LRA for the Naval Shipyard on March 1, 1996. The reuse plan prepared by SRAC and approved by the City in July 1996, proposed to include on Shipyard property a marine container terminal facility, a ship repair facility, a liquid bulk terminal, expanded breakbulk and neobulk terminal facilities, and a police headquarters and police training academy. Navy declared the Naval Shipyard property surplus in August 1997.

Navy published a Notice Of Intent in the Federal Register on October 30, 1995, announcing that Navy would prepare an EIS to analyze the impacts of disposal and reuse of the land, buildings, and infrastructure at Naval Station Long Beach. In 1996, the City, through its Harbor Department, prepared an EIR for reuse of the Naval Station. On September 3, 1996, the City of Long Beach's Board of Harbor Commissioners certified the EIR.

On September 30, 1996, Navy also published a Notice of Intent to prepare an EIS for the disposal and reuse of Long Beach Naval Shipyard. On November 1, 1996, the City, through its Harbor Department, published a Notice of Preparation of an EIR for the proposed redevelopment of the Naval Shipyard.

Navy and the City reevaluated their decisions to prepare separate environmental documents for disposal and reuse of the two properties and determined for several reasons that they would address disposal and reuse of the Naval Station and the Naval Shipyard in a single environmental document. The proposed disposal and reuse actions for both properties would occur in the same general time frame. The City's proposed reuse plans for each property were generally similar, and the possibility existed that a combined analysis could identify alternatives or mitigation measures that would reduce impacts to the Roosevelt Base Historic District as well as other potential environmental impacts.

Navy published a Notice of Intent in the **Federal Register** on July 21, 1997, announcing that Navy and the City of Long Beach would prepare a Joint EIS/EIR for the disposal and reuse of the

Naval Station and the Naval Shipyard. Navy and the City held a public scoping meeting at the City Council Chambers on August 20, 1997, and the scoping process concluded on September 3, 1997.

Navy and the City distributed a Draft EIS/EIR to Federal, State, and local agencies, elected officials, and interested persons on December 19, 1997, and commenced a 45-day public review and comment period. Navy and the City held a public hearing to receive comments on the Draft EIS/EIR on January 14, 1998, at the Convention Center in Long Beach. During the forty-five day public review period, Federal, State, and local agencies, community groups and associations, and the general public submitted oral and written comments concerning the Draft EIS/EIR.

The responses of Navy and the City to all public comments received during this review period were incorporated in the Final EIS/EIR. Navy and the City distributed the Final EIS/EIR to the public on April 10, 1998, for a thirty-day review period that concluded on May 11, 1998. Navy received 72 letters concerning the Final EIS/EIR.

Alternatives

NEPA required Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this Federal property. Navy analyzed the environmental impacts of two disposal alternatives for the Naval Station and Naval Shipyard property: (1) disposal of the 454 acres of nonreversionary Navy property and (2) ''No action''. Other than for the Navy Mole, which is currently under lease, the ''No action'' alternative would leave the Navy property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

The City evaluated three reuse alternatives. These alternatives were developed by the LRA's reuse planning process and Navy's Historic Properties Adaptive Use Feasibility Study of the Roosevelt Base Historic District (AUFS). These three alternatives were (1) the LRA Reuse Alternative, (2) the Auto Terminal Alternative, and (3) the Institutional Campus Alternative.

The LRA Reuse Alternative, identified in the EIS/EIR as the Preferred Reuse Alternative, proposes to develop a 327-acre marine container terminal and intermodal railyard facility on the Naval Station and Naval Shipyard properties; an 18-acre ship repair facility centered around Drydock 1 on the Naval Shipyard; a 42-acre oil production relocation area on Port property; an 87-acre breakbulk and neobulk terminal with 61 acres on Port property and 26 acres on the Navy Mole; a 17-acre Sea Launch facility on the Navy Mole; a 15-acre police headquarters and police training academy at Shipyard Building 300; 46 acres for port-related facilities on the Navy Mole; and 18 acres for roads on the Navy Mole.

In order to accommodate the deep draft container vessels that would call at the marine container terminal facility, approximately 6.6 million cubic yards of sediment would be dredged from the West Basin. An additional 1.6 million cubic yards of sediment would be dredged to accommodate ships using the liquid bulk cargo terminal.

All existing structures within the proposed marine container terminal facility area, including all of the Roosevelt Base Historic District on the Naval Station, would be demolished. Some buildings and structures on the Navy Mole and in the Naval Shipyard would be renovated, refurbished, and reused where feasible.

The Auto Terminal Alternative proposes to use 86 acres at the marine container terminal facility area for a 78-acre automobile terminal and an 8-acre Naval museum centered around Building 1, the Naval Station Headquarters. All other uses and areas would remain the same as in the LRA Reuse Alternative. The Auto Terminal alternative would reuse most of the buildings within the Roosevelt Base Historic District.

The Auto Terminal Alternative would require the dredging of about 7.4 million cubic yards of sediments from the West Basin. Of this total, 2.8 million cubic years of sediments would be removed to accommodate the auto terminal; 3.0 million cubic yards of sediments would be removed to accommodate the marine container terminal facility; and 1.6 million cubic yards of sediments would be removed to accommodate the liquid bulk terminal.

The Institutional Campus Alternative proposes to use 37 acres at the marine container terminal facility area for a police headquarters and police training academy, Port administration offices, fire department offices, and a Naval museum located within the Roosevelt Base Historic District. This alternative also proposes to develop a 268-acre marine container terminal facility and a 91-acre ship repair facility. All other uses would remain the same as in the LRA Reuse Alternative.

Most of the buildings and structures within the Roosevelt Base Historic District would be reused in the Institutional Campus Alternative. About 4.8 million cubic yards of sediments would be dredged from the West Basin to accommodate the marine container terminal facility.

Environmental Impacts

Navy analyzed the direct, indirect, and cumulative impacts of disposal and reuse of this Federal property on land use, socioeconomics, utilities, historic and archaeological resources, aesthetics, biological resources, topography, soils and geology, hydrology and water quality, generation of hazardous materials and environmental contamination, public health and safety, traffic and transportation, air quality, noise and vibration, low-income and minority populations, and children.

The direct environmental impacts are those associated with Navy's proposed disposal of 454 acres of nonreversionary Navy property and with the ''No action'' alternative. The indirect impacts are those associated with reuse of nonreversionary Navy property. The cumulative impacts include those associated with redevelopment of the reversionary Navy property (686 acres) and the adjacent Port of Long Beach property discussed in the LRA reuse plans (89 acres), as well as other projects within the immediate area.

With the exception of the impact on historical and archaeological resources, no significant direct impacts will result from Navy's disposal of Navy property. Therefore, this Record of Decision will focus on the indirect and cumulative impacts that are likely to result from the City's implementation of the LRA Reuse Alternative that was designated as the Preferred Alternative.

The LRA Reuse Alternative will have significant impacts on land use. All of the proposed uses are compatible with existing land use policies and the use of adjacent land, except for the policy headquarters and policy training academy. This use is not compatible with surrounding land use, the City of Long Beach General Plan, the Long Beach zoning ordinance, the Port of Long Beach Port Master Plan, and the California Coastal Act.

While disposal of the Naval Station and the Naval Shipyard will not have an effect on California coastal resources, it will be necessary for the Port of Long Beach to obtain coastal development permits from the California Coastal Commission before redeveloping the Naval Shipyard and surrounding Port properties. Because they are not port-related uses, the proposed police headquarters and police training academy are not consistent with the California Coastal Act and the Port of Long Beach Port Master Plan and may constitute an unmitigable impact on these policies.

The LRA Reuse Alternative will not result in any significant adverse socioeconomic impacts. This alternative will likely generate 1,046 direct jobs and 2,017 direct and indirect jobs in Los Angeles County and Orange County. Although the July 1995 reuse plan for the Naval Station includes a homeless service center on Site 6A, traffic mitigation measures for the marine container terminal facility will require relocation of that center with a resultant potential impact on homeless assistance services. To mitigate such a loss, the Port has acquired property for a homeless assistance facility and will provide funding to renovate the property.

The LRA Reuse Alternative will not result in any significant impacts on utilities or utility systems, because the intensity of land use will decrease and the number of people working at the facilities will be less than when the Naval Station and the Naval Shipyard were operational.

The demolition of many structures will generate debris that must be transferred to landfills. Although the volume of such waste will not be significant in terms of landfill capacity, landfill capacity is not unlimited and additional demand for these facilities has a potentially significant effect. To mitigate this impact, implementation of the LRA Reuse Alternative will be designed to comply with the City's existing program to reduce solid waste pursuant to the California Solid Waste Reuse and Recycling Access Act of 1991, Cal. Pub. Res. Code, § 42900, *et seq.*

The LRA Reuse Alternative's proposed use of the Naval Station will have a significant impact on historical and cultural resources for three reasons. First, the transfer of the Roosevelt Base Historic District from Federal ownership is considered an adverse effect under 36 C.F.R. § 800.9(b), because it will decrease the protection afforded by the National Historic Preservation Act, 16 U.S.C. § 470, *et seq.* (NHPA). Second, the LRA Reuse Alternative proposes to demolish the Roosevelt Base Historic District to allow construction of the marine container terminal facility. Third, although the likelihood of encountering archeological resources is minimal, disturbances and modifications to the ground surface may have an adverse effect on potential archeological resources.

In accordance with Section 106 of NHPA, Navy consulted with the California State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation, and several interested parties concerning ways to avoid and mitigate adverse impacts to the Roosevelt Base Historic District resulting from Federal disposal of the Naval Station and the LRA's proposed reuse. This consultation concluded on January 27, 1998, with a Memorandum Of Agreement (MOA) that defined the mitigation measures that shall be implemented before the Naval Station is conveyed and before any demolition of the Roosevelt Base Historic District may occur.

Navy shall ensure that the Historic American Building Survey (HABS) documentation is made available to the SHPO and to any archive designated by the SHPO. The Port of Long Beach shall prepare a written curation plan; develop a professional quality story board exhibit; determine the feasibility of conducting an open house and tour of the Roosevelt Base Historic District; prepare a professional quality documentary film about the history of the Navy in Long Beach and conduct an outreach program to make the film available to the public; prepare a plan for the salvage and reuse of architectural and landscape elements; and deposit $4,500,000 in the Long Beach Heritage Fund for the express purpose of fostering and supporting the identification, evaluation, preservation, rehabilitation, restoration and interpretation of historical resources within the municipal boundaries of the City of Long Beach.

The MOA also requires that, in the unlikely event that unidentified cultural material is encountered during demolition or other ground disturbing activities, work will be temporarily halted until a qualified archeologist can evaluate the importance of the find and appropriate consultation has been conducted. Implementation of these mitigation measures will not, however, reduce the impacts to a less than significant level, because the entire Roosevelt Base Historic District will be demolished under the LRA Reuse Alternative.

The LRA Reuse Alternative will not have a significant adverse impact on aesthetics. The proposed reuse is consistent with the existing industrial character of Terminal Island and the surrounding port area.

The LRA Reuse Alternative will not have significant adverse impacts on the California brown pelican and the California least tern, two Federally endangered species listed under the Federal Endangered Species Act of 1973, 16 U.S.C. § 1531, *et seq.* The proposed dredging for the marine container terminal facility, however, would eliminate 26 acres of shallow water habitat in the West Basin that may be used by the Terminal Island least tern colony.

Thus, Navy and the Port of Long Beach conducted an informal consultation with the Department of the Interior's U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act to identify mitigation measures that would respond to these impacts. As a result, the Fish and Wildlife Service concurred with the Port's proposal to create a shallow water habitat area in a sheltered and relatively secluded triangular area east of the Pier 400 causeway and southwest of the Navy Mole.

The LRA Reuse Alternative will have a significant adverse impact on the black-crowned night heron rookery that occupies the large ornamental focus trees on the Naval Station. These trees would be removed to build the marine container terminal facility. Black-crowned night herons are protected by the Migratory Bird Treaty Act of 1918, 16 U.S.C. § 703, *et seq.*, and have been classified by the California Department of Fish and Game as a ''California Special Animal''. Consequently, their rookeries are considered sensitive resources in southern California.

The Port of Long Beach and USFWS discussed mitigation that would respond to the loss of these trees. The Port proposes to relocate the colony to Gull Park at the eastern end of the Navy Mole. This relocation will be accomplished by removing about 30 nesting trees from the Naval Station and replanting them at Gull Park with 20 additional new ficus trees. The relocated trees and the new trees will be planted among the existing trees at Gull Park to develop an interlocking canopy favored by the herons. Additionally, salvaged nests, artificial nests, decoys, and recorded calls will be used to attract herons to the new site. These mitigation measures will reduce the impacts below the significant level. If the relocation is not successful, the Port will prepare and implement a contingency plan that would expand and enhance rookeries elsewhere in southern California.

The LRA Reuse Alternative will not have any significant adverse environmental impacts on topography, soils, or geology. Similarly, the LRA Reuse Alternative will not have any significant adverse environmental impacts on hydrology or water quality.

The generation of hazardous materials and environmental contaminants under the LRA Reuse Alternative will not have any significant adverse impacts. Although no mitigation is required, the Port of Long Beach will continue to work closely with the U.S. Army Corps of Engineers and the Los Angeles

Regional Water Quality Control Board to develop appropriate control measures that will minimize the transmission of contaminated sediments in the West Basin during dredging. The standard control measures that are part of any dredging plans or permits issued by the regulatory agencies will precluded hydraulic dredging of contaminated sediments; require the use of silt curtains during dredging and disposal of highly contaminated sediments; and require frequent sampling of the West Basin to ascertain the presence of potential contaminants.

The LRA Reuse Alternative will have certain significant unmitigable adverse impacts on public health and safety. During construction of the intermodal railyard on the Navy Mole, workers will be present within the explosive arc associated with the Navy Fuel Depot. Construction of the ship repair facility and the police headquarters and police training academy on the Naval Shipyard will require workers to be present within the explosive arc associated with the existing liquid bulk terminal on the Port of Long Beach's property at Pier T and the radiant heat arc of Southern California Edison's (SCE) fuel tank farm. Although the Port of Long Beach will train and inform workers about potential hazards and evacuation plans, the significance of these impacts cannot be reduced.

Similarly, locating the police headquarters and training academy and the ship repair facility within the radiant heat arc of the existing SCE fuel tank farm and within the explosive arc of the proposed expansion of the existing liquid bulk terminal could have unavoidable significant adverse impacts on the health and safety of employees and visitors at these facilities. Additionally, the location of these facilities is inconsistent with existing hazard footprints and thus contrary to the Port of Long Beach's Risk Management Plan that discourages the siting of habitable buildings and uses within known hazard footprints.

The LRA Reuse Alternative will not cause significant adverse impacts on traffic and transportation. Implementation of this alternative will generate about 14,880 average daily trips, compared with 62,580 such trips when the Naval Station and the Naval Shipyard were open in 1990. Operation of the marine container terminal facility will increase train movement by an additional 27 trains per week, creating significant vehicular delays where there are at-grade railroad crossings. However, the fact that the Alameda Corridor project will be completed before the LRA Reuse Alternative is fully operational will mitigate the impact on these vehicles.

The Alameda Corridor is a 20-mile railway improvement project that separates rail traffic from vehicular traffic at roadway intersections from the Port of Los Angeles and the Port of Long Beach to the downtown Los Angeles railyards. This corridor will reduce rail traffic on the existing major rail lines and reduce traffic-related delay, disruption, and train noise.

The LRA Reuse Alternative will cause of significant adverse impacts on air quality. Although the net operational emissions of Nitrogen oxides (No_x) and particulate matter (PM_{10}) will exceed South Coast Air Quality Management District thresholds, redevelopment of the Naval Station and the Naval Shipyard was incorporated in the 1994 and 1997 State Implementation Plans in terms of projected emissions and transportation control measures.

Section 176 of the Clean Air Act, 42 U.S.C. § 7506, as amended, requires Federal agencies to review their activities to ensure that they do not hamper local efforts to control air pollution. This statute prevents Federal agencies from conducting activities that do not conform to an approved implementation plan but recognizes certain categorically exempt activities. The conveyance of real property, regardless of the method, is a categorically exempt activity. Accordingly, disposal of the Naval Station and the Naval Shipyard does not require Navy to conduct a conformity analysis.

The LRA Reuse Alternative will not result in significant adverse impacts on noise or vibration. Additionally, the completion of the Alameda Corridor will mitigate vibration impacts along the rail routes.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, reprinted in 42 U.S.C. § 4321 note, requires that Navy determine if any low-income and minority populations will experience disproportionately high and adverse human health or environmental effects from the proposed action. While there are substantial minority and low-income populations residing in areas in the vicinity of the Naval Station and the Naval Shipyard, these populations are not adjacent to the site and will not experience disproportionately high and adverse human health or environmental effects. Those minority and low-income populations who reside along existing major rail lines could experience disproportionately high and adverse effects from the increase in rail traffic if the additional rail lines planned under the Alameda Corridor project are either not built or are delayed.

Executive Order 13045, Environmental Health and Safety Risks to Children, 62 Fed. Reg. 19885 (1997), requires Navy to analyze the impacts on children. There are no residential neighborhoods in the immediate vicinity of the Naval Station and the Naval Shipyard. Therefore, there will not be any adverse environmental health risks or safety risks to children arising out of construction an operation of the proposed LRA Reuse Alternative. However, children who reside along existing rail lines could be adversely affected by the increase in rail traffic if the Alameda Corridor project is either not built or is delayed.

Mitigation

Implementation of the decision to dispose of the Naval Station and the Naval Shipyard does not require Navy to perform any mitigation measures beyond those discussed here. Navy has completed the actions required by the Memorandum of Agreement for the Disposal of the Roosevelt Base Historic District, dated January 27, 1998. Additionally, in accordance with applicable Federal and State laws, Navy will include appropriate restrictive covenants in the deeds and leases in furtherance of conveyance for any parcels where hazardous substances remain.

The Final EIS/EIR identified and discussed those actions that will be necessary to mitigate the impacts associated with reuse and redevelopment of the Naval Station and the Naval Shipyard. The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing any necessary mitigation measures.

Comments Received on the FEIS

Navy received comments on the Final EIS/EIR from one Federal agency; three local agencies; seven organizations; and 61 individuals. Many of the comments simply stated support for or opposition to a particular reuse alternative. The Institutional Campus Alternative received the most support from those commenting on the Final EIS/EIR, followed by the LRA Reuse Alternative, and the ''No action'' alternative. All of the substantive comments received concerned issues already discussed in the EIS/EIR. Those comments that require clarification are addressed below.

Several comments suggested that a national park alternative should be

added to the EIS/EIR. A reasonable range of reuse alternatives was analyzed in the EIS/EIR. Reuse of the Navy property on the Naval Station for a park, whether national, state, regional or local, is not a feasible reuse alternative. The justification for eliminating a park-related reuse from detailed analysis is addressed in Chapter 2 of the Final EIS/EIR. Despite the assertions in a comment that the Department of the Interior was actively considering development of a national park on the Naval Station, no governmental entity has advocated or supported developing a park there.

Responding to a proposal from private citizens that consideration be given to establishing a national park at the Naval Station, the Department of the Interior, by letter dated April 23, 1998 stated that it would review the proposal to determine whether to place it on Interior's list of proposals earmarked for future study. Interior has taken no action to designate the Naval Station as a national landmark or part of the national park system.

Several individuals also commented on the adequacy of the discussion of the ship repair facility. Navy is not required, nor is it feasible, to evaluate every increment in the size and capability of the ship repair facility proposed under all three reuse alternatives. The Final EIS/EIR presents a thorough discussion of the environmental impacts associated with a ship repair operation and allows a reasoned decision concerning disposal and reuse of the property.

The Port of Los Angeles commented on potential traffic problems associated with truck traffic waiting for access to the marine container terminal facility. The Port of Los Angeles asked Navy to place deed restrictions on the property that would require construction of the ''Terminal Island Freeway/Ocean Boulevard Interchange Project,'' an unrelated port access demonstration project. This project has not been identified in the EIS/EIR as mitigation for potential traffic congestion. Additionally, as Navy explained in response to comments on the DEIS/EIR, Navy has no statutory authority to use deed restrictions to require construction of such a demonstration project.

The Port of Los Angeles also commented on safety issues associated with existing and projected hazard footprints for nearby fuel storage tanks and the proposed liquid bulk terminal. The Final EIS/EIR recognized that the proposed police headquarters and police training academy and the ship repair facility would lie within these hazard footprints and acknowledged that this proximity constitutes a significant adverse impact on the safety of individuals working at the proposed facilities. While some mitigation measures that would respond to this impact on safety have been identified in the Final EIS/EIR, there is no mitigation that will reduce the impact below the significant level.

The El Dorado Audubon Society submitted comments concerning impacts on the black-crowned night heron that would result from the proposed reuse of the Naval Station property. The impacts on the heron were thoroughly discussed in the final EIS/EIR, and the establishment of a nesting site at Gull Park was selected as an appropriate mitigation measure. In fact, during recent surveys of the heron population, Navy discovered that a large number of the nesting heron pairs had voluntarily relocated to Gull Park even though no nesting trees have yet been removed from the Naval Station.

Several individuals and community groups commented on the impacts associated with increased rail traffic on rail lines that provide access to Terminal Island. The Final EIS/EIR discussed the potential safety and noise-related impacts on individuals, low-income and minority populations, and children residing along the rail corridor. The Alameda Corridor project, which reduces rail traffic on existing rail lines that traverse predominately residential areas and moves rail crossings below road grade, will mitigate potential significant impacts from the increased rail traffic. Additionally, the Alameda Corridor is scheduled to be completed before the intermodal and rail facilities that the LRA has proposed under any of the reuse alternatives would become fully operational.

Regulations Governing the Disposal Decision

Since the proposed action contemplates a disposal action under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. § 2687 note, Navy's decision was based upon the environmental analysis in the Final EIS/EIR and application of the standards set forth in DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR Parts 174 and 175.

Section 101–47.303–1 of the FPMR requires that the disposal of Federal property benefit the Federal government and constitute the ''highest and best use'' of the property. Section 101–47.4909 of the FPMR defines the ''highest and best use'' as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The ''highest and best use'' determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercise substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the highest and best use of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth in Part 101–47 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of DBCRA, may Navy apply disposal procedures other that those in the FPMR.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify

and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the Local Redevelopment Authority's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, *e.g.*, reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 175.7(d)(3) of the DoD Rule provides that the Local Redevelopment Authority's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484, as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid are committed by law to agency discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion

The LRA's proposed reuse of the Naval Station and the Naval Shipyard, reflected in the combined LRA reuse plans and embodied in the LRA Reuse Alternative, is consistent with the requirements of the FPMR and Section 174.4 of the DoD Rule. The LRA has determined in its reuse plans that the property should be used primarily as a port. The property's location, physical characteristics and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed use. While the use of certain adjacent property for a police headquarters and police training academy and a ship repair facility is not consistent with the restrictions imposed by certain port operations, those facilities constitute only a small part of the entire reuse plan.

The LRA Reuse Alternative responds to local economic conditions, promotes rapid economic recovery from the impact of the closures of the Naval Station and the Naval Shipyard, and is consistent with President Clinton's Five-Part Plan for Revitalizing Base Closure Communities, which emphasizes local economic redevelopment and creation of new jobs as the means to revitalize these communities. 32 CFR Parts 174 and 175, 59 Fed. Reg. 16123 (1994).

Although the ''No action'' alternative has less potential for causing adverse environmental impacts, this alternative will not take advantage of the property's location, physical characteristics and infrastructure or the current uses of adjacent property. Additionally, it will not foster local redevelopment of the Naval Station and the Naval Shipyard property.

The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm resulting from implementing the reuse plans.

Accordingly, Navy will dispose of Naval Station Long Beach and Long Beach Naval Shipyard in a manner that is consistent with the City of Long Beach's reuse plans for the Naval Station and the Naval Shipyard property.

Dated: May 26, 1998.

Robert B. Pirie, Jr.,

Assistant Secretary of the Navy, (Installations and Environment).

[FR Doc. 98–14732 Filed 6–2–98; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 3, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment

addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 28, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Secretary's Awards for Outstanding Adult Education and Literacy Programs.

Frequency: Every other year.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 40.

Burden Hours: 1,600.

Abstract: The Secretary's Awards identifies programs featuring promising practices in family literacy, workplace literacy, welfare to further education or work, services to out-of-school youth, or corrections.

[FR Doc. 98–14626 Filed 6–2–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 28, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Study of Charter School Accountability.

Frequency: On occasion.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 30.

Abstract: This two-year study will look at accountability relationships between charter schools and their sponsoring state/agencies and whether these relationships are defined by law or developed in practice. One part of the study is a survey of a sample of authorizing agencies in six states.

[FR Doc. 98–14627 Filed 6–2–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: June 16, 1998 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol Hotel located at 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Treopia Washington, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 600 Independence Avenue, SW., the Portals Building, Suite 605, Washington, DC 20202–5120. Telephone: (202) 708–8667.

SUPPLEMENTARY INFORMATION: .The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 12876 of November 1, 1993. The Board was established to advise on federal policies that impact upon Historically Black Colleges and Universities, to advise on strategies to increase participation of Historically Black Colleges and Universities in federally sponsored programs and funding opportunities, and to advise on strategies to increase private sector support for those colleges.

The meeting of the Board is open to the public. The meeting will focus on federal agency program activity with Historically Black Colleges and Universities.

Records are kept of all Board procedures and are available for public

inspection at the White House Initiative on Historically Black Colleges and Universities located at 1250 Maryland Avenue, SW., the Portals Building, Suite 605, Washington, DC 20202, from the hours of 8:30 a.m. to 5:00 p.m.

Dated: May 27, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–14668 Filed 6–2–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket Nos. EA–181, EA–182, EA–183, EA–184, EA–185, EA–186]

Applications to Export Electric Energy; H.Q. Energy Services (U.S.) Inc., NGE Generation, Inc., Morgan Stanley Capital Group, Inc., and New England Power Pool

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: H.Q. Energy Services (U.S.) Inc. (HQUS) and Morgan Stanley Capital Group, Inc. (Morgan Stanley), both power marketers, have submitted applications to export electric energy to Mexico and to Canada pursuant to section 202(e) of the Federal Power Act. NGE Generation, Inc. (NGE Gen), a generation-owning subsidiary of New York State Electric & Gas Corporation (NYSEG), has submitted an application to export electric energy to Canada. The New England Power Pool (NEPOOL) has submitted an application to export electric energy to Canada on an emergency basis.

DATES: Comments, protests or requests to intervene must be submitted on or before July 6, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

The Office of Fossil Energy (FE) of the Department of Energy (DOE) has received applications from the following companies for authorization to export electric energy to Mexico, pursuant to section 202(e) of the FPA:

Applicant	Application date	Docket No.
H.Q. Energy Services (U.S.) Inc..	4/27/98	EA–181
Morgan Stanley Capital Group, Inc..	5/15/98	EA–184

FE has also received applications from the following companies for authorization to export electric energy to Canada, pursuant to section 202(e) of the FPA:

Applicant	Application date	Docket No.
H.Q. Energy Services (U.S.) Inc..	4/27/98	EA–182
NGE Generation, Inc.	5/4/98	EA–183
Morgan Stanley Capital Group, Inc..	5/15/98	EA–185
New England Power Pool.	5/15/98	EA–186

HQUS is a power marketer and wholly-owned subsidiary of Hydro-Quebec, the provincial electric utility of Canada's Province of Quebec. In Docket Nos. EA–181 and EA–182, HQUS proposes to export to Mexico and to Canada, respectively, electric energy purchased from a variety of entities such as power marketers, independent power producers (IPP's), U.S. electric utilities and Federal power marketing agencies, and from Hydro-Quebec or other foreign utilities. HQUS claims that the purchased energy would be surplus to the needs of these entities.

In Docket Nos. EA–184 and EA–185, Morgan Stanley proposes to export to Mexico and to Canada, respectively, electric energy purchased from U.S. electric utilities, Federal power marketing agencies, IPP's, qualifying small power production and cogeneration facilities, and other sellers.

HQUS and Morgan Stanley would arrange for the exported energy to be transmitted to Mexico over the international transmission facilities owned by the Central Power & Light Company, El Paso Electric Company, San Diego Gas & Electric Company, and Comision Federal de Electricidad, the national electric utility of Mexico.

HQUS and Morgan Stanley each proposed to arrange for the exported energy to be transmitted to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Bradfield Electric Incorporated, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Fraser Paper Limited, Joint Owners of the Highgate Project, Long Sault Incorporated, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

NGE Gen is a generator and seller of electric energy and an affiliate of NYSEG, an investor-owned electric and gas utility, which is a subsidiary of Energy East. As a result of a Restructuring Agreement, NGE Gen supplies NYSEG with capacity and energy which NYSEG uses to serve its retail customers in New York State. In Docket EA–183, NGE Gen proposes to export to Canada electric energy that it obtains from two sources: NGE Gen's system generation that is surplus to the needs of NYSEG; and energy that NGE Gen purchases from U.S. utilities and power marketing agencies. The exported energy would be transmitted to Canada using the international transmission facilities of Niagara Mohawk Power Company and the New York Power Authority.

New England Power Pool (NEPOOL) is a collection of 130 electric utilities and power marketers in New England. In Docket EA–186 NEPOOL requests authority, on behalf of its members, to export up to 200 megawatts (MW) of emergency electric energy to Hydro Quebec using the transmission facilities of the Joint Owners of the Highgate Project. Operational control of all bulk power facilities in the New England region is under the authority of ISO New England Inc., an independent system operator accepted by the Federal Energy Regulatory Commission. NEPOOL asserts that the proposed emergency exports will not be combined with other electricity exports over the Highgate Project so as to result in an instantaneous transmission rate in excess of the existing export limitation of 200 MW.

The construction of each of the international transmission facilities to be utilized by these applicants, as more fully described in the applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to any or all of these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in

accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

Comments on HQUS's request to export to Mexico should be clearly marked with Docket EA–181. Comments on HQUS's request to export to Canada should be clearly marked with Docket EA–182. Additional copies are to be filed directly with Gilles Marchand, Marchand, Lemieus, 75, boul. Rene-Levesque, W. 4th étage, Montreal, Quebec, Canada, H2Z 1A4, Mathew LaRocque, H.Q. Energy Services (U.S.) Inc., 159 State Street, Montpelier, Vermont 05602 *and* Pierre F. De Ravel d'Esclapon, H. Lisa Moses, LeBoeuf, Lamb, Greene & MacRae, L.L.P. 125 West 55th Street, New York, New York 10019–5389.

Comments on NGE Gen's request to export to Canada should be clearly marked with Docket EA–183. Additional copies are to be filed directly with John R. Tigue, Manager—Bulk Power Sales, New York State Electric & Gas Corp., Corporate Drive, Kirkwood Industrial Park, P.O. Box 5224, Binghamton, New York 13902–5224 *and* Nicholas A. Giannasca, Esq., Huber Lawrence & Abell, 605 Third Avenue, 27th Floor, New York, New York 10158.

Comments on Morgan Stanley's request to export to Mexico should be clearly marked with Docket EA–184. Comments on Morgan Stanley's request to export to Canada should be clearly marked with Docket EA–185. Additional copies are to be filed directly with William H. Penniman, Daniel E. Frank, Sutherland, Asbill & Brennan, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415 *and* William F. McCoy, Esq., VP and Counsel, Morgan Stanley & Co., 1585 Broadway, New York, NY 10023.

Comments on NEPOOL's request to export to Canada should be clearly marked with Docket EA–186. Additional copies are to be filed directly with Richard M. Chapman, Chair, NEPOOL Executive Committee, Vermont Electric Power Company, Inc., Pinnacle Ridge Ave., RR1 Box 4077, Rutland, VT 05701 *and* David T. Doot, Esq., Day, Berry & Howard, CityPlace I, Hartford,CT 06103–3499.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on May 29, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 98–14710 Filed 6–2–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.

DATE AND TIME: Thursday, June 18, 1998: 5:00 p.m.—10:00 p.m.

ADDRESSES: Executive Inn, Van Buren Room, 1 Executive Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Myrna E. Redfield, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6815.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:00 p.m.—Call to Order
5:15 p.m.—Approve Meeting Minutes
5:30 p.m.—Public Comment/Questions
6:00 p.m.—Presentations
7:00 p.m.—Break
7:15 p.m.—Presentations
8:30 p.m.—Public Comment
9:00 p.m.—Administrative Issues
10:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Myrna E. Redfield at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item on the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to Carlos Alvarado, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on May 28, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–14713 Filed 6–2–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2498–000]

Cobisa-Person Limited Partnership; Notice of Filing

May 28, 1998.

Take notice that on May 18, 1998, Cobisa-Person Limited Partnership tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 4, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14642 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–54–005]

Colorado Interstate Gas Company; Notice of Refund Report

May 28, 1998.

Take notice that on May 18, 1998, Colorado Interstate Gas Company (CIG) tendered for filing its refund report in Docket No. RP98–54. CIG states that this filing and refunds were made to comply with the Commission's (Commission) Order of September 10, 1997. Initial refunds were paid by CIG on May 1, 1998.

CIG states that the May 18, 1998 refund report summarizes the refunds made as of that date by CIG for Kansas ad valorem tax overpayments pursuant to the Commission's September 10, 1997 Order. Lump-sum cash refunds were made by CIG to its former jurisdictional sales customers. In those instances where payment was not made within 30 days of receipt from the producers, appropriate interest was computed as provided for in the Order.

CIG states that copies of CIG's filing have been served on CIG's former jurisdictional sales customers, interested state commissions, and all parties to the proceedings.

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 June 4, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14637 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR94–3–011]

KansOk Partnership; Notice of Report of Refunds

May 28, 1998.

Take notice that on May 8, 1998, KansOk Partnership (KansOk) tendered for filing a refund report reflecting additional amounts refunded to its customers on May 8, 1998, in compliance with a Commission Order dated April 23, 1998, in Docket No. PR94–3–002.

KansOk states that during a recent review of its records, it was discovered that not all shippers on the system were affiliates of KansOk, and that Kansas Gas Service Company (Kansas Gas Service) was actually the shipper on the KansOk system for one-half of the quantity of its gas shipped on KansOk between December 1, 1993, and August 1, 1997. KansOk states that it also discovered that Kansas Gas Service has been the shipper for all of its gas shipped on KansOk from August 1, 1998, to the present.

Pursuant to the April 23 order and this newly discovered information, KansOk states that it has adjusted refunds accordingly resulting in an additional $420,185.74 refunded to its 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 June 4, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14638 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–225–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 28, 1998.

Take notice that on May 22, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sixth Revised Sheet No. 1810, to become effective June 21, 1998.

Koch proposes modifications to Section 11.4(e)(2) of the General Terms and Conditions regarding the economic scheduling of Rate Schedule ISS (Interruptible Storage Service) in order to clarify the definition of the ''average storage rate''. For the purposes of economic scheduling related to ISS injections, Section 11.4(e)(2) calculates the average storage rate based upon the average injection, space, and fuel charges paid previously or to be paid on the day of scheduling. For the purposes of economic scheduling related to withdrawals, the average storage rate is based upon the average injection, space, fuel, and withdrawal charges previously paid or to be paid on the day of scheduling. Since the inception of Rate Schedule ISS, Koch has not invoked Section 11.4(e)(2).

Koch proposes to modify Section 11.4(e)(2) to correct certain omissions in the current tariff provision. Specifically, Koch proposes to include any withdrawal charges paid prior to the day of scheduling in the calculation of the average storage rate for injections. Koch also proposes to value fuel charges at Koch's fuel reimbursement price published monthly on its electronic bulletin board. The current tariff provision does not address either of these issues. Koch believes that these proposed changes will further clarify the economic scheduling provisions of Rate Schedule ISS and result in the equitable treatment of all ISS customers.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14631 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–226–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

May 28, 1998.

Take notice that on May 22, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing the following tariff sheets in its FERC Gas Tariff, Fifth Revised Volume No. 1, to be effective May 1, 1998:

Fifth Revised Sheet No. 2701
Fifth Revised Sheet No. 2702

Koch is submitting these revised tariff sheets to implement modifications that neutralize the cash-in and cash-out procedures in the case of Prior Period Adjustments (PPA's). Koch proposes to change its cash-in and cash-out procedures to the midpoint price for the production month that the PPA was identified.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

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 is 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14632 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–61–003]

Koch Gateway Pipeline Company; Notice of Compliance Filing

May 28, 1998.

Take notice that on May 22, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective June 1, 1998:

Seventh Revised Sheet No. 2700

Koch states that it is submitting this revised tariff sheet to implement modifications that are in accordance with the Commission's Order issued April 22, 1998, 83 FERC ¶ 61,067, rejecting Tariff Sheet No. 5200 and ordering a modification to Sheet No. 2700.

Koch states that copies of this filing have been served upon each party contained in the official service list as compiled by the Secretary in the above captioned proceeding.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14635 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–565–000]

National Fuel Gas Supply Corporation; Notice of Application

May 28, 1998.

Take notice that on May 22, 1998, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP98–565–000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon 2 firm transportation services in the state of New York, all as more fully set forth in the application on file with the Commission and open to public inspection.

National Fuel requests permission and approval to abandon the transportation services performed under National Fuel's Rate Schedules X–59 and X–60 for Indeck-Oswego Limited Partnership and Indeck–Yerkes Limited Partnership. It is stated that both shippers have requested that the transportation services be converted to Part 284 transportation service under National Fuel's FT Rate Schedule. It is asserted that no customers of National Fuel would be adversely affected by the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 5, 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 and 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 any subject to the jurisdiction conferred upon the Federal Energy Regulatory 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, of 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 National Rule to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14641 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–158–002]

NorAm Gas Transmission Company; Notice of Technical Conference

May 28, 1998.

In the Commission's order issued on May 7, 1998, the Commission directed that a technical conference be held to address issues raised by filing.

Take notice that the technical conference will be held on Thursday, June 11, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14633 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–554–000]

Northwest Pipeline Corporation; Notice of Application

May 28, 1998.

Take notice that on May 15, 1998, Northwest Pipeline Corporation, (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP98–554–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate new, upgraded or modified facilities at four existing compressor stations on its mainline in the Columbia River Gorge area of Klickitat, Skamania, and Clark Counties, Washington, in order to expand its capacity to provide incremental firm transportation service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Northwest proposes to include a new turbine-driven centrifugal compressor unit at the Roosevelt Compressor Station, turbine upgrades and compressor restages for two units at the Willard Compressor Station, turbine upgrades for two units and a compressor restage for one of those units at the Goldendale Compressor Station, and new cylinder unloader pockets on the reciprocating compressor unit at the Washougal Compressor Station.

Northwest also states that the proposed compression facilities will add a total of 10,870 horsepower (ISO rated) to its system and will increase its mainline transmission capacity by 50,000 Dth per day from the Stanfield Meter Station near Stanfield, Oregon to the SIPI Meter Station near Sumas, Washington. Northwest estimates the cost of this Columbia Gorge Expansion Project to be 17 million dollars.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 18, 1998, file with the Federal Energy Regulatory Commission, 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 a grant of the certificate is required by the pubic convenience and necessity. If a motion for leave to intervene is timely field, 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 Northwest to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14630 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–14–000]

Sonat Intrastate-Alabama Inc.; Notice of Petition for Rate Approval

May 28, 1998.

Take notice that on May 20, 1998, Sonat Intrastate-Alabama Inc. (SIA) filed in the captioned docket a petition pursuant to Section 284.123(b)(2) of the Commission's regulations under the Natural Gas Policy Act for approval of a maximum system wide rate for transporting natural gas pursuant to Section 311(a)(2) of the NGPA, all as more fully set forth in the petition.

SIA files this petition pursuant to the Commission's Letter Order, issued in Docket No. PR95–12, requiring SIA to file a Section 284.123(b)(2) application on or before May 20, 1998 to justify SIA's current system wide rate or a revised system wide rate. SIA proposes to retain its current maximum, system wide transportation rate of 29.4 cents per MMBtu. SIA requests that the Commission approve this rate as fair and equitable and not in excess of an amount that is comparable to the rates that interstate pipelines would be permitted to charge for providing similar service.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, SIA's proposed rates will be deemed to be fair and equitable. 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 oral presentation of views, data and arguments.

Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before June 12, 1998. The petition for rate approval is on file with the

Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14636 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–555–000]

Southern Natural Gas Company; Notice of Application

May 28, 1998.

Take notice that on May 15, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–555–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon, two (415 horsepower) compressor units and compressor station structures located in Livingston Parish, Louisiana (Frost Compressor Station), all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern classifies the Frost compressor units as unnecessary and accordingly, proposes to abandon the Frost Compressor Station by removing the compressor equipment, structures, and associated piping. Southern states the Frost Compressor Station was constructed pursuant to a transportation agreement with Transcontinental Gas Pipe Line Corporation (Transco). Under the agreement, Transco transported up to 15,000 dekatherms of gas per day for Southern, on a firm basis. Southern delivered the gas to Transco at an interconnect in Ship Shoal Block 232, offshore Louisiana. Transco would then redeliver to Southern at the proposed interconnect in Livingston Parish.

The gas purchase contracts have expired, Transco received approval from the Commission to abandon the transportation arrangement, and the Frost Compressor Station does not serve any firm obligations. Southern states abandoning the Frost Compressor Station will reduce cost of service by retiring underutilized facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 18, 1998, file with the Federal Energy Regulatory Commission, 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 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 Southern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14640 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT98–10–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 28, 1998.

Take notice that on May 20, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 187.

Williston Basin states that the revised tariff sheet reflects changes to the list of possible shared policy making personnel.

Williston Basin has requested that the Commission accept this filing to become effective May 20, 1998.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14639 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–000]

Wyoming Interstate Company Ltd; Notice of Informal Settlement Conference

May 28, 1998.

Take notice that an informal settlement conference in this proceeding will be convened on Tuesday, June 2, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Arnold Meltz at (202) 208–2161 or John Roddy at (202) 208–0053.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–14643 Filed 6–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of January 12 Through January 16, 1998

During the week of January 12 through January 16, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: May 21, 1998.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision List No. 68

Week of January 12 through January 16, 1998

Personnel Security Hearings

Personnel Security Hearing, 1/12/98, *VSO–0164*

A Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain an access authorization under the provisions of 10 CFR Part 710. The DOE issued a Notification Letter which alleged that the individual (1) deliberately falsified information from a Questionnaire for National Security Position and in a Personnel Security Interview, and (2) engaged in unusual conduct that showed the individual is not honest, reliable, or trustworthy or is subject to coercion that may cause the individual to act contrary to the best interests of national security. *See* 10 CFR 710.8(f)(1). After carefully examining the record of the proceeding, the Hearing Officer determined that the individual had deliberately omitted information from a Questionnaire for National Security Position and had engaged in financially irresponsible conduct and other behavior involving a sensitive foreign country that showed the individual is not trustworthy and is subject to coercion. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Personnel Security Hearing, 1/12/98 *VSO–0166*

An individual's access authorization had been suspended due to two items of derogatory information that gave rise to security concerns. The first item was a diagnosis by a DOE psychiatrist that the individual suffered from paranoid delusional disorder, a mental condition that causes, or may cause, a significant defect in judgment or reliability as provided at 10 CFR 710.8(h). The second item was an interview in which the individual stated she would disclose classified information relating to health issues, which indicated that the individual is not honest reliable, or trustworthy, as provided at 10 CFR 710.8(1). At the hearing, the individual, while casting doubt on the DOE psychiatrist's diagnosis, failed to establish her eligibility for access authorization. Her expert witness however, a clinical psychologist, testified that the individual suffered from psychotic depression with episodic loss of contact with reality. In addition, the individual stated at the hearing that she would not disclose classified information, The Hearing Officer found, however, that the individual's statements were unconvincing in view of testimony at the hearing that she was emotionally labile and subject to psychotic episodes. Accordingly, the Hearing Officer expressed the opinion that the individual's access authorization should not be restored.

Dismissals

The following submissions were dismissed.

Name	Case No.
Dykema Gossett PLLC	VFA–0362
Interstate Gulf	RF300–21691
National Starch & Chemical Co.	RF272–95738
Personnel Security Hearing	VSO–0182

[FR Doc. 98–14712 Filed 6–2–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders; Office of Hearings and Appeals

Week of January 26 Through January 30, 1998

During the week of January 26 through January 30, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: May 20, 1998.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision List No. 70

Week of January 26 through January 30, 1998

Appeal

Charles G. Frazier, 1/28/98, VFA–0361

Charles G. Frazier (Appellant) filed an Appeal of a Determination issued to him by the Department of Energy (DOE) in response to a request under the Freedom of Information Act (FOIA). In its determination, the Chicago Field Office (Chicago) claimed that the requested information was not an ''agency record.'' Chicago asserted that the requested appointment books were created for the convenience of the individual officials not for an agency purpose. The Office of Hearings and Appeals determined that these documents were not ''agency records'' and, therefore, not subject to the FOIA. Accordingly, the DOE denied the Appeal.

Personnel Security Hearing

Personnel Security Hearing, 1/29/98, VSO–0179

A Hearing Officer found that an individual had successfully shown rehabilitation from his grief-related alcohol abuse. Accordingly, the Hearing Officer recommended in the Opinion that the individual's access authorization be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Ash Grove Cement West, Inc., et al	RF272–57083	1/27/98
Eastern Freightways, Inc.	RF272–98683	1/27/98
Associated Transport, Inc.	RF272–98763	.....
Lylin & Carolyn Cowan, et al	RK272–04703	1/28/98
Polysar Gulf Coast, Inc.	RD272–48280	1/30/98
Polysar Gulf Coast, Inc.	RF272–48280	1/30/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Cox Enterprises, Inc.	RF272–8644
Hanford Education Action League	VFA–0347

[FR Doc. 98–14715 Filed 6–2–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6106–1]

Agency Information Collection Activities Under OMB Review Recordkeeping Requirements for Producers of Pesticides Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as Amended (FIFRA); (ICR # 0143.06 AND OMB # 2070–0028)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507 (a)(1)(D)), this document announces that the Information Collection Request (ICR) for recordkeeping requirements for producers of pesticides under section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA) as described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument, i.e., forms.

DATES: Comments must be submitted on or before July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer, 202–260–2740, and refer to EPA ICR No. 0143.06

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping Requirements for Producers of Pesticides under section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA); (OMB Control No. 2070–0028; EPA ICR No. 0143.06). This is a request for an extension of a currently approved collection.

Abstract: Producers of pesticides must maintain certain records with respect to their operations and make such records available for inspection and copying as specified in section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and in regulations at 40 CFR part 169. This information collection is mandatory under FIFRA section 8. It is used by the Agency to determine compliance with the Act. The information is used by EPA Regional pesticide enforcement and compliance staffs, OECA, and the Office of Pesticide Programs (OPP) within the Office of Prevention, Pesticides and Toxic Substances (OPPTS), as well as the U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), other Federal agencies, States under Cooperative Enforcement Agreements, and 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 OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 5, 1998 (63 FR 10870), and no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be an average of 120 minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 12,336.

Estimated Number of Respondents: 12,336.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 24,672 hours.

Estimated Total Annualized Cost Burden: 0

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0143.06 and OMB Control No. 2070–0028 in any correspondence.

Ms. Sandy Farmer,
U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 28, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–14724 Filed 6–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–6106–2]

Air Pollution Control; Nonroad Vehicle and Equipment Emission Inventories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Workshop.

SUMMARY: The Environmental Protection Agency is in the process of developing a nonroad mobile source emissions inventory model (the NONROAD model). This notice announces a public workshop for the purpose of discussing the various issues involved in creating a model for this diverse collection of vehicles and equipment that comprise the nonroad mobile source sector, and provides a formal opportunity for comment and reaction to the release of the draft NONROAD model and its associated technical documentation. This notice also announces a hands-on demonstration of the model immediately following the public workshop.

DATES: The workshop will be held Thursday, June 25, 1997. The times are from 8:30 am to 4 pm. A demonstration of the NONROAD model will be held on the same day from approximately 4:30 pm to 5:30 pm. All times are Central Daylight Time.

ADDRESSES: The workshop will be held in the Metcalf Federal Building, 17 West Jackson Blvd., Chicago, IL, Lake Michigan and Lake Ontario Rooms—12th Floor, Great Lakes Conference and Training Center. The Metcalf building is located in the heart of the downtown area. The model demonstration will be held at the same location. Directions to the workshop and model demonstration can be obtained through the EPA OMS World Wide Web (WWW) site, or otherwise requested from the EPA contact person. Information on how to electronically access the web site or on the EPA contact person appears immediately below.

FOR FURTHER INFORMATION CONTACT: Ms. Gertrude Venlet, U. S. EPA, Office of Mobile Sources, Assessment and Modeling Division, Scientific Assessment Group, 2000 Traverwood Drive, Ann Arbor MI 48105. Telephone: (734) 214–4892; fax (734) 214–4939. Email: nonroad@epa.gov.

This notice, as well as related information concerning the workshop, may be found at the EPA OMS web site. The electronic address for this site is: http://www.epa.gov/omswww/nonrdmdl.htm.

Workshop-related files, including a copy of this notice, additional information on the location of the workshop and model demonstration, hotels, technical reports, the draft NONROAD model, and later additional information that may become available as described in the body of this announcement, will be found at the web site location or may otherwise be obtained from the EPA contact person.

SUPPLEMENTARY INFORMATION:

Background

Nonroad mobile sources are a significant source of air pollutants in many areas of the United States. This broad category is comprised of a diverse collection of vehicles and equipment, including vehicles and equipment in the following nine categories:

—Recreational vehicles, such as all-terrain vehicles and off-road motorcycles;
—Logging equipment, such as chain saws;
—Agricultural equipment, such as tractors;
—Construction equipment, such as graders and back hoes;
—Industrial equipment, such as fork lifts and sweepers;
—Residential and commercial lawn and garden equipment, such as leaf and snow blowers;
—Recreational and commercial marine vessels, such as power boats and oil tankers;
—Locomotive equipment, such as train engines; and
—Aircraft, such as jets and prop planes.

Current nonroad inventory development practices are based on EPA's Nonroad Engine and Vehicle Emissions Study (NEVES), done under the 1990 Clean Air Act Amendment requirements, and ''Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources'' (EPA–450/4–81–026d (revised), 1992). In consideration of the increased recognition of the importance of emissions from nonroad sources in terms of overall emissions and air quality, and the considerable practical difficulty of implementing the current guidance, EPA is developing a nonroad emissions inventory model (NONROAD) to meet the needs of the modeling audience.

NONROAD Emission Inventory Model

EPA has completed a draft version of NONROAD, an accompanying detailed user's guide, and a number of technical reports describing the model's data inputs and assumptions. This version of the model covers all nonroad vehicle and equipment types, except aircraft, locomotives, and commercial marine. The Agency will develop modeling modules for aircraft and locomotives sometime in the future. As for commercial marine, a module for this source category is under construction and will be released for public review later this year.

The draft model is intended to easily create and project accurate, reproducible inventories of nonroad emissions. It has a number of uses, but should be especially important to state and local pollution control agencies in satisfying the State Implementation Plan (SIP) requirements of the Clean Air Act Amendments of 1990.

Structurally, the model is made up of three specific components: a graphical user interface (GUI) which allows the user to easily input model parameters,

the core model which contains all computational algorithms, and a reporting utility for viewing and summarizing modeled emissions estimates. The model has been designed to allow the user a high degree of flexibility. As such, the model will:

—Calculate and report emissions in total for the United States, and for individual states and counties;

—Calculate emissions for a variety of time periods (e.g., an entire year, any particular month, any combination of months, or daily weekday or weekend day);

—Report emissions of six pollutants: hydrocarbons (HC), carbon monoxide (CO), NO_X, sulfur oxides (SO_X), and PM. The model will report both exhaust and non-exhaust HC emissions, the latter of which includes crankcase, diurnal, refueling, etc;

—Estimate current and future year emissions in a specified geographic area. In estimating future year emissions, the model includes growth and scrappage and can accommodate a variety of control program options; and

—View model results in different formats such as an Emission Pre-Processor System 2 (EPS–2) input file, spreadsheet, and preformatted reports.

The public workshop being announced today provides a valuable opportunity for EPA to receive assistance in developing the final NONROAD model through review and comment by all interested users. The workshop will focus on all aspects of the model including user convenience, data inputs and modeling assumptions, computational structure, and reporting options and formats. Presentations on each subject will be followed by a short discussion/question and answer period, and there should be some time left at the end of the day for more general open discussion of the material that has been presented. A detailed draft agenda for the workshop will be posted on the EPA OMS web site or may be obtained from the EPA contact person (see **FOR FURTHER INFORMATION CONTACT**).

Availability of Technical Reports and NONROAD

EPA anticipates the workshop will be highly interactive. To facilitate this goal, all participants are encouraged to review the draft technical reports on data inputs and assumptions, as well as the draft NONROAD model and accompanying user's guide. These documents and the model are posted on the EPA OMS web site or are otherwise available on CD ROM from the EPA contact person (see **FOR FURTHER INFORMATION CONTACT**). Please visit this site often to check for additional information or model documentation which may be posted between now and the workshop date.

Comment Period

The Agency is providing a 60-day public comment period on the draft model and associated documents. This period should be adequate for interested parties to thoroughly review the available information, and is consistent with the guidelines for public review of EPA emission models the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee established under the Federal Advisory Committee Act. The comment period will be initiated at the time the draft NONROAD model is posted on the EPA OMS web site, which EPA projects to be on or around June 15, 1998.

Model Demonstration

The Agency will hold a hands-on demonstration of the model on the same day, at the same location immediately after the public workshop. The facility is capable of seating approximately 20 people at individual personal computers. This demonstration will be held on a first come, first serve basis. Please contact EPA via the NONROAD E-mail box or the EPA contact person (see **FOR FURTHER INFORMATION CONTACT**).

Additional Information

To the extent possible, EPA will post material at the EPA OMS web site, as described under **FOR FURTHER INFORMATION CONTACT,** in advance of the workshop. Those planning to attend, and those interested in following the progress of workshop planning more closely, should periodically visit the EPA OMS web site.

Dated: May 28, 1998.

Donald E. Zinger,

Acting Director, Office of Mobile Sources.

[FR Doc. 98–14725 Filed 6–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00539; FRL–5795–5]

State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality andPesticide Disposal Working Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality and Pesticide Disposal Working Committee will hold a 2–day meeting, June 8 and 9, 1998. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Water Quality and Pesticide Disposal will meet on Monday, June 8, 1998, from 8:30 a.m. to 4 p.m. and Tuesday, June 9, 1998, from 8:30 a.m. to 12 noon .

ADDRESSES: The meeting will be held at: The National Airport Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Field and External Affairs Division, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Arlington-Crystal City, VA 22202, CM–II (703) 305–5306, (703) 308–1850 (fax); e-mail: lyon.elaine@epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Water Quality and Pesticide Disposal includes the following:

1. Update on the State Management Plan.

2. Status on triazine special review.

3. Surface water issues.

4. Aquatic herbicide issues.

5. Follow-up on Total Maximum Daily Loads.

6. Drinking water levels of concern.

7. FQPA - Tolerance assessment impacts from water residues.

8. Update on The Ecological Committee on FIFRA Risk Assessment Methods.

9. Update from the Office of Pesticide Programs.

10. Update from the Office of Enforcement and Compliance Assurance.

11. Overview of GAO Hazardous Waste Report.

12. Reports from Committee meetings.

13. Other topics as appropriate

List of Subjects

Environmental protection.

Dated: June 1, 1998.

Jay Ellenbeger,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 98–14831 Filed 6–2–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

May 27, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments [insert date 60 days from publication in Federal Register].

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, 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 collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0139.

Title: Application for Antenna Structure Registration.

Form No.: FCC 854.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals, Businesses or other for-profit; Non-profit institutions; State, Local or Tribal Government.

Number of Respondents: 4,500.

Estimated Time Per Response: 30 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,250 hours.

Needs and Uses: Section 303(q) of the Communications Act, as amended, authorizes the Commission to require the painting and/or illumination of radio towers in cases where there is a reasonable possibility that an antenna structure may cause a hazard to air navigation.The data collected is required by the Communications Act of 1934, as amended; FCC Rules Section 1.61(a), 17.4, 21.11(g),25.113(c), 73.3533(c), 74.551(c), 74.651(d), 74.1251(d), 78.109(c), 95.83(a)(3), 97.15(d).

This FCC form is to be used for the purpose of registering structures used for wire or radio communication services within the United States, or to make changes to an existing registered structure, or to notify the Commmission of the dismantlement of a structure. The Commission staff will evaluate the antenna data submitted by the tower owner and determine if Part 17 rule requirements are met and if any obstruction painting and/or lighting will be necessary. The tower owner will receive notification that the Commission has registered the structure, modification or dismantlement on FCC Form 854R, Antenna Structure Registration. Owners of new and modified towers must notify the Commission within 24 hours of construction completion and/or disposition of structure, using a portion of the FCC Form 854R which is detachable.

The Commission is in the final phase of completing the initial two year registration period for the revised antenna structure registration process. The form's data collection remains the same, however, we estimate a significant decrease (adjustment) in the number of total respondents from 43,000 to 4,500 and a decrease in the total annual burden from 21,500 hours to 2,250 hours as a result of a re-evaluation of receipts due to the program change implemented two years ago.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–14690 Filed 6–2–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Submitted to OMB for Review and Approval

May 22, 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, 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 July 6, 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 collections contact Les Smith at 202–418–0214 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0316.

Title: Section 76.305, Records to be maintained locally by cable system operators for public inspection.

Form Number: N/A

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 4,670 cable television systems.

Estimated Time Per Response: 26 hours.

Frequency of Response: Recordkeeping requirement.

Cost to Respondents: $46,700 (printing, photocopying and stationery costs).

Total Annual Burden: 121,420 hours.

Needs and Uses: Section 76.305 requires cable television systems having 1,000 or more subscribers to maintain a public inspection file containing various records in accordance with the Commission's rules: These records are used by Commission staff in field inspections/investigations, by local public officials and by the public to assess a cable television system's performance and to ensure that the system is in compliance with all of the Commission's applicable rules and regulations.

OMB Control Number: 3060–0500.

Title: Section 76.607, Resolution of complaints.

Form Number: N/A

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 11,365 cable television systems.

Estimated Time Per Response: 1–17 hours.

Frequency of Response: Recordkeeping; Third Party Disclosure.

Cost to Respondents: $56,825 (Printing, photocopying and stationery costs).

Total Annual Burden to Respondents: 204,570 hours.

Needs and Uses: On March 4, 1992, the Commission adopted a Report and Order, FCC 92–61, MM Docket Nos. 91–169 and 85–381, In The Matter of Cable Television Technical And Operational Requirements. Section 76.607 requires cable system operators to advise subscribers at least once each calendar year of the procedures for resolution of complaints about the quality of television signals delivered. Section 76.607 also requires that records be maintained by cable system operators on all such subscriber complaints and resolution of complaints for at least a one-year period. The data are used by local franchising authorities to assess the technical performance of cable television systems and to ensure that quality service is being provided to subscribers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–14691 Filed 6–2–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–988; CC Docket No: 90–571]

Notice of Publix Network Corporation's Telecommunications Relay Services (TRS) Application for Certification Accepted

Released: May 22, 1998.

Notice is hereby given that on April 15, 1998, Publix Network Corporation filed an application with the Commission for Interstate Telecommunications Relay Service (TRS) Certification. The Commission's rules state that TRS providers eligible for receiving payments from the Interstate TRS Fund are: (1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to 64.605; or (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to 64.604; or (3) Interstate common carriers offering TRS pursuant to 64.604. Publix Network Corporation must demonstrate that its TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225. These rules are codified at 47 CFR 64.601–605.

Copy of application for certification is available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM. Interested persons may file comments with respect to that application on or before June 22, 1998. Comments should reference file number, NSD–L–98–65. One original and five copies of all comments must be sent to Magalie Roman Salas, Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, or Kris Monteith, (202) 418–1098, kmonteit@fcc.gov, (TTY: 202–418–0484), at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Dated: May 27, 1998.

Kent Nilsson,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–14692 Filed 6–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–1001; CC Docket No. 90–571]

Notice of Telecommunications Relay Services (TRS) Certification

Released: May 27, 1998.

Notice is hereby given that the applications for certification of state Telecommunication Relay Services (TRS) programs of the states listed below have been granted, subject to the condition described below, pursuant to Title IV of the Americans with Disabilities Act of 1990, 47 U.S.C. 225(f)(2), and section 64.605(b) of the Commission's rules, 47 CFR 64.605(b). The Commission will provide further Public Notice of the certification of the remaining applications for certification once review of those states' applications has been completed. On the basis of the states applications, the Commission has determined that:

(1) the TRS program of the listed states meet or exceed all operational, technical, and functional minimum standards contained in section 64.604 of the Commission's rules, 47 CFR 64.604;

(2) the TRS programs of the listed states make available adequate procedures and remedies for enforcing the requirements of the state program; and,

(3) the TRS programs of the listed states in no way conflict with federal law.

The Commission also has determined that, where applicable, the intrastate funding mechanisms of the listed states are labeled in a manner that promotes national understanding of TRS and does not offend the public, consistent with section 64.605(d) of the Commission's rules, 47 CFR 64.605(d).

On May 14, 1998, the Commission adopted a Notice of Proposed Rulemaking that proposes ways to enhance the quality of existing telecommunications relay services

(TRS) and expand those services for better use by individuals with speech disabilities. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, FCC 98–90 (rel. May 20, 1998). Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with any new rules ultimately adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five year period, beginning July 26, 1998, and ending July 25, 2003, pursuant to 47 CFR 64.605(c). One year prior to the expiration of this certification, July 25, 2002, the states may apply for renewal of their TRS program certifications by filing documentation in accordance with the Commission's rules, pursuant to 47 CFR 64.605(a) and (b).

Copies of certification letters are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM.

First Group of States Approved for Certification

File No.: TRS–97–02.
Applicant: Hawaii Public Utilities Commission.
State of: Hawaii.

File No.: TRS–97–05.
Applicant: Oregon Public Utility Commission.
State of: Oregon.

File No.: TRS–97–08.
Applicant: Tennessee Regulatory Authority.
State of: Tennessee.

File No.: TRS–97–11.
Applicant: Kentucky Public Service Commission.
State of: Kentucky.

File No.: TRS–97–12.
Applicant: Washington Department of Social and Health Services.
State of: Washington.

File No.: TRS–97–13.
Applicant: Arizona Council for Hearing Impaired.
State of: Arizona.

File No.: TRS–97–14.
Applicant: State of Delaware Public Service Commission.
State of: Delaware.

File No.: TRS–97–18.
Applicant: South Carolina Budget and Control Board.
State of: South Carolina.

File No.: TRS–97–20.
Applicant: New Jersey Board of Public Utilities.
State of: New Jersey.

File No.: TRS–97–21.
Applicant: Department of Budget and Management.
State of: Maryland.

File No.: TRS–97–22.
Applicant: Wyoming Department of Employment.
State of: Wyoming.

File No.: TRS–97–25.
Applicant: Counsel for the Telecommunications Regulatory Board of Puerto Rico.
Puerto Rico.

File No.: TRS–97–26.
Applicant: Indiana Telephone Relay Access Corporation.
State of: Indiana.

File No.: TRS–97–29.
Applicant: Governor's Committee on Telecommunications Access Service.
State of: Montana.

File No.: TRS–97–30.
Applicant: Vermont Department of Public Service.
State of: Vermont.

File No.: TRS–97–31.
Applicant: Idaho Public Utilities Commission.
State of: Idaho.

File No.: TRS–97–32.
Applicant: Colorado Public Utilities Commission.
State of: Colorado.

File No.: TRS–97–33.
Applicant: Department of Human Services, Division of Rehabilitation Services.
State of: South Dakota.

File No.: TRS–97–40.
Applicant: Commission of the Deaf and Hearing Impaired.
State of: Connecticut.

File No.: TRS–97–41.
Applicant: Louisiana Relay Administration Board.
State of: Louisiana.

File No.: TRS–97–42.
Applicant: Nebraska Public Service Commission.
State of: Nebraska.

File No.: TRS–97–43.
Applicant: California Public Utilities Commission.
State of: California.

File No.: TRS–97–46.
Applicant: New York State Department of Public Service.
State of: New York.

File No.: TRS–97–47.
Applicant: District of Columbia Public Service Commission.
District of Columbia.

File No.: TRS–97–48.
Applicant: Public Utility Commission of Texas.
State of: Texas.

File No.: TRS–97–49.
Applicant: Information Services Division.
State of: North Dakota.

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov: Helene Nankin, (202) 418–1466, hnankin@fcc.gov; or Kris Monteith, (202) 418–1098, kmonteit@fcc.gov, (TTY, 202–418–0484), at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Dated: May 27, 1998.

Federal Communications Commission.

Kent Nilsson,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–14693 Filed 6–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–993]

Waiver of Business and Industrial/Land Transportation Channel Construction Requirements

1. We have before us three separate requests for a thirty-day extension of the time for filing comments and reply comments in response to the request of Southern Company for a waiver of section 90.629 of the Commission's Rules to further extend the extended implementation period for its 800 MHz Business and Industrial/Land Transportation (I/LT) Category channels that Southern has converted to commercial use.[1] We also invited comment on a number of related issues. On May 19, 1998, the Industrial Telecommunications Association, Inc. (ITA) and Nextel Communications, Inc., filed their requests. On May 22, 1998, the American Mobile Telecommunications Association, Inc. (AMTA) filed its request. Each petitioner requests that the time for filing comments be extended from May 28, 1998, to June 29, 1998, and that the time for filing reply comments be extended from June 12, 1998, to July 13,

[1] *See* Waiver of Business and Industrial/Land Transportation Channel Construction Requirements, 63 FR 26188 (May 12, 1998).

1998. On May 22, 1998, Southern filed an opposition to these requests. For the reasons stated below, we conclude that the extensions should be granted in part and denied in part.

2. ITA, the frequency coordinator for 800 MHz I/LT applications, states that it needs additional time to submit comments in order to poll its membership regarding these issues before it files comments. Nextel states that it needs additional time in order to review and analyze Southern's application for review, which seeks relief similar to that sought in waiver request, and to which the waiver request refers regarding certain arguments. Nextel further states that it did not obtain a copy of the application for review, which was filed under seal, until May 18, 1998. AMTA states that additional time is needed due to the scope of the issues on which comment was sought and the impact that resolution of those issues will have on the Part 90 radio services.

3. In its opposition, Southern does not object to extending the comment period with respect to the related issues on which we invited comment. However, it argues that further delaying resolution of the waiver request itself by extending the comment period is inappropriate, given that it faces an impending implementation deadline. In this connection, Southern contends that unduly delaying resolution of the waiver request could prejudice its efforts to meet such implementation obligations. Southern suggests that this proceeding be bifurcated, with consideration of its waiver request proceeding separately from consideration of the other issues.

4. We conclude that an extension of time would serve the public interest. We believe that providing interested parties additional time to address the issues on which comment has been sought would result in a more comprehensive record that includes the views of various sectors of the private land mobile radio (PLMR) and specialized mobile radio (SMR) communities. We note, however, that our desire for a comprehensive record should be balanced against Southern's request that we not unduly delay resolution of its pending waiver request. Thus, we are concerned about granting the requested thirty-day extensions under the circumstances. Rather, we believe an extension of fifteen (15) days should be adequate to allow the PLMR and SMR communities to respond to the waiver request and comment on the related issues. In addition, we believe that this brief extension of time will not result in a significant delay in the resolution of Southern's pending waiver request. We therefore extend the period of time for filing comments to and including June 12, 1998, and we extend the period for filing reply comments to and including July 6, 1998.

5. It is hereby ordered that pursuant to § 1.46 of the Commission's rules, 47 CFR 1.46, the requests of ITA, Nextel, and AMTA to extend the deadlines for filing comments and reply comments in this proceeding are granted in part and denied in part, to the extent indicated herein.

6. This action is taken under delegated authority pursuant to §§ 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331.

7. For further information, contact Scot Stone, Public Safety and Private Wireless Division, at (202) 418–0680 or via e-mail to sstone@fcc.gov.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division.

[FR Doc. 98–14601 Filed 6–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

* * * * *

FEDERAL REGISTER NUMBER: 98–14223.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, June 4, 1998, 10 a.m., meeting open to the public.

THIS MEETING HAS BEEN CANCELLED.

* * * * *

DATE & TIME: Tuesday, June 9, 1998 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE & TIME: Thursday, June 11, 1998 at 10 a.m.

PLACE: 999 E Street, NW, Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Notice of Proposed Rulemaking: Electronic Filing for Presidential Committees.

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. 98–14893 Filed 6–1–98; 3:04 pm]

BILLING CODE 6715–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Assessment of Civil Money Penalties

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Notice of revised policy statement.

SUMMARY: The FFIEC Task Force on Supervision, acting under delegated authority, has revised the 1980 Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies (1980 CMP Policy). The revised policy statement specifies factors that the Federal financial institutions regulatory agencies should take into consideration in deciding whether, and in what amounts, civil money penalty assessment proceedings should be initiated. The revised policy statement supersedes the 1980 CMP Policy.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: The FFIEC is comprised of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the agencies). Questions regarding this notice and the revised policy statement may be addressed to the FFIEC contact. Agency specific questions should be addressed to the appropriate agency contact.

FFIEC: Keith Todd, Acting Executive Secretary, Federal Financial Institutions Examination Council, (202) 634–6526, 2100 Pennsylvania Avenue NW, Suite 200, Washington, DC 20037.

OCC: Carolyn Amundson, Senior Attorney, Enforcement & Compliance Division, (202) 874–5371, 250 E Street SW, Washington, DC 20219.

Board: Nancy Oakes, Senior Attorney, Division of Banking Supervision and

Regulation, (202) 452–2743, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Dan Austin, Review Examiner, Division of Supervision, (202) 898–6774, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington DC 20429.

OTS: Richard Stearns, Deputy Chief Counsel, Office of Enforcement, (202) 906–7966, Office of Thrift Supervision, 1700 G Street NW, Washington, DC 20552.

NCUA: John Ianno, Senior Trial Attorney, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: The FFIEC Task Force on Supervision, acting under delegated authority, is giving notice that it has revised its 1980 CMP Policy (45 FR 59423; Sept. 9, 1980). The revised policy statement, published in full text later in this **Federal Register** notice, updates the 1980 CMP Policy. The revised policy statement:

(1) Specifies the factors the agencies should take into consideration in deciding whether, and in what amounts, to initiate civil money penalty proceedings;

(2) Eliminates references to interagency coordination of civil money penalty proceedings, because such coordination is addressed in a separate interagency policy (FFIEC, Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies);

(3) Eliminates references to the statutes authorizing the agencies to initiate civil money penalty proceedings or the authority pursuant to the statutes;

(4) Eliminates references to the agencies' rules of practice and procedure for civil money penalty proceedings; and

(5) Specifies that the amount of a civil money penalty may be greater than the economic gain in order to deter future misconduct.

The FFIEC Task Force on Supervision, acting under delegated authority, has recommended that the agencies adopt, through separate actions, the revised policy statement.

The revised policy statement reads as follows:

Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies

This supervisory policy provides general guidance concerning the criteria used by the Federal financial institutions regulatory agencies (agencies) in the assessment of civil money penalties under statutes that require consideration of the five following factors in setting the amount of fines:[1]

(1) Size of financial resources;

(2) Good faith;

(3) Gravity of the violation;

(4) History of previous violations; and

(5) Other factors that justice may require.

The principles set forth in this policy apply to penalties assessed both by consent and through formal enforcement proceedings.

The agencies generally are authorized, under these statutes, to assess civil money penalties for violations of:

(1) Any law or regulation;

(2) Any final or temporary order, including a cease and desist, suspension, removal, or prohibition order;

(3) Any condition imposed in writing in connection with the grant of any application or other request;

(4) Any written agreement; and

(5) Regulatory reporting requirements.

Under certain circumstances, the agencies may also assess fines for unsafe or unsound practices and breaches of fiduciary duty.

In determining the amount and the appropriateness of initiating a civil money penalty assessment proceeding under statutes requiring consideration of the above-mentioned five statutory factors,[2] the agencies have identified the following factors as relevant:

(1) Evidence that the violation or practice or breach of fiduciary duty was intentional or was committed with a disregard of the law or with a disregard of the consequences to the institution;

(2) The duration and frequency of the violations, practices, or breaches of fiduciary duty;

(3) The continuation of the violations, practices, or breach of fiduciary duty after the respondent was notified or, alternatively, its immediate cessation and correction;

(4) The failure to cooperate with the agency in effecting early resolution of the problem;

(5) Evidence of concealment of the violation, practice, or breach of fiduciary duty or, alternatively, voluntary disclosure of the violation, practice or breach of fiduciary duty;

(6) Any threat of loss, actual loss, or other harm to the institution, including harm to the public confidence in the institution, and the degree of such harm;

(7) Evidence that a participant or his or her associates received financial gain or other benefit as a result of the violation, practice, or breach of fiduciary duty;

(8) Evidence of any restitution paid by a participant of losses resulting from the violation, practice, or breach of fiduciary duty;

(9) History of prior violation, practice, or breach of fiduciary duty, particularly where they are similar to the actions under consideration;

(10) Previous criticism of the institution or individual for similar actions;

(11) Presence or absence of a compliance program and its effectiveness;

(12) Tendency to engage in violations of law, unsafe or unsound banking practices, or breaches of fiduciary duty; and

(13) The existence of agreements, commitments, orders, or conditions imposed in writing intended to prevent the violation, practice, or breach of fiduciary duty.

The agencies will give additional consideration in cases where the violation, practice, or breach causes quantifiable, economic benefit or loss. In those cases, removal of the benefit or recompense of the loss usually will be insufficient, by itself, to promote compliance with statutory and regulatory requirements. The penalty amount should reflect a remedial purpose and should provide a deterrent to future misconduct.

The agencies intend these factors to provide guidance on the appropriateness of a civil money penalty, in a manner consistent with the statutes authorizing such an action. This policy does not preclude any agency from considering any other matter relevant to the civil money penalty assessment.

Dated: May 28, 1998.

Keith Todd,

Acting Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 98–14611 Filed 6–2–98; 8:45 am]

BILLING CODE 6210–01–P, 6720–01–P, 6714–01–P, 4810–33–P, 7535–01–P

[1] See generally 12 U.S.C. 1786(k)(2)(G) and 1818(i)(2)(G).

[2] Some federal laws authorizing the Federal financial institutions regulatory agencies to assess fines, such as the civil money penalty provisions of section 102(f) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(f), and section 21B of the Securities Exchange Act of 1934, 15 U.S.C. 78u–2, do not require the consideration of the five statutory factors.

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Field

The Commission hereby gives notice of the filing of the following

agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date of this notice appears in the **Federal Register**.

Agreement No.: 203–011623.

Title: APL/MOL/HMM Asia-U.S. Atlantic Coast Space Sharing Agreement.

Parties:

American President Lines, Ltd. (''APL'')
APL Co. PTE Ltd. (''APL'')
Mitsui O.S.K. Lines, Ltd. (''MOL'')
Hyundai Merchant Marine Co., Ltd. (''HMM'')

Synopsis: The proposed agreement authorizes the parties to charter space to and from each other, coordinate sailings, cooperate in the use of equipment and terminals, and reach voluntary agreement on rates, terms and conditions of service contracts and tariffs in the trade between ports in the Far East and ports on the Atlantic and Gulf Coasts of the United States, Puerto Rico, and the U.S. Virgin Islands, and points in the United States via those ports.

Dated: May 28, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–14619 Filed 6–2–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–07]

CTM International, Inc. v. Medtech Enterprises, Inc. and Mr. Xin Liu; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by CTM International, Inc. (''Complainant'') against Medtech Enterprises, Inc. and Mr. Xin Liu (''Respondents'') was served May 28, 1998. Complainant alleges that Respondents violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. section 1709(a)(1), by issuing a bad check or issuing a check upon which payment was subsequently stopped in order to induce release of cargo, and thereafter failing to remit the ocean freight and other charges due and payable for two shipments of used medical equipment from New York to Xingang, China.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by May 28, 1999, and the final decision of the Commission shall be issued by September 29, 1999.

Joseph C. Polking,

Secretary.

[FR Doc. 98–14620 Filed 6–2–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

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, DC 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 28, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–14621 Filed 6–2–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Larch Bancorporation, Inc., Larchwood, Iowa; to merge with Exchange State Bancorporation, Inc., Hills, Minnesota, and thereby indirectly acquire Exchange State Bank of Hills, Hills, Minnesota.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, Memphis, Tennessee, and its wholly owned subsidiary, Union Planters Holding Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Transflorida Bank, Boca Raton, Florida.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. AmCorp Financial, Inc., Ardmore, Oklahoma; to acquire 100 percent of the

voting shares of First State Bank, Morton, Texas. In addition the bank's main office will be relocated to Keller, Texas, and the bank will be renamed American Bank, Keller, Texas.

Board of Governors of the Federal Reserve System, May 29, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–14723 Filed 6–2–98; 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 18, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Unionbancorp, Inc., Ottawa, Illinois; to retain Sainet, Streator, Illinois (an Internet service provider), and thereby engage in providing access to the Internet to their institutions, and in data processing activities, pursuant to § 225.28(b)(14)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 29, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–14722 Filed 6–2–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, June 8, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 1, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–14806 Filed 6–1–98; 10:42 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting on June 25.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a regular meeting on Thursday, June 25, 1998, from 9:00 A.M. to 4:00 P.M. in Room 5N30 (not 7C13) of the General Accounting Office building, 441 G St., N.W., Washington, D.C. (A public hearing on Property, Plant, and Equipment, notice of which is separately published in the **Federal Register**, is scheduled for the following day, June 26.)

The purpose of the meeting is to discuss the following issues: (1) Credit Reform, (2) Management's Discussion and Analysis, (3) the Internal Revenue Service's request for amendments to the Accounting for Revenue and Other Financing Sources Standard, and (4) the addition of new projects to the Board's agenda for 1998.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the Public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 3B18, Washington, D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: May 29, 1998.

Wendy M. Comes,

Executive Director.

[FR Doc. 98–14726 Filed 6–2–98; 8:45 am]

BILLING CODE 1610–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of public hearing on June 26.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a public hearing of the Federal Accounting Standards Advisory Board will be held on Friday, June 26, 1998 from 9:00 a.m. to 5:00 p.m. in room 5N30 of the General Accounting Office, 441 G St., NW., Washington, DC.

The purpose of the hearing is to hear testimony from interested parties on the *Amendments to Accounting for Property, Plant, and Equipment* exposure draft, issued on February 13, 1998.

Persons interested in testifying should contact the Property, Plant, and Equipment Project Director, Richard Wascak, on 202–512–7363, as soon as possible but no later than Friday, June 12. If more people wishing to testify than can be accommodated on this date, the Board will schedule an additional public hearing date. Due notice will be

published in the **Federal Register** if such additional date becomes necessary. Presenters should provide a written outline of their comments and copies of their biographies to the Board prior to the hearing.

Any interested person may attend the hearing as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Suite 3B18, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988)); 41 CFR 101–6.1015 (1990).

Dated: May 29, 1998.

Wendy M. Comes,

Executive Director.

[FR Doc. 98–14727 Filed 6–2–98; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–20]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Reader Evaluation of ATSDR's Public Health Assessment and Consultation Products—(0923–0016)—Extension—ATSDR is seeking qualitative and quantitative information from its readers on how effectively it communicates its public health findings through its products and to find out what groups read and comment on ATSDR documents. ATSDR will use the information to identify the strengths and weaknesses of its reports from the reader's perspective, provide feedback to our designated reviewers, health assessors and managers, implement quality improvements in readability, risk communication, and the logical development of the science and findings in our public health products, and determine how to best serve each reading group.

Based on review and evaluation of the comments received to date through this process, a few changes are being proposed on the survey instrument to improve several of the questions to make them clearer and more understandable. In addition to follow up with public libraries and repositories, included in the current OMB approval, other follow up mechanisms will be added. Another aspect is also being proposed for this request, a follow up to stimulate user participation in this evaluation. Based on responses from January 1995 to December 1997, an average of about 55 forms are distributed for each site (or document) and about 2 persons respond per site (or per document). Based on the number actually distributed (10,968) and received (398), the response rate has only been about 3.6%. By actively following up on a sample of 200 distributed surveys and documents, we hope to increase the response rate to about 75%. Other than their brief time to participate, there are no costs involved for the responder to participate.

A one-page, two-sided survey is provided with each public health document to persons who have requested to be on a mailing list to receive a copy. Federal Depository Libraries are also used to provide these documents and survey instruments. The persons receiving a document either reside near the hazardous release area or site or have been involved with the site or release in some way; they may include concerned community members, public employees, health care professionals, or some other group. The recipient is asked to complete and return the survey, which has a business reply label that is postage pre-paid. This is a request for a three-year extension. There is no cost to respondents.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Reader of public health document	130	1	0.25	33
Librarian follow-up	180	1	0.12	22
Reader follow-up	200	1	0.25	50
Nonresponder follow-up	100	1	0.25	25
Total				130

2. Childhood Lead Poisoning Prevention Program Quarterly Report (0920–0282)—Extension—The National Center for Environmental Health requests an extension of the Childhood Lead Poisoning Prevention Program Quarterly Report. Section 317A of the Public Health Service Act as amended by The Lead Contamination Control Act of 1988 and the Preventive Health Amendments of 1992, mandates that grant applicants report quarterly the number of infants and children screened for elevated blood lead levels, the number found to have elevated blood lead levels, the number and type of medical referrals made for them, and the outcome of such referrals. State and local health agencies are the principal delivery points for childhood lead screening and related medical and environmental management activities. In FY 1998, CDC awarded 41 grants to fund childhood lead poisoning

prevention programs. The purpose of the quarterly report is to report data collected by CDC's grantees. The report consists of narrative and data sections. The narrative section (1) provides highlights of quarterly activities, (2) reports issues and activities that have significant impact on the program, and (3) lists objectives and discusses progress towards meeting those objectives. The data section provides (1) screening and case confirmation activities, (2) environmental inspection and hazard remediation activities, and (3) medical case management activities. The total cost to the respondents is $0.00.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Grantees	41	4	2	328
Total				328

3. Evaluation of Effectiveness of Worker Notifications Conducted by NIOSH—(New)—The National Institute for Occupational Safety and Health (NIOSH) has conducted worker notification formally since 1988. This program informs workers in NIOSH-conducted epidemiological studies about the study results and hence, of their risks. NIOSH worker notification officers conducted a two-task evaluation project approved by OMB in 1993. Task 1 of the project evaluated the long-term impact of a high risk worker notification, and Task 2 evaluated the short-term impact and effectiveness of the notification materials themselves, with the goal of developing a monitoring instrument for routine use. A monitoring instrument was developed for routine use to evaluate effectiveness of ongoing worker notification activities. This instrument was refined over three field trials, involving a random sample set of 25 notified workers in each trial. A second instrument for use with other stakeholders (company and union officials) in the notifications also was developed. The design of these evaluation projects was descriptive in nature, gathering information from small groups of workers, for the purpose of learning how to improve the NIOSH worker notification program.

Having completed the data collection and final report for Task 2 of the evaluation project, we now are seeking approval to use the program monitoring worker survey instrument on a routine basis to assess effectiveness of ongoing letter notifications conducted by NIOSH notification officers. As with the design of the three trials in Task 2, ongoing routine assessment would include for each letter-type notification, our contacting by telephone a random sample of 25 workers who received notification letters and related materials, and at least one company representative and one union representative (where appropriate). A 15-minute telephone survey would be administered to the notified workers, and an up to 30 minute interview would be conducted with the other stakeholders (e.g., company and union representatives). The total annual cost to respondents for the study is $1187.50.

Respondents (workers)	No. of respondents	No. of responses/respondent	Avg. burden/response	Total burden (in hrs.)
Task 1	750	1	.25	187.5
Task 2	60	1	.50	30
Total				217.5

Dated: May 28, 1998.

Charles W. Gollmar,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–14646 Filed 6–2–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98063]

Notice of Availability of Funds; Cooperative Agreement for National Hepatitis B Immunization Program with Focus on Asians and Pacific Islanders

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year FY 1998 funds for a cooperative agreement to support a Hepatitis B Immunization Project with a focus on Asians and Pacific Islanders. The purpose of this cooperative agreement program is to increase hepatitis B vaccination levels among Asian and Pacific Islander (API) children in the United States born between 1983 and 1993 from a baseline of 10 percent in 1996 to 90 percent by the close of year 2000, to enhance local demand for hepatitis B vaccination of API children, and to inform and educate vaccination service providers who serve API children. This program addresses the ''Healthy People 2000'' priority area of Immunization, and Infectious Diseases.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit (and for-profit) organizations, and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private non profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $49,900 is available in FY 1998 to fund one award. It is expected that the award will begin on or about July 31, 1998, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In achieving the purpose of this effort, the recipient will be responsible for the activities listed under Item 1, (Recipient Activities) and CDC will be responsible for the activities listed under Item 2, (CDC Activities).

1. Recipient Activities

The recipient will promote hepatitis B immunization of all API children in the United States through collaborative education and vaccination activities and sharing of information and resources through the member groups, working groups, volunteers, and national, State, and local public and private health care providers. The grantee will:

a. Recipient should conduct meetings, form working groups, and maintain reports and other records as necessary related to Hepatitis B Immunization activities.

b. Work with targeted national organizations and State and local coalitions to facilitate API hepatitis B vaccination coverage surveys and implementation of efforts to educate providers and parents about hepatitis B vaccine (HBV), Vaccines for Children (VFC) Program, and the national recommendations to vaccinate all API children with hepatitis B vaccine.

c. Work with State and local coalitions to identify barriers and solutions to these barriers in the implementation of hepatitis B vaccination of all API children.

d. Regularly inform all work groups and volunteers and relevant national, State and local groups of recipient related activities around the country with a published vehicle such as a newsletter.

e. Develop strategies, action plans, and mechanisms to increase public and private collaboration on activities to ensure hepatitis B vaccination of all API children in the U.S., for example, such as establishing a Web page; organizing volunteer groups; organizing fund-raising efforts; developing and utilizing mailing lists; working with Asian language school principals; meeting with Asian language media spokespersons; and working through the federal Vaccines for Children (VFC) network to enroll and educate providers of vaccination services to API children in each of the 12 top API states—California, New York, Hawaii, Texas, Illinois, New Jersey, Washington, Florida, Virginia, Maryland, Pennsylvania, and Massachusetts.

f. Establish working relationships with API health care providers to enhance their interest and participation in the project.

g. Devise and implement a linkage of a majority of the existing hepatitis B virus transmission prevention resources with a majority of the nation's API community leaders.

2. Centers for Disease Control and Prevention (CDC) Activities

a. As requested, provide assistance to the recipient, with plans or agendas for proposed activities.

b. Provide technical assistance through telephone calls, correspondence, and site visits in the area of program and agenda development, implementation, and priority setting related to the cooperative agreement.

c. Provide scientific collaboration for appropriate aspects of the activities, including information on disease impact and vaccination coverage levels.

d. Provide speakers, when possible, on such topics and impact of HBV infection in API's, national policy and recommendations related to hepatitis B vaccination of API children.

e. Assist as requested in reporting and validating relevant hepatitis B vaccination information made available through publication in a newsletter and journal articles and otherwise provided to project members, volunteers, Federal, State, and local health agencies, and health care providers.

f. Provide representatives to attend executive, steering group and work group conference calls and meetings.

E. Application Content

The application must contain the following:

1. Objectives consistent with the existing purpose of the applicant organization.

2. Background information on the applicant; evidence of relevant experience in coordinating groups of diverse organizations; evidence of the applicant's organizational capacity and experience in building and maintaining relationships with national organizations, private and public sector non-profit health care organization, professional health associations, volunteer groups, advocacy groups, API organizations, and government entities.

4. A clear description of the purpose of the applicant organization along with detailed methods and activities which will be undertaken to ensure vaccination of at least 90 percent of all API children in the U.S. with hepatitis B vaccine by the close of year 2000.

5. A plan to monitor and evaluate activities.

6. Biographical information on qualified and experienced administrative and professional personnel who will be working in an existing organizational structure to fulfill the terms of the project.

7. Letters from current API organizations, API community leaders, and State and local public health agencies which indicate the applicant has their support and involvement in conducting the activities of this project and has an established reputation to motivate other organizations.

8. A detailed budget and narrative budget justification.

Competing Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189) on or before July 6, 1998. Submit the application to: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98063, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, Georgia 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated by an independent review group appointed by CDC to the extent it documents the applicant's:

1. understanding of the existing disease control problem and the importance and feasibility of hepatitis B vaccination of at least 90 percent of all API children in the U.S. by the close of year 2000. *(10 percent)*

2. specific, realistic, measurable, and time-phased objectives which are related to effective activities. (*15 percent*)

3. high quality and effective plan for ensuring implementation of State and local successful hepatitis B vaccination efforts in at least the top 12 API states. (*20 percent*)

4. established network of national, State or local collaborators and accessibility to an adequate number of member organization representatives. (*20 percent*)

5. administrative and support staff to operate the project. (*10 percent*)

6. qualified and experienced professional personnel who are committed to the project and will implement the proposed program activities. (*10 percent*)

7. appropriate and effective plan to measure activities and evaluate its progress toward the year 2000 goal. (*15 percent*)

In addition, consideration will be given to the extent to which the budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

A. Provide CDC with original plus two copies of:

1. quarterly progress reports describing the progress toward achieving objectives, implementing vaccination programs, and providing services;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial and performance reports, no more than 90 days after the end of the project period.

B. Provide an annual report to the project members, summarizing activities and accomplishments of the project.

Send all reports to: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305–2209.

The grantee will visit CDC, NIP at least twice a year for a verbal progress report on all project activities.

The following additional requirements are applicable to this program.

AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions
AR98–7 Executive Order 12372 Review
AR98–8 Public Health System Reporting Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 317(k)(1)[42 U.S.C. 247b(k)(1)], as amended. The Catalog of Federal Domestic Assistance number is 93.185.

J. Where to Obtain Additional Information

Please refer to Program Announcement 98063 when you request information. For a complete program description, information on application procedures, an application package, and business management assistance, contact: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98063, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305–2209, telephone (404) 842–6521, Email address DCE1@cdc.gov.

See also the CDC home page on the Internet: *http://www.cdc.gov*

For program technical assistance, contact Gary L. Euler, DrPH, Chief, Hepatitis Activity, Adult Vaccine Preventable Diseases Branch, Epidemiology and Surveillance Division, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–61, Atlanta, GA 30333, telephone (404) 639–8742, Internet address: GLE0@CDC.gov.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

Dated: May 28, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 98–14658 Filed 6–2–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Program Announcement No. 98043; National Partnerships for Human Immunodeficiency Virus (HIV) Prevention; Notice of Availability of Funds for Fiscal Year 1998

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds to (a) develop national, State, and local leadership and support for HIV prevention programs and policies, and (b) build capacity and skills for HIV prevention activities at the State and local levels.

This announcement relates to the priority areas of educational and community-based programs, HIV infection, and sexually transmitted diseases (STDs). It addresses the ''Healthy People 2000'' objectives by providing support for primary prevention for persons at risk for HIV infection and by increasing the availability and coordination of prevention and early intervention services for HIV-infected persons. CDC encourages all grant recipients to provide HIV prevention education to their employees and staff.

B. Eligible Applicants

To be eligible for funding under this announcement, applicants must be (1) a tax-exempt, non-profit national business-or labor-related, religion-or faith-based, performing arts, professional media, or civic or service organization , as defined below, whose net earnings in no part accrue to the benefit of any private shareholder or person; or (2) an academic institution working in collaboration with such organizations. Tax-exempt status is determined by the Internal Revenue Service (IRS) Code, Section 501(c)(3). Tax-exempt status may be proved by either providing a copy of the pages from the IRS' most recent list of 501(c)(3) tax-exempt organizations or a copy of the current IRS Determination Letter. Proof of tax-exempt status must be provided with the application. CDC will not accept an application without proof of tax-exempt status.

For purposes of this cooperative agreement, the following definitions are used:

A national business-or labor-related organization is a non-profit, professional or voluntary organization, that (1) has businesses, business leaders,

or labor leaders as a major focus or constituency; (2) is a labor union; or (3) is a trade association. In addition, the organization (1) has a formal or informal network, chapters, affiliates, constituent organizations, or offices in multiple U.S. States or territories; and (2) has access to national corporate, business, union, or labor leaders and managers (e.g., human resource managers). For example, a labor union with chapters in multiple States would meet the definition of a national business-or labor-related organization, whereas an individual State chapter of a national labor union would not.

A national religion or faith-based organization is a non-profit, professional or voluntary organization which (1) has primarily a religious, faith, or spiritual basis or constituency; (2) has a formal or informal network, chapters, affiliates, constituent organizations, or offices in multiple U.S. States or territories; and (3) has access to national religious, faith, and spiritual leaders. For example, a national organization of churches that has constituent chapters or affiliates in multiple States would meet the definition of a national faith organization, whereas an individual church, mosque, or synagogue would not.

A national performing arts organization is a nonprofit, professional or voluntary organization which (1) has expertise in using the performing arts for health promotion purposes among youth (i.e., persons ≤24 years old), and (2) has the capacity to develop, a formal or informal network of performing arts organizations or groups in multiple States or territories. For example, a performing arts organization or group that has a communications network with performing arts groups in multiple States would meet the definition of a national performing arts organization, whereas a single performing arts group that has no affiliates or network would not.

A national professional media organization is a nonprofit, professional or voluntary organization which (1) has the radio, television, or print media as a major focus or constituency; (2) is a media-related professional society; or (3) is a media-related trade association; and (1) has a formal or informal network, chapters, affiliates, constituent organizations, or offices in multiple U.S. States or territories; (2) has access to media leaders, content producers, or distributors; and (3) has access to important national, regional, State, or local media outlets or message delivery channels (e.g., national broadcasters or publishers, regional media networks, or local television or radio stations). For example, a media-related trade organization with constituent chapters or affiliates in multiple States would meet the definition of a national media organization, whereas an individual television or radio station would not.

A national civic or service organization is a nonprofit, professional or voluntary organization or agency which (1) has community service as a primary focus, and (2) has a formal or informal network, chapters, affiliates, constituent organizations, or offices in multiple States or territories. For example, a civic organization that has affiliates or chapters in multiple States would meet the definition of a national civic or service organization, whereas an individual State chapter would not.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $1.4 million is available in FY 1998 to fund approximately 10 awards in 4 categories. It is expected that the average award will be $140,000. It is expected that the awards will begin on or about August 1, 1998, and will be made for an eight month budget period. The second and third budget periods will be 12 months; the total project period will be 32 months.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Applicants may apply for funding in only one of the four Categories; however, within each category, applicants may apply for one or both of two Activities, as defined in the section on Recipient Activities.

A. Category I—Business-or Labor-related Organization Programs

Up to three awards will be made in this category, including:

- Up to two that address Activity A (Leadership Activities), requests should not exceed $200,000 per year; and
- Up to two that address Activity B (Technical Assistance Activities), requests should not exceed $300,000 per year.

B. Category II—Religious or Faith-based Organization Programs

Up to three awards will be made in this category, including:

- Up to two that address Activity A (Leadership Activities), requests should not exceed $200,000 per year; and
- up to two that address Activity B (Technical Assistance Activities), requests should not exceed $300,000 per year.

C. Category III—Performing Arts or Professional Media Organization Programs Up to two awards will be made in this category, including:

- Up to two that address Activity A (Performing Arts Activities), requests should not exceed $300,000 per year; and
- Up to two that address Activity B (Professional Media Activities), requests should not exceed $300,000 per year.

D. Category IV—Civic or Service Organization Programs

Consideration will be given to proposals involving national civic or service organizations. Up to two awards will be made in this category, including:

- Up to two that address Activity A (Leadership Activities), requests should not exceed $200,000 per year; and
- Up to two that address Activity B (Technical Assistance Activities), requests should not exceed $300,000 per year.

These estimates are subject to change based on the following: the actual availability of funds; appropriateness and reasonableness of the budget justification; and proposed use of project funds.

Funds available under this announcement must support activities directly related to primary HIV prevention (i.e., prevention of the transmission or acquisition of HIV infection). However, activities that include preventing other STDs and drug use as a means of reducing or eliminating the risk of HIV infection may also be supported. No funds will be provided for direct patient medical care (including substance abuse treatment, medical prophylaxis or drugs). These funds may not be used to supplant or duplicate existing funding.

Although applicants may contract with other organizations under these cooperative agreements, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services) for which funds are requested. Applications requesting funds to support only administrative and managerial functions will not be accepted.

Awards will be made for one 8 month and two 12 month budget periods within a 32 month project period.

Note: Applicants can apply in only one category. Within each category, applicants

can apply for either or both of the specified activities. A separate application must be submitted for each activity; for example, an organization applying in both Category I/Activity A and Category I/Activity B, should submit an application for Category I/Activity A and a separate application for Category I/Activity B. With each application, applicants should state explicitly for which Category and Activity they are applying.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A; CDC will be responsible for activities under B.

A. Recipient Activities

1. Recipients in all categories must include the following general activities:

a. Incorporate cultural competency and linguistic appropriateness into all capacity and skills building efforts, including those involving the development, production, dissemination, and marketing of health communication or prevention messages;

b. Develop and implement a plan for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement and ensure its continuation after the end of the project period. During the project period recipients are encouraged to obtain funds from non-CDC sources to match the CDC funds provided through this cooperative agreement in a 2:1 ratio (i.e., two dollars from other sources for each one dollar of CDC funds provided through this cooperative agreement) to minimize the disruption of activities at the end of the CDC project period;

c. Use epidemiologic data, needs assessments, and prioritization of groups and interventions to design program activities and place emphasis on communities at high risk for HIV;

d. Participate as a member of a CDC-coordinated technical assistance network, including working with other national partners in a team approach, when appropriate;

e. Coordinate program activities with relevant national, regional, State, and local HIV prevention programs to prevent duplication of efforts;

f. Review and ensure consistency with applicable State and local comprehensive HIV prevention community plans when conducting program activities at the State and local levels;

g. Facilitate the dissemination of successful prevention interventions and program models through meetings, workshops, conferences, and communications with project officers;

h. Compile ''lessons learned'' from the project;

i. Monitor and evaluate all major program activities and services supported with CDC HIV prevention funds under this cooperative agreement;

j. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

2. Category I—Business- or Labor-related Organization Programs.

a. Activity A—Leadership Activities.

(1) Develop and promote, at the national, State, and local levels, leadership, support for HIV prevention policies and strategies, volunteerism, community service, and philanthropic activities in support of HIV prevention;

(2) Influence and strengthen, at the national, State, and local levels, societal and community norms that dispel myths about HIV/AIDS, reduce discrimination against persons with HIV/AIDS, and facilitate HIV prevention by supporting the adoption and maintenance of safer behaviors;

(3) Review, promote, and market, at the national, State, and local levels, policies related to HIV/AIDS and HIV prevention education in the workplace.

b. Activity B—Technical Assistance Activities.

(1) Provide businesses and business- and labor-related organizations with training and technical assistance related to:

- Adopting and implementing appropriate CDC-recommended policies on HIV/AIDS in the workplace;
- Educating managers and labor leaders about these policies;
- Educating workers about HIV/AIDS in the workplace;
- Educating workers and their families about HIV prevention, and
- Contributing to community efforts to control HIV transmission.

Prioritize these activities to focus on communities that are at high risk for HIV.

(2) Assist State and local HIV prevention community planning groups, health departments, CBOs (community-based organizations), and other HIV prevention providers in working with businesses and business- and labor-related organizations to strengthen and promote HIV prevention efforts in the community.

(3) Assist businesses and business- and labor-related organizations in working with State and local HIV prevention community planning groups, health departments, CBOs, and other HIV prevention providers to strengthen and promote HIV prevention efforts in the community.

Note: Organizations conducting these technical assistance activities will function as members of a CDC-coordinated technical assistance network.

3. Category II—Religious or Faith-based Organization Programs.

a. Activity A—Leadership Activities.

(1) Develop and promote, at the national, State, and local levels, leadership, support for HIV prevention policies and programs, volunteerism, community service, and philanthropic activities in support of HIV prevention.

(2) Influence and strengthen, at the national, State, and local levels, societal and community norms that dispel myths about HIV/AIDS, reduce discrimination against persons with HIV/AIDS, and facilitate HIV prevention by supporting the adoption and maintenance of safer behaviors.

b. Activity B—Technical Assistance Activities.

(1) Provide faith-based organizations, institutions, and groups with training and technical assistance related to:

- Educating their leaders, employees, and membership about HIV/AIDS and HIV prevention;
- Planning and implementing HIV education and prevention programs and activities, and
- Contributing to community efforts to prevent HIV transmission.

Prioritize these activities to focus on communities that are at high risk for HIV.

(2) Assist State and local HIV prevention community planning groups, health departments, CBOs, and other HIV prevention providers in working with regional, State, or local faith-based organizations or institutions to strengthen and promote HIV prevention efforts in the community.

(3) Assist regional, State, or local faith-based organizations or institutions in working with State and local HIV prevention community planning groups, health departments, CBOs, and other HIV prevention providers to strengthen and promote HIV prevention efforts in the community.

Note: Organizations conducting these technical assistance activities will function as members of a CDC-coordinated technical assistance network.

4. Category III—Performing Arts or Professional Media Organization Programs

a. Activity A—Performing Arts Activities.

(1) Develop a network of State and local organizations or groups that use the performing arts to promote HIV prevention among youth (i.e., persons ≤24 years old).

(2) Provide State and local performing arts organizations or groups with training and technical assistance to

develop their capacity and skills for using the performing arts for HIV prevention among youth. Prioritize these activities to focus on communities that are at high risk for HIV.

(3) Assist State and local HIV prevention community planning groups, health departments, CBOs, and other HIV prevention providers in working with performing arts organizations or groups to strengthen and promote HIV prevention among youth in the community.

(4) Assist performing arts organizations or groups in working with State and local HIV prevention community planning groups, health departments, CBOs, and other HIV prevention providers to strengthen and promote HIV prevention among youth in the community.

Note: Organizations conducting these technical assistance activities will function as members of a CDC-coordinated technical assistance network.

b. Activity B—National Media Organization Programs.

(1) Provide radio and television stations and the print media with training and technical assistance to develop their capacity and skills for communicating effective HIV education and prevention messages to their audiences. Prioritize these activities to focus on communities that are at high risk for HIV.

(2) Assist State and local HIV prevention community planning groups, health department HIV prevention programs, CBOs, and other HIV prevention providers in working with radio and television stations and the print media to strengthen and promote HIV prevention efforts in the community.

(3) Assist radio and television stations and the print media in working with State and local HIV prevention community planning groups, health departments, CBOs and other HIV prevention providers to strengthen and promote HIV prevention efforts.

Note: Organizations conducting these technical assistance activities will function as members of a CDC-coordinated technical assistance network.

5. Category IV—Civic or Service Organization Programs.

a. Activity A—Leadership Activities.

(1) Develop and promote, at the national, State, and local levels, leadership, support for HIV prevention policies and programs, volunteerism, community service, and philanthropic activities in support of HIV prevention.

(2) Influence and strengthen, at the national, State, and local levels, societal and community norms that dispel myths about HIV/AIDS, reduce discrimination against persons with HIV/AIDS, and facilitate HIV prevention by supporting the adoption and maintenance of safer behaviors.

b. Activity B—Technical Assistance Activities.

(1) Provide civic and service organizations with training and technical assistance related to:

- Educating their leaders, staff members, and membership about HIV/AIDS and HIV prevention;
- Planning and implementing HIV education and prevention programs and activities; and
- Contributing to community efforts to prevent HIV transmission.

Prioritize these activities to focus on communities that are at high risk for HIV.

(2) Assist State and local HIV prevention community planning groups, health departments, CBOs, and other HIV prevention providers in working with regional, State, or local civic and service organizations to strengthen and promote HIV prevention efforts in the community.

(3) Assist regional, State, or local civic and service organizations in working with State and local HIV prevention community planning groups, health departments, CBOs, and other HIV prevention providers to strengthen and promote HIV prevention efforts in the community.

Note: Organizations conducting these technical assistance activities will function as members of a CDC-coordinated technical assistance network.

B. CDC Activities

1. Coordinate a national technical assistance network that will include organizations providing technical assistance under the cooperative agreement.

2. Provide recipients with consultation and technical assistance in planning, operating, and evaluating program activities and services. Provide consultation and technical assistance both directly from CDC and indirectly through prevention partners such as health departments, national and regional minority organizations (NRMOs), contractors, and other national organizations.

3. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

4. Assist recipients in collaborating with State and local health departments, HIV prevention community planning groups, and other federally-supported HIV/AIDS recipients.

5. Facilitate the dissemination of successful prevention interventions and program models through meetings of grantees, workshops, conferences, and communications with project officers.

6. Monitor recipient performance of program activities, protection of client confidentiality, and compliance with other requirements.

7. Facilitate exchange of program information and technical assistance among HIV prevention community planning groups, health departments, national and regional organizations, and CBOs.

8. Conduct an overall evaluation of the National Partnerships Cooperative Agreement program.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your applications will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The application should not exceed 25 single spaced printed pages, excluding attachments and required forms.

Submit the original and 2 copies of the application. Number each page clearly, and provide a complete index to the application and its attachments. Please begin each section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be printed, single spaced, with unreduced type on 8–½'' by 11'' paper, with at least 1'' margins, headings and footers, and printed on one side only. Materials which should be part of the basic plan will not be accepted if placed in the attachments.

In developing the application, follow the instructions and format outlined below.

1. Abstract (not to exceed two pages) Summarize your proposed program activities. Include the following:

a. Category and activity for which the application is being made;

b. Long-term goals;

c. Brief summary of the need for the proposed activities;

d. Brief description of organizational history and capacity;

e. Proposed first budget period objectives;

f. Brief summary of proposed plan of operation;

g. Brief description of planned collaborations with governmental and non-governmental organizations (e.g., national agencies or organizations, State and local health departments,

community planning groups, or State and local non-governmental organizations);

h. Brief summary of plans for evaluating the activities of this project; and

i. Brief summary of plans for obtaining training and technical assistance.

2. Long-term Goals:

Describe the broad goals that your proposed program aims to achieve over the course of the 32 month project period. Describe how these goals relate to the prevention of HIV infection, either directly or indirectly.

3. Assessment of Need and Justification for Proposed Activities:

Clearly identify the need that will be addressed by your proposed program. Describe how you assessed the need for your proposed program. Include epidemiologic and other data that was used to identify the need, an inventory of resources currently available that address the identified need, and an analysis of the gap between the identified need and the resources currently available to address the need (i.e., How will proposed activities or program address an important unmet HIV prevention need or risk-group?). State why the funds being applied for in this application are necessary to address the need.

4. Organizational History and Capacity:

a. Describe your role as a national entity and how you meet the criteria for national organizations as defined in this program announcement. Describe your existing organizational structure, including constituent or affiliate organizations or networks, how that structure will support the proposed program activities, and how the proposed program will have the capacity to reach targeted communities or groups in multiple States or territories.

b. Describe your past and current experience in developing and implementing similar programs in the appropriate category and activity. For leadership activities, include capacity for and expertise in leadership development. For technical assistance activities, include capacity for and expertise in providing training and technical assistance related to HIV prevention.

c. Describe your knowledge of HIV transmission and behavioral and social interventions for preventing HIV transmission, and experience in developing and implementing effective HIV prevention strategies and activities. Include your capacity for and expertise in providing educational or prevention services to populations at risk for HIV.

d. Describe your capacity to provide culturally competent and appropriate services that respond effectively to the cultural, gender, environmental, social and multilingual character of the target audiences, including any history of providing such services.

e. Describe your experience and ability to (1) collaborate with other governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services; and (2) coordinate program development with existing governmental and private prevention efforts.

f. For any of the above areas in which you do not have capacity or expertise, describe how you will ensure that the proposed program has that capacity (e.g., through a collaborating organization or a subcontractor).

g. Describe your plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and ensure its continuation after the end of the project period.

5. Program Proposal:

Describe your proposed program, including:

a. *Objectives:* Provide specific, realistic, time-phased and measurable objectives to be accomplished during the first budget period. Describe how these objectives relate to the program's long-term goals. Describe possible barriers to or facilitators for reaching these objectives.

b. *Plan of Operation:* Describe in detail the methods (i.e., strategies and activities) you will use to achieve the proposed goals and objectives, and perform the required recipient activities. Identify program staff responsible for conducting the proposed activities. Describe specifically how you will address the general and activity-specific requirements. Describe your roles and responsibilities and those of each collaborating institution, organization, or subcontractor in performing the proposed activities.

c. *Prioritize Program Activities:* Describe how you will prioritize the program activities to place emphasis on populations or communities that are disproportionately affected by HIV/AIDS.

d. *Coordination/Collaboration:* Describe how you will work and coordinate with other national, regional, State, and local governmental and nongovernmental organizations and HIV prevention providers, such as other national agencies or organizations, State and local health departments, and State and local non-governmental organizations, to conduct the proposed activities. Describe how you will ensure consistency with applicable State and local comprehensive HIV prevention community plans when conducting program activities at the State and local levels.

e. *Communications:* Describe how you will share successful approaches with other organizations and how ''lessons learned'' will be compiled and disseminated.

f. *Time Line:* Provide a time line that indicates the approximate dates by which activities will be accomplished.

6. Scientific, Theoretical, or Conceptual Foundation for Proposed Activities: Provide a detailed description of the scientific, theoretical, or conceptual foundation on which the proposed activities are based and which support the potential effectiveness of these activities for addressing the stated need.

7. Plan of Evaluation: Describe how you will monitor progress to determine if the objectives are being achieved, and determine if the methods used to deliver the proposed activities are effective. Describe how data will be collected, analyzed, and used to improve the program.

8. Training and Technical Assistance Plan: Describe areas in which you anticipate needing technical assistance in designing, implementing, and evaluating your program and how you will obtain this technical assistance. Describe anticipated staff training needs related to the proposed program and how these needs will be met.

9. Project Management and Staffing: Describe how the proposed program will be managed and staffed, including the location of the program within your organization. Describe in detail each existing or proposed position by job title, function, general duties, and activities. Include the level of effort and allocation of time for each project activity by staff positions. If the identity of any key personnel who will fill a position is known, provide their curriculum vitae (not to exceed two pages per person) as an attachment. Note experience and training related to the proposed project.

10. Budget Breakdown and Justification: Provide a detailed budget for each proposed activity. Justify all operating expenses in relation to the stated objectives and planned priority activities. CDC may not approve or fund all proposed activities. Be precise about

the program purpose of each budget item and itemize calculations wherever appropriate.

For the personnel section, indicate the job title, annual salary/rate of pay, and percentage of time spent on this program.

For contracts contained within the application budget, identify the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown of and justification for the estimated costs of the contracts; the kinds of organizations or parties to be selected; the period of performance; and the method of selection.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement.

11. Attachments: Provide the following as attachments:

a. Proof of nonprofit status;

b. An organizational chart and listing of existing and proposed staff, including volunteer staff;

c. Description of collaborating organizations or institutions and original, signed letters from the chief executive officers of each such organization or institution assuring their understanding of the intent of this program announcement, the proposed program, their role in the proposed program, and the responsibilities of recipients;

d. A description of any funding being received from CDC or other sources to conduct similar activities which includes:

(1) A summary of funds and income received to conduct HIV/AIDS programs. This summary must include the name of the sponsoring organization/source of income, level of funding, a description of how the funds have been used, and the budget period. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting;

(2) A summary of the objectives and activities of the funded programs described above;

(3) A description of how funds requested in this application will be used differently or in ways that will expand upon the funds already received, applied for, or being received; and

(4) An assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds.

e. Evidence of collaboration, or intent to collaborate, with State and local chapters, affiliates, organizations, or venues; and

f. Independent audit statements from a certified public accountant for the previous 2 years.

F. Submission and Deadline

Submit the original and two copies of PHS 5161 (OMB Number 0937–0189). Forms are in the application kit.

On or before July 10, 1998, submit the application to: Julia Valentine, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98043, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Mailstop E–15, Atlanta, GA 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

A. Long-term Goals and Justification (Total 10 Points)

1. The quality of the applicant's stated long-term goals and the extent to which the goals are consistent with the purpose of this cooperative agreement, as described in this program announcement. (5 points)

2. The extent to which the applicant soundly and convincingly documents a substantial need for the proposed program and activities. (5 points)

B. Organizational History and Capacity (Total 25 Points)

The extent of the applicant's documented experience, capacity, and ability to address the identified needs and implement the proposed activities, including:

1. How the applicant's organizational structure and planned collaborations (including constituent or affiliated organizations or networks) will support the proposed program activities, and how the proposed program will have the capacity to reach targeted communities or groups in multiple States or territories; (5 points)

2. Summary of the applicant's past and current experience in developing and implementing similar programs in the appropriate category (For leadership activities, this should include capacity for and expertise in leadership development. For technical assistance activities, this should include capacity for and expertise in providing training and technical assistance related to HIV prevention); (5 points)

3. The applicant's knowledge of HIV transmission and behavioral and social interventions for preventing HIV transmission and experience in developing and implementing effective HIV prevention activities; (3 points)

4. Past and current experience providing culturally competent and appropriate services which respond effectively to the cultural, gender, environmental, social and multilingual character of the target audiences, including documentation of any history of providing such services; (3 points)

5. Experience and ability in collaborating with other governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services; (3 points)

6. Experience and ability in coordinating program development with existing governmental and private prevention efforts; (3 points) and

7. The quality of the applicant's plans for obtaining additional resources from other non-CDC sources to supplement the program conducted through this cooperative agreement and ensure its continuation after the end of the project period. (3 points)

C. Objectives (Total 5 Points)

1. The extent to which the proposed first-year objectives are specific, realistic, measurable, time-phased, and consistent with the program's long-term goals and proposed activities. (3 points)

2. The extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives. (2 points)

D. Plan of Operation (Total 25 Points)

1. The overall quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed goals and objectives; (7 points)

2. The quality of the applicant's plans to address the general and category/activity-specific requirements listed under Recipient Activities; (6 points)

3. The extent to which the roles and responsibilities of the primary applicant and each collaborating institution, organization, or subcontractor are

consistent with the proposed activities; (5 points) and

4. The quality of the applicant's plan to focus the proposed program and activities on communities that are at high risk for HIV. (7 points)

E. Coordination With Other Programs (Total 10 Points)

1. The extent to which the applicant describes and documents intended coordination with other national, regional, State, and local governmental and nongovernmental organizations and HIV prevention providers, such as other national agencies or organizations, State and local health departments; (4 points)

2. The quality of the applicant's plan to ensure consistency with applicable State and local comprehensive HIV prevention community plans when conducting activities at the State and local levels; (4 points) and

3. The quality of the applicant's plan for communicating successful approaches and ''lessons learned'' to other organizations. (2 points)

F. Scientific, Theoretical, or Conceptual Foundation (Total 10 Points)

1. The extent to which the program, as described, has a clearly described and sound scientific, theoretical, or conceptual foundation; (5 points) and

2. The extent to which data, theory, or conceptual framework convincingly demonstrate that the proposed activities are likely to meet the stated needs. (5 points)

G. Evaluation and Technical Assistance (Total 15 Points)

1. The quality of the applicant's evaluation plan for monitoring the implementation of proposed activities and measuring the achievement of program goals and objectives; (10 points) and

2. The quality of the applicant's plan for obtaining needed technical assistance and staff training to support the proposed program. (5 points)

H. Budget (Not Scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with intended use of funds.

A fiscal Recipient Capability Audit may be required of some applicants before funds will be awarded.

H. Other Requirements

A. Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semiannual progress reports which should document services provided and problems encountered, with careful attention to answering questions and documenting accomplishments and problems encountered in meeting program objectives. Progress reports should follow the OMB report format (OMB 0920–0249) as indicated in the application kit. In the third and final year of the project, CDC will ask recipients to report on their plans to sustain the program in the event CDC funding is not continued for another project period;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to: Julia Valentine, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mailstop E–15, Atlanta, GA 30305–2209.

For descriptions of the following Other Requirements, see Attachment I:

AR98–4 HIV/AIDS Confidentiality Provisions
AR98–5 HIV Program Review Panel Requirements
AR98–7 Executive Order 12372 Review
AR98–8 Public Health System Reporting Requirements
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions
AR98–14 Accounting System Requirements
AR98–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 301(a) [42 U.S.C. 241(a)], 317(k)(2) [42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance Number is 93.939.

J. Where to Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Julia Valentine, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98043, Centers for Disease Control and Prevention, Room 300, 255 East Paces Ferry Road, NE., Mailstop E–15, Atlanta, GA 30305–2209, telephone (404) 842–6871; Email address JXV1@CDC.GOV.

For program technical assistance, contact Victor Barnes, M.D., Division of HIV/AIDS Prevention—Intervention Research and Support; National Center for HIV, STD, and TB Prevention; Centers for Disease Control and Prevention (CDC), Mail Stop E–58, Atlanta, GA 30333, telephone (404) 639–5200, E-mail address VCB3@CDC.GOV.

See also the CDC homepage on the Internet: http://www.cdc.gov.

Dated: May 28, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 98–14645 Filed 6–2–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0393]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by July 6, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–80), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the

PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance:

MedWatch: FDA's Medical Product Reporting Program, Forms FDA 3500 and FDA 3500A (OMB Control Number 0910–0291—Reinstatement)

Under sections 505, 507, 512, 513, 515, and 903 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355, 357, 360b, 360c, 360e, and 393) and section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to ensure the safety and effectiveness of drugs, biologics, and devices. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug or device is misbranded if its labeling is false or misleading. Under section 502(f)(2) of the act, a drug or device is misbranded if it fails to bear adequate warnings, and under section 502(j), a drug or device is misbranded if it is dangerous to health when used as directed in its labeling. To carry out its responsibilities under these statutory provisions, the agency needs to be informed whenever an adverse event or product problem occurs. Only if FDA is provided with such information will the agency be able to evaluate the risk, if any, associated with the product, and take whatever action necessary to reduce or eliminate the public's exposure to the risk through regulatory action ranging from labeling changes to the rare product withdrawal. To ensure the marketing of safe and effective products, certain adverse events must be reported. FDA has issued regulations requiring reporting of adverse events and product problems for human drugs, biologics, and devices in 21 CFR 310.305, 314.80, 600.80, 803.30, 803.50, 805.53, and 803.56. These regulations implement statutory adverse event reporting requirements in sections 505(k) and 512(l) of the act and section 2125 of the Public Health Service Act (42 U.S.C. 300aa-25).

To carry out these provisions for mandatory reporting of adverse events and product problems with human drugs, biologics, and devices, and to facilitate voluntary reporting for certain other products that FDA regulates, two very similar forms are used. These forms replaced other forms previously used by the agency, including Form FDA 1639. Form FDA 3500A is used for mandatory reporting. Form FDA 3500 is used for voluntary (i.e., not mandated by law or regulation) reporting of adverse events and product problems by health professionals.

Respondents to this collection of information are health professionals; hospitals and other health care providers (i.e., nursing homes, etc.); manufacturers of biologics, drugs, and medical devices; user facilities; distributors; and importers.

In a notice published in the **Federal Register** of December 18, 1996 (61 FR 66673), FDA invited comments on Forms FDA 3500 and FDA 3500A (hereinafter referred to as the December 18, 1996, notice).

FDA received two comments in response to the December 18, 1996, notice, one from industry and one from a trade association. Both comments generally supported the reinstatement of Form FDA 3500A and opposed any major changes to the structure of the form, since many manufacturers have made investments in systems that produce computer facsimiles of the form. However, both comments questioned the need for Form FDA 3417, the medical device ''Baseline Report,'' saying that virtually all of the information is or could be provided to FDA on either the 3500A form or through the medical device registration and listing process.

FDA agrees that there is a redundancy of certain data elements between the MedWatch Form FDA 3500A, the medical device baseline report, and the medical device registration and listing forms. The Center for Devices and Radiological Health (CDRH) plans to evaluate data collected under the current medical device reporting (MDR) program over the next 6 months. CDRH will then attempt to redesign the forms related to medical device reporting, including parts of Form FDA 3500A. The redesign will be presented in an interactive fashion to industry and OMB in late 1998. The redesigned forms will be made available for public comment in early 2001 and will be instituted in late 2001, assuming that OMB approval has been obtained.

Both comments disagreed with FDA's estimate of the hours per response for medical device reports submitted on Form FDA 3500A. One of the comments correctly stated that the estimate of one hour per response ''may be about right for the physical act of filling out the form itself,'' but felt it was ''a gross underestimate of the time necessary to 'respond''' due to the number of hours it takes to gather the information required by the form. The comment suggested that FDA's original estimate of 1 hour per response be changed to a range of 1 to 5 hours, depending on the complexity of the event. FDA agrees with the comment's statement that the agency's estimate accurately reflects the time necessary to fill out the form; however, the agency disagrees that the estimate for Form 3500A should be modified to cover the time necessary to gather the required information, as this burden has already been counted under the medical device reporting regulations. The burden placed on medical device user facilities, importers, distributors, and manufacturers to investigate a report and compile the necessary information to complete Form FDA 3500A was included in a separate burden estimate that was subjected to public comment (see 60 FR 63578 at 63597) and approved by OMB (OMB control number 0910–0059). Accordingly, to avoid duplication, FDA's estimate for Form 3500A has been intentionally limited to the time needed for the actual completing of the form.

This comment also stated that FDA's estimate did not account for the burden of filing a supplemental MedWatch report on Form FDA 3500A when more information is obtained after the filing of the original report. FDA disagrees with the comment's second criticism, however. Supplemental MedWatch reports are also filed on Form FDA 3500A. Although such supplemental reports are not listed separately in the burden chart, they are included as part of the estimated total number of Form FDA 3500A submissions for each agency component.

The other comment argued that FDA's estimate was too low because it did not include the burden of preparing and submitting medical device baseline reports on Form FDA 3417. FDA disagrees with this comment. The medical device baseline report is not part of the MedWatch collection of information (OMB control number 0910–0291) for which FDA is requesting reinstatement. Rather, the medical device baseline report is a separate collection of information that has already undergone public comment (see 60 FR 63578 at 63597) and received OMB approval (OMB control number 0910–0059). As noted above, however, FDA does plan to revise the medical device baseline report form and other medical device reporting forms to eliminate duplication, and the agency will seek public comment on the revisions.

FDA estimates the burden of this collection of information as follows:

Table 1.—Estimated Annual Reporting Burden[1]

Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
CBER:					
Form FDA 3500	804	1	804	0.5	402
Form FDA 3500A	63	158.5	9,988	1.0	9,988
CDER:					
Form FDA 3500	14,875	1	14,875	0.5	7,438
Form FDA 3500A	500	375	187,522	1.0	187,522
CDRH:					
Form FDA 3500	2,807	1	2,807	0.5	1,404
Form FDA 3500A	39,889	2.05	81,928	1.0	81,928
CFSAN:					
Form FDA 3500	646	1	646	0.5	323
Form FDA 3500A	0	0	0	1.0	0
Total Hours					289,005
Form FDA 3500					9,567
Form FDA 3500A					279,438

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Note: CBER = Center for Biologics Evaluation and Research; CDER = Center for Drug Evaluation and Research; CDRH = Center for Devices and Radiological Health; CFSAN = Center for Food Safety and Applied Nutrition. Form FDA 3500 is for voluntary reporting; Form FDA 3500A is for mandatory reporting.

As more medical products are approved by FDA and marketed, FDA expects that more reports will be submitted. The figures in the table are based on the average number of reports received in FY 1996, adjusted for the anticipated annual increase in reports. The anticipated annual increase in reports is based on the average annual increase from 1993 to 1996. There are zeroes in the CFSAN row for Form FDA 3500A because mandatory reporting using Form FDA 3500A is not applicable to foods.

Dated: May 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14721 Filed 6–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on June 18, 1998, 8 a.m. to 5:30 p.m., and on June 19, 1998, 8 a.m. to 3 p.m.

Location: Doubletree Hotel, Plazas I and II, 1750 Rockville Pike, Rockville, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 18, 1998, the committee will: (1) Hear updates on hepatitis C recipient notification and partner deferral of xenotransplantation recipients; (2) discuss information provided on the Blood Action Plan, Immune Globulin Intravenous supply issues, and Plasma Inventory Hold; and (3) discuss and make recommendations on standard testing for human immunodeficiency virus (HIV) variants. On June 19, 1998, the committee will: (1) Discuss and make recommendations on the review of clinical trial design for Alpha-1-Proteinase Inhibitor; and (2) review and discuss the draft report on the intramural site visit of the Laboratories of Hemostasis and Cellular Hematology, Division of Hematology, and the Laboratories of Hepatitis and Molecular Virology, Division of Transfusion Transmitted Diseases.

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 June 9, 1998. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. on June 18, 1998, and between 10:45 a.m. and 11:15 a.m. on June 19, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 9, 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.

Closed Committee Deliberations: On June 18, 1998, from 3 p.m. to 3:30 p.m., and on June 19, 1998, from 10:15 a.m. to 10:45 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). These portions of the meeting will be closed to discuss increased sensitivity of manufacturers' tests for HIV variants and review of clinical trial design for Alpha-1-Proteinase Inhibitor. On June 19, 1998, from 2 p.m. to 3 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to discuss the draft report of the intramural site visit.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 28, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–14760 Filed 6–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0359]

Program Priorities in the Center for Food Safety and Applied Nutrition; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit input on program priorities in the Center for Food Safety and Applied Nutrition (CFSAN). CFSAN is currently conducting a comprehensive review of its programs to set priorities and establish work product expectations. This meeting is intended to give the public an opportunity to provide input into the priority-setting process.

Date and Time: The meeting will be held on June 24 and 25, 1998, 10 a.m. to 5 p.m.

Location: The meeting will be held in the auditorium at the Cohen Bldg., 330 Independence Ave. SW., Washington, DC.

Contact: Tracy S. Summers, Center for Food Safety and Applied Nutrition (HFS–1), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4850, FAX 202–205–5025, e-mail tsummers@bangate.fda.gov.

Registration and Requests for Oral Presentations: Send registration information (name, title, firm name, address, telephone, and fax number) and requests to make oral presentations to the contact person by June 15, 1998. Written comments should be identified with the docket number found in brackets in the heading of this document and should be submitted by July 15, 1998, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: FDA's CFSAN is conducting a comprehensive review of all its programs to set priorities and establish reasonable work product expectations. Although implementation of the President's Food Safety Initiative (FSI) is clearly CFSAN's top priority, CFSAN has responsibility for many other important programs as well. (The Presidential initiative is aimed at reducing foodborne microbial illness by strengthening food safety practices and policies.) This meeting is intended to provide the public with an opportunity to provide input into the priority-setting process. This meeting will also serve as one of many activities undertaken by the agency to solicit input in accordance with section 406(b) of the Food and Drug Administration Modernization Act (FDAMA) of 1997 (Pub. L. 105–115) (codified at 21 U.S.C. 393(f)). Section 406 of FDAMA requires that FDA, after consultation with appropriate scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, and the regulated industry, develop and publish in the **Federal Register** a plan for meeting all statutory obligations of the Federal Food, Drug, and Cosmetic Act.

By way of example, in CFSAN's regulations program, work priorities are being assigned as follows: (1) The highest priority will be those regulations that enhance consumer safety, such as those issued to carry out the President's FSI; (2) those regulations that are mandated by statute; (3) health-related product labeling regulations; (4) regulations that will improve efficiency of operations; and (5) those additional regulations that have a major positive impact. The agency is interested in comments regarding the use of these criteria for setting priorities in CFSAN's other program areas. To facilitate comments on this issue, the appendix to this notice contains a list of major activities undertaken by FDA to ensure that foods are safe, wholesome, sanitary, and properly labeled, and that cosmetics are safe and properly labeled. Specific activities are listed in one of six general categories: Application review, injury reporting, product safety assurance, research, outreach, and enforcement.

The agency is most interested at this time in receiving comments regarding program priorities outside of FSI, as other venues are available for interested persons to provide input regarding implementation of FSI across the Federal Government. (Information regarding public meetings on the implementation of FSI can be obtained by contacting Camille E. Brewer at 202–260–1784.) Moreover, because many FSI-related activities require that FDA collaborate with one or more of the other Federal agencies that have primary responsibility for food safety (e.g., the Centers for Disease Control and Prevention in the Department of Health and Human Services; the Food Safety and Inspection Service, the Agricultural Research Service and the Cooperative State Research, Education, and Extension Service in the Department of Agriculture; and the Environmental Protection Agency), comments on priorities in the FSI program at the meeting should be limited to those activities for which FDA has sole responsibility.

To help focus comments, FDA requests that oral and/or written input regarding CFSAN program priorities address the following questions:

1. With respect to products under the jurisdiction of CFSAN, do you believe there are issues that directly affect consumer safety that are not being adequately addressed?

2. Beyond implementation of FSI, which program areas and/or activities do you believe should be top priorities for CFSAN, and why?

3. The criteria being used to set priorities for CFSAN's regulations are described above. Should these same criteria be used to set priorities for work in CFSAN's other program areas? If not, what criteria should be used?

4. FDA needs to ensure that its research programs provide the scientific information upon which regulatory decisions are made. In CFSAN, what do you believe should be the highest priority areas for conducting research?

5. Because so much of our nation's food supply is either imported or exported, international activities, such as Codex, appear to be growing in importance. What level of priority do you believe should be given in CFSAN to international activities? Please identify specific activities in your answer.

6. Finally, while not a public health issue, economic fraud affects both the industry and consumers. What level of priority do you believe should be given to addressing issues of economic fraud in the food supply?

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after each meeting at a cost of 10 cents per page. The transcript of the meeting will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Persons requiring a sign language interpreter or other special

accommodations should notify the listed contact person by June 15, 1998. This will be an informal meeting conducted in accordance with 21 CFR 10.65.

Appendix

Center for Food Safety and Applied Nutrition—List of Major Activities

(*Italics* indicates FSI activity)

I. Application Review

- Food and Color Additive Petitions
- GRAS Determinations
- Threshold of Regulation Determinations (food packaging)
- Product Notification (consultation with biotechnology firms)
- Food Additive Regulatory Management (FARM) System (automated workflow)
- Review of Scientific Data and Research (nonlab) (to support petition review/biotech)
- Notification Program for Infant Formula
- Notification Program for Dietary Supplements
- Notification for Nutrient Content and Health Claims Based on Authoritative Statements
- Nutrient Content and Health Claim Petitions
- Small Business Notifications
- Approval of Data Bases for Nutrition Labeling
- Temporary Marketing Permits
- Certificates of Free Sale

II. Injury Reporting

- Adverse Event Reporting/ Monitoring
- *Foodborne Active Surveillance Network (FoodNet)*
- *Coordination on Foodborne Disease Outbreaks*
- *DNA Fingerprinting (PulseNet)*

III. Product Safety Assurance

Monitoring

- Good Laboratory Practices (GLP)/ Bioresearch Monitoring
- *Preventive Measures for Eggs*
- Safety of Dietary Supplements/ Herbal Products
- Monitoring of Prohibited Ingredients (cosmetics) and Adherence to GMP's
- Food Labeling and Packaging Survey (FLAPS)
- Priority-Based Assessment of Food Additives (PAFA)
- Monitoring the Safety of Imported Foods and Cosmetics
- Monitoring of Adverse Reactions to Food Products Reported by the Field
- *Produce Initiative*
- Seafood Decomposition—Investigation of Problems
- Epidemiological Support
- Monitoring Pesticide Residues
- *Monitoring Microbial Pathogens*
- Monitoring Chemical and Industrial Contaminants
- Monitoring Seafood Toxins
- Safety of Medical Foods

Compliance

- Lab Accreditation (e.g., milk labs)
- Low-Acid Canned Food and Acidified Food Regulations and Establishment Registration
- *Development of GAP's and GMP's for Fresh Produce*
- Electronic Inspection System (EIS)
- Import and Domestic Seafood Compliance Program Development and Evaluation
- Economic Fraud
- Regulation and Policy Development (centerwide)
- Economic Cost Benefit Analysis Studies (regulations)
- Nutrient Content Analyses
- Food Standards (including petitions to modify or establish)

HACCP

- International Shellfish Program
- *Implementation of Seafood HACCP*
- *Juice HACCP and Warning Label Proposed Regulations*
- HACCP at Retail (pilot)

Product Testing—This category includes laboratory testing of components/ingredients of foods and cosmetic products for safety.

- Indirect and Direct Food Additives
- Sample Analyses
- Infant Formula Samples
- Testing for Harmful Ingredients and Contaminants in Cosmetic Products

IV. Research

- **Methods Development**—This is research to develop new analytical methods or investigate known analytical methods for detecting and identifying microbial pathogens, chemical contaminants, and toxins in foods and cosmetics that can be potentially harmful to the public's health. Most of the research conducted in CFSAN falls into this category.

— Analytical Methods Development to Detect Microbial Pathogens

- **Risk Assessment**—Developing or applying analytical methods to quantify exposure to or determine if a pathogen, chemical contaminant, or toxin poses a public health risk. This is the second largest category of research conducted in CFSAN.

— Risk Assessment for the Food Safety Initiative: Interagency Consortium; Improve Modeling Techniques

— Mathematical and Statistical Support

— Pathology Data Analyses

— Pharmacokinetic and Pharmcodynamic Modeling

- **Other Research**— Laboratory studies to obtain knowledge/data necessary for application in methods development and/or risk assessment. This category also includes collaborative research efforts with academia and other food safety research concerns.

V. Outreach

- Technical Assistance and Education (consumers/industry/retail/foreign countries)
- Codex Activities
- Guideline Development
- Voluntary Registration Program
- Mutual Recognition Agreements
- Federal/State Cooperative Programs (milk, shellfish, retail)
- *Education on Food Safety*

— Develop educational messages and materials

— Educate general public about safe food handling

— Educate children about safe food handling

— Educate vulnerable populations about safe food handling

VI. Enforcement

- Case Processing
- Recalls of Foods and Cosmetics

Dated: May 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14720 Filed 6–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Nominations of Candidates to Serve on the National Vaccine Advisory Committee, Department of Health and Human Services

The Public Health Service (PHS) is soliciting nominations for possible membership on the National Vaccine Advisory Committee (NVAC). This committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the States; recommends research priorities and other measures the Director of the National Vaccine Program should take to enhance the safety and efficacy of vaccines; advises the Director of the Program in the implementation of sections 2102, 2103, and 2104, of the PHS Act; and identifies annually, for the Director of the Program, the most

important areas of government and non-government cooperation that should be considered in implementing sections 2102, 2103, and 2104, of the PHS Act.

Nominations are being sought for individuals engaged in vaccine research or the manufacture of vaccines or who are physicians, members of parent organizations concerned with immunizations, or representatives of state or local health agencies or public health organizations. Federal employees will not be considered for membership. Members may be invited to serve a four-year term.

Close attention will be given to minority and female representation; therefore nominations from these groups are encouraged.

The following information is requested: name, affiliation, address, telephone number, and a current curriculum vitae. Nominations should be sent, in writing, and postmarked by June 30, 1998, to: Felecia D. Pearson, Committee Management Specialist, NVAC, National Vaccine Program Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, M/S D50, Atlanta, Georgia 30333. Telephone and facsimile submission cannot be accepted.

Dated: May 27, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–14670 Filed 6–2–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, contact the SAMHSA Reports Clearance Officer on (301) 443–7978.

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; © ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

1999 National Household Survey on Drug Abuse —(0930–0110)— Revision—The National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the United States, age 12 and over. The data are used to determine the prevalence of use of cigarettes, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources. For 1999, both the core and modular components of the NHSDA questionnaire will remain essentially unchanged. However, the sample size will be expanded to permit prevalence estimates for each of the fifty states. The total annual burden estimate is 94,918 hours as shown below:

	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
Household Screener	254,563	1	0.05	12,728
NHSDA Questionnaire	67,500	1	1.20	81,000
Total				93,728

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 27, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–14660 Filed 6–2–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4355–N–04]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Lead Hazard Control, 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 date: August 3, 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: Ruth Wright, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Karen L. Williams, Grant Officer, Department of Housing and Urban development, 451 Seventh Street, SW, room B–133, Washington, DC 20410, telephone number (202) 755–1785 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection 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 affecting 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 department'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: Notice of Funding Availability (NOFA) for the Local Lead Hazard Awareness Campaign.

OMB Control Number, if applicable: 2539–0013.

Description of the need for the information and proposed use: This information collection is required in connection with the issuance of a NOFA announcing the availability of approximately $700,000 for grants or cooperative agreements for a local campaign to promote lead hazard awareness. Grants are authorized under Title X, The Residential Lead-Based Paint Hazard Reduction Act of 1992 or the Housing and Community Development Act 1992, Pub. L. 102–550, Section 1011(g).

Agency form numbers, if applicable: None.

Members of affected public: Potential applicants include non-profit organizations, for-profit organizations, institutions of higher learning, State and local governments, federally recognized Indian Tribes and Professional Organizations. *Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:*

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application Development	10	1	50	500
Number of copies to be submitted to Office of Lead Hazard Control for evaluation: Original and five (5) copies.				
Quarterly Reports	5	8	4	160
Total Estimated Burden Hours: 660.				

Status of the proposed information collection: New Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 26, 1998.

David Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 98–14662 Filed 6–2–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4355–N–05]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Lead Hazard Control, 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 date: August 3, 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: Ruth Wright, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Karen L. Williams, Grant Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Room B–133, Washington, DC 20410, telephone Number (202) 755–1785 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection 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 affecting 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 department'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: Notice of Funding Availability (NOFA) for the National Lead Hazard Awareness Campaign.

OMB Control Number, if applicable: 2539–0014.

Description of the need for the information and proposed use: This information collection is required in connection with the issuance of a NOFA announcing the availability of approximately $1,000,000 for grants or cooperative agreements for a national campaign to promote lead hazard awareness. Grants are authorized under Title X, The Residential Lead-Based Paint Hazard Reduction Act of 1992 or the Housing and Community Development Act 1992, Pub. L. 102–550, Section 1011 (g).

Agency form numbers, if applicable: None.

Members of affected public: Potential applicants include non-profit organizations, and for-profit organizations such as public relations firms or marketing/advertising companies.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application Development	2	1	100	200
Number of copies to be submitted to Office of Lead Hazard Control for evaluation: Original and five (5) copies.				
Quarterly Reports	2	8	4	32
Total Estimated Burden Hours: 232				

Status of the proposed information collection: New Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 26, 1998.

David Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 98–14663 Filed 6–2–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4351–N–07]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments are due on or before June 8, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, 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: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package regarding random digit dialing (RDD) rent surveys. HUD is requesting a 7-day OMB review of this information collection.

Section 8(C)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate Program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other program whose regulations specify their use.

Random digit dialing (RDD) telephone surveys have been used for several years to adjust FMRs. These surveys are based on a sampling procedure that uses computers to select statistically random samples of telephone numbers to locate certain types of rental housing units for surveying. HUD contracts with a private company to conduct two types of RDD surveys: (1) Approximately 50 individual FMR areas are surveyed every year to test the accuracy of their FMRs; (2) In addition, 20 RDD surveys are conducted every year to provide updating factors for FMRs not surveyed individually and for Annual Adjustment Factors (AAFs.) These surveys are conducted in the nonmetropolitan portions of all 10 HUD regions, and in the 10 metropolitan portions that do not have their own Consumer Price Index (CPI) surveys.

This Notice is soliciting comments from members of the public and affecting 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: Section 8 Random Digit Dialing Fair Market Rent Telephone Survey.

OMB Control Number: 2528–0142.

Description of the need for the information and proposed use: This provides HUD with a fast, inexpensive way to estimate and update Section 8 Fair Market Rents (FMRs) in areas not covered by AHS or CPI surveys, and in areas where FMRs are believed to be incorrect. It also provides estimates of annual rent changes.

Members of affected public: Individuals or households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The RDD surveys require a great many telephone calls to reach the required number of eligible respondents—those living in 1 or 2 bedroom nonsubsidized rental housing, who had moved in recently. Most numbers are screened out on the first completed telephone call, which is brief. The few that are eligible are asked a longer series of questions, for a total elapsed time of about 4 minutes each. Information collection is voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; and Section 8(C)(1) of the United States Housing Act of 1937.

Dated: May 28, 1998.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 98–14664 Filed 6–2–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Seneca Resources Corporation/Enron Oil and Gas Company West Landslide Habitat Conservation Plan, Kern County, CA

AGENCY: Fish and Wildlife Service; Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that the Seneca Resources Corporation (Seneca) and Enron Oil and Gas Company (Enron) have applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The proposed permit would authorize the incidental take of San Joaquin kit fox (*Vulpes macrotis mutica*), blunt-nosed leopard lizard (*Gambelia silus*), giant kangaroo rat (*Dipodomys ingens*), California condor (*Gymnogyps californianus*), federally listed as endangered, and Hoover's eriastrum (*Eriastrum hooveri*), federally listed as threatened. The proposed permit also would authorize future incidental take of the San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), short-nosed kangaroo rat (*Dipodomys nitratoides brevinasus*), western burrowing owl (*Athene cunicularia hypugea*), and recurved larkspur (*Delphinium recurvatum*), currently unlisted species, should any of them become listed under the Endangered Species Act in the future. The permit would be in effect for 30 years.

The Service also announces the availability of an Environmental Assessment for the incidental take permit application. The application includes the proposed Habitat Conservation Plan (Plan) fully describing the proposed project and mitigation, and the accompanying Implementing Agreement. This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, Environmental Assessment and Implementing Agreement should be received on or before July 6, 1998.

ADDRESSES: Comments regarding the application or adequacy of the Environmental Assessment and Implementing Agreement should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino, Suite 130, Sacramento, California 95821–6340. Individuals wishing copies of the application, Environmental Assessment or Implementing Agreement for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Pine or Peter Cross, Sacramento Fish and Wildlife Office, (916) 979–2728.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibit the ''taking'' of a species listed as endangered or threatened, respectively. However, the Service may, under limited circumstances, issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

Seneca Resources Corporation and Enron Oil and Gas Company seek coverage for take of the federally listed San Joaquin kit fox, blunt-nosed leopard lizard, giant kangaroo rat, California condor, and Hoover's eriastrum incidental to exploratory oil well drilling operations and associated production operations on the 640-acre West Landslide oil field. The proposed permit also would authorize future incidental take of the San Joaquin antelope squirrel, short-nosed kangaroo rat, western burrowing owl, and recurved larkspur, currently unlisted species, should any of them become listed under the Endangered Species Act in the future. Collectively the listed and unlisted species addressed in the Plan are referred to as the ''covered species'' for the West Landslide project. Authority under the Endangered Species Act for direct take of California condor is not requested. It is requested that authority be given for minimal harassment of California condor that may inadvertently result if condors are ever present in the Plan Area.

The project will occur in two phases. For Phase 1, Seneca and Enron will drill an exploratory well on the West Landslide property. Phase I activities are expected to disturb up to 3.3 acres of land. If the exploratory well is successful, Phase II will be initiated. For Phase II, Seneca and Enron will construct and operate up to ten (10) additional wells and related pipelines, roads, power lines, and a tank setting. Phase II activities are expected to disturb a maximum of 17.7 acres in addition to the Phase I disturbed area. Therefore, the maximum area that will potentially be disturbed during both Phase I and Phase II of the project is 21 acres.

Biological surveys to determine if listed species are present were not conducted. Instead, Seneca and Enron assumed that species are present because appropriate habitat is present, and because distribution mapping indicates that the species could occur on the West Landslide property. Seneca and Enron concluded that the construction and operation of oil wells and related infrastructure may result in incidental take of listed species.

Seneca and Enron will avoid and minimize impacts to listed species by conducting pre- and post-project surveys, project monitoring and reporting, and restoration. Detailed avoidance and minimization measures are presented in the Plan.

In addition, Seneca and Enron will mitigate for habitat disturbance. Seneca and Enron estimate that approximately 14 acres of disturbance may be considered permanent and approximately 7 acres of disturbance may be temporary. Compensation for disturbances considered permanent will occur at a 3:1 ratio (3 acres preserved for every 1 acre disturbed). Compensation for temporary disturbances will occur at a 1.1:1 ratio. To compensate for the loss of habitat for the listed species during Phase I activities, Seneca and Enron propose to fund the permanent protection and management of 10 acres of similar habitat at the ARCO Coles Levee Ecosystem Preserve or other Service-approved site. To compensate for Phase II development, if it is undertaken, Seneca and Enron propose to fund the permanent protection and management of between 12 and 53 acres of similar habitat at the ARCO Coles Levee Ecosystem Preserve or other Service-approved site. In addition, Seneca and Enron will implement adaptive management measures if a review of the implemented avoidance, minimization, and mitigation measures indicate that specific adjustments would be beneficial to listed species. Seneca and Enron will clean up any oil spills immediately, deal with fires appropriately, and compensate for any loss of habitat that occurs in the event

of a spill or fire with the prescribed mitigation ratios.

The Environmental Assessment considers the environmental consequences of three alternatives. Alternative one, the proposed action, consists of the issuance of an incidental take permit to Seneca and Enron, and implementation of the Habitat Conservation Plan and its Implementing Agreement. This alternative is preferred because: (1) it satisfies the purpose and needs of the Service, Seneca, and Enron; (2) measures have been incorporated to avoid and minimize incidental take to the greatest practicable extent; and (3) unavoidable impacts are mitigated by the permanent protection of between 10 to 63 acres of habitat at an approved preserve site.

Alternative 2 consists of development of oil production facilities on an alternative site. This alternative was not selected as the preferred alternative because any other areas suitable for oil production in this portion of California will have similar listed species concerns. Under the No Action Alternative, the Service would not issue an incidental take permit. No oil well development and production would take place and no incidental take of listed species would occur. In addition, no habitat would be permanently protected through purchase of credits at an approved preserve. Therefore the No Action Alternative was not selected as the preferred alternative.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: May 26, 1998.

Michael J. Spear,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–14667 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Correction to Federal Register Notices of November 18, 1996 (61 FR 58700) and November 14, 1997 (62 FR 61144)—Proclaiming Certain Lands as Reservation for the Redwood Valley Rancheria of Pomo Indians of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to Notices of Reservation Proclamation.

SUMMARY: This notice corrects **Federal Register** Notices 61 FR 58700 published on November 18, 1996 and 62 FR 6114 published on November 14, 1997, ''Proclaiming Certain Lands as Reservation for the Redwood Valley of Pomo Indians of California.'' The legal descriptions are corrected.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: On November 1, 1996, and November 3, 1997, the Assistant Secretary of Indian Affairs, pursuant to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), proclaimed certain lands to be additions to and made a part of the reservation of the Redwood Valley Rancheria of Pomo Indians of California for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership. Notices of these proclamations were published on November 18, 1996, and November 14, 1997, at 61 FR 58700 and 62 FR 61144.

Need for Corrections

As published, the notices contained errors which are in need of correction. For this reason, the following publication corrects and supersedes both 61 FR 58700 and 62 FR 61144. The land referred hereto is described as follows:

Redwood Valley Rancheria Reservation, Mendocino County, California

All that certain real property situated, lying and being in the unincorporated area, County of Mendocino, State of California, more particularly described as follows:

Parcel One: Beginning at the Northeast corner of a parcel of land described in a deed from the Finnish Colony, a corporation to V. E. Frost and Z. J. Elliott, dated December 3, 1929, recorded in Liber 48 of Official Records, Page 208, Mendocino County Records (it being a point in the East line of Lot 20 of the Finnish Colony Subdivision, according to the Official plat thereof on file in the Office of the County Recorder of said Mendocino County) from which the Southeast corner of said Lot 20 bears South 8° 13′ 30″ East and is 372.72 feet distant; thence on the exterior boundaries of the land to be described as follows: South 77° 17′ 30″ West along the North line of said Lot of Frost and Elliott 579.04 feet to its Northwest corner; thence North 9° 20′ West along a Northerly projection of the West boundary line of said Parcel 660 feet to an iron pin marked ''X'' in the South boundary line of a parcel of land described in a deed from Bank of America National Trust and Savings Association to Dan Bergamaschi, a single man, dated January 16, 1935, recorded in Liber 100 of Official Records, Page 45, Mendocino County Records; thence North 87° 59′ East along said South boundary line 606 feet to the Southeast corner of said last mentioned parcel of land (it being a point in the East boundary line of said Lot 20) thence South 8° 13′ 30″ East along said East boundary line 542.21 feet to the point of beginning.

Parcel Two: Beginning at the Southeast corner of Lot 20 of the Finnish Colony Subdivision, originally filed in Map Book 2, Page 189, now on file in Map Case 1, Drawer 4, Page 89; thence from said point of beginning South 78° 31′ West, 571.18 feet along the South line of said Lot 20; thence North 9° 20′ West 360 feet; thence North 77° 17′ 30″ East 579.04 feet to the East line of said Lot 20; thence South 8° 13′ 30″ East 372.72 feet along the East line of said Lot 20 to the point of beginning.

Parcel Three: The land described in Grant Deed, numbered 5369, recorded in Book 1502, pages 479, 480, and 481, of the official records of Mendocino County, California, described as follows:

That portion of Lot 19 of the Finnish Colony Subdivision, filed for record at the Recorder's Office, Mendocino County, State of California, and that portion of the Northeast quarter of Section 34 and of the Northwest quarter of Section 35, Township 17 North, Range 12 West, Mount Diablo Base and Meridian, lying Northerly of the following described line: Beginning at the Southeast corner of Lot 20 of said Finnish Colony Subdivision; thence North 82° 15′ East 265.57 feet; thence North 44° 24′ East 1028.50 feet; thence North 81° 30′ East to the Westerly line of the parcels of land conveyed in the Deed executed by R.J. Rospide et al to Floyd C. Lawrence et ux, dated May 3,

1954, recorded May 10, 1954 in Volume 370 of Official Records, Page 151.

Excepting Therefrom the Following

1st: Beginning at the Northwest corner of said Lot 19 and running thence South 8° 13′ 30″ East along the West line of said Lot 19, a distance of 373.97 feet; thence North 44° 31′ East 350.38 feet; thence North 11° 43′ West 132.57 feet to the North line of said Lot 19; thence South 87° 59′ West along the said North line of said Lot 19, a distance of 272.33 feet to the point of beginning.

2nd: That portion of the Northwest quarter of the Northeast quarter of Section 34, Township 17 North, Range 12 West, Mount Diablo Base and Meridian, lying North of the agreed boundary line dated May 27, 1918, recorded in Liber 151 of Deeds, Page 188, Mendocino County Records; between Effie M. Heughes and the Finnish Colony, a corporation.

Together with a non-exclusive easement 20 feet in width for an existing road over and across a portion of Lot 19 of the Finnish Colony as filed in Case 1, Drawer 4, Page 89, said easement lying and being within a strip of land 200 feet in width, lying Southerly and Southeasterly of the following described line:

Beginning at the Southeast corner of Lot 20 of said Finnish Colony; thence from said point of beginning North 82° 15′ East 265.57 feet; thence North 44° 24′ East 1028.50 feet; thence North 81° 30′ East to a point on the Westerly line of that certain parcel of land as conveyed to Floyd C. Lawrence et ux in deed recorded May 10, 1954, in Book 370, Page 151, Official Records of Mendocino County.

Also together with, as an appurtenance to the property above described: A non-exclusive easement 60 feet in width for ingress and egress over that portion of Lot 20 of Finnish Colony Subdivision as filed for record in Case 1, Drawer 4, Page 89, Mendocino County Records, lying Easterly and Southeasterly of the following described line: Beginning at a point on the Southerly line of Lot 20, said point being 60 feet West of the Southeast corner of said Lot 20; thence from said point of beginning, along a curve Northerly and Easterly to the right with a radius of 60 feet, the center of said radius being the Southeast corner of said Lot 20, to a point on the East line of said Lot 20.

Title to the land described above is conveyed subject to any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: May 19, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–14687 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1020–00 [4000/1790]]

Notice of Availability of Final Environmental Impact Statement and Proposed Plan Amendment to Land Use Plans in the Development of Standards for Rangeland Health and Guidelines for Grazing Management on Public Lands in California and Northwestern Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 98–12586 on page 27102 in the issue of Friday, May 15, 1998, make the following corrections: In the first and second columns, the date for receiving protests, shown as June 15, 1998, is corrected to read June 22, 1998.

Dated: May 26, 1998.

Carl Rountree,

Deputy State Director, Natural Resources.

[FR Doc. 98–14669 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–08–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in Montrose, Colorado.

DATES: The meeting will be held on Thursday, June 18, 1998.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov

SUPPLEMENTARY INFORMATION: The June 18, 1998, meeting will begin at 9:00 a.m. in the BLM Montrose District Office Conference Room, 2465 South Townsend, Montrose, Colorado. The agenda will focus on development of recreation guidelines and a request from the National Mustang Association-Spring Creek Basin Herd Account. Time will be provided for public comments at 9:30 am.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__—rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: May 28, 1998.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 98–14649 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–0777–52]

Notice of RAC Subgroup Meeting

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Utah Bureau of Land Management's Resource Advisory Council (RAC) has formed a subgroup to advise and inform the RAC and BLM on planning issues in Lockhart Basin and Comb Wash areas in San Juan County, Utah.

A 2-day meeting for the 15-member subgroup will be headquartered in Monticello, Utah, during the week of June 15–19, 1998. The subgroup will be touring the Lockhart Basin and Comb Wash areas and making their recommendations.

Resource Advisory Council meetings, as well as subgroup meetings, are open to the public; however, transportation, meals, and overnight accommodations are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Anyone interested in attending the meeting should contact Hardy Redd, Subgroup Chairperson, at (435) 686–2221 or Kent Walter, BLM's San Juan

Area Field Office Manager at (435) 587–1500.

Dated: May 28, 1998.

G. William Lamb,

State Director.

[FR Doc. 98–14659 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–01; CACA 7545, CACA 7882, CACA 7903, and CACA 7987]

Public Land Order No. 7332; Revocation of Executive Orders Dated July 2, 1910, November 23, 1911, and April 17, 1926; Secretarial Orders Dated August 18, 1894, and December 20, 1909; and Public Land Order No. 6073; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes: (a) an Executive order and a public land order which withdrew land for Public Water Reserve No. 107; (b) a Secretarial order and an Executive order, which withdrew land for Power Site Reserve No. 87; (c) an Executive order which withdrew land for Power Site Reserve No. 234; and (d) a Secretarial order which withdrew lands for Reservoir Site Reserve No. 18. The lands are no longer needed for the purposes for which they were withdrawn. This order will open 160.10 acres of the lands to surface entry, and 40 acres of the same lands to mining, unless closed by overlapping withdrawals or temporary segregations of record. This is a record-clearing action only for 159.91 acres, which have been conveyed out of Federal ownership. All of the lands that are still in Federal ownership have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825, 916–978–4675.

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(a). The Executive Order dated April 17, 1926, and Public Land Order No. 6073 (CACA 7545), which established Public Water Reserve No. 107, are hereby revoked insofar as they affect the following described lands:

Mount Diablo Meridian

T. 9 N., R. 6 W.,
Sec. 17, SW¼NE¼.

The area described contains 40 acres in Napa County.

(b). The Secretarial Order dated December 20, 1909, and the Executive Order dated July 2, 1910 (CACA 7882), which established Power Site Reserve No. 87, are hereby revoked insofar as they affect the following described lands:

Mount Diablo Meridian

T. 6 N., R. 14 E.,
Sec. 7, SW¼SE¼.

The area described contains 40 acres in Calaveras County.

(c). The Executive Order dated November 23, 1911 (CACA 7903), which established Power Site Reserve No. 234, is hereby revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 28 N., R. 7 E.,
Sec. 8, lots 2, 3, and 4 (originally described as SW¼SW¼);
Sec. 17, W½NW¼ and NW¼SW¼.

The area described contains 160.01 acres in Plumas County.

(d). The Secretarial Order dated August 18, 1894 (CACA 7987), which established Reservoir Site Reserve No. 18, is hereby revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 9 N., R. 21 E.,
Sec. 3, SE¼SW¼ and SE¼SE¼.

The areas described aggregate 80 acres in Alpine County.

2. The following described lands have been conveyed out of Federal ownership:

Mount Diablo Meridian

T. 28 N., R. 7 E.,
Sec. 8, lots 2 and 4;
Sec. 17, SW¼NW¼ and NW¼SW¼.
T. 9 N., R. 21 E.,
Sec. 3, SE¼SW¼.

The areas described aggregate 159.91 acres in Plumas and Alpine Counties.
This is a record-clearing action only.

3. At 10 a.m. on July 6, 1998, the lands described in paragraph 1(a)–(d), except those described in paragraph 2, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on July 6, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m. on July 6, 1998, the lands described in paragraph 1(d), except those described in paragraph 2, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

5. The lands described above in paragraphs 1(b) and 1(c) have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994). However, since this act applies only to lands withdrawn for power purposes, the provisions of the act are no longer applicable.

6. For the land described above in paragraph 1(b), the State of California has waived its right of selection in accordance with the provisions of Section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818 (1994).

Dated: May 14, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–14628 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; NV–19622]

Notice of Proposed Extension of Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy has filed an application to extend the withdrawal of 21,576.40 acres of public land for the Bravo-20 Bombing Range. The land was originally withdrawn by Pub. L. 99–606 of November 6, 1986.

The withdrawal will expire on November 5, 2001, unless extended. This withdrawal extension requires legislative action by Congress pursuant to the Act of February 28, 1958, 43 U.S.C. 155–158, commonly known as the Engle Act. The land is currently withdrawn from all forms of appropriation under the public land laws, the mining laws, the mineral leasing laws, and the geothermal leasing laws pursuant to Pub. L. 99–606.

DATES: Comments and requests for meeting should be received on or before September 1, 1998.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–861–6532.

SUPPLEMENTARY INFORMATION: On May 8, 1998, the Department of the Navy filed an application to extend the withdrawal for the Bravo-20 Bombing Range. The Navy has determined there is a continuing military need for the land and filed the application for extension in accordance with Section 8(a)(1) and (2) of Public Law 99–606. The legal description for Bravo-20 is as published in the 52 FR 3176, February 2, 1987, FR Doc. 87–1928, and the 52 FR 6227, March 2, 1987, FR Doc. 87–4232. The area described contains 21,576.40 acres in Churchill County.

A copy of the legal description is available by contacting Dennis J. Samuelson at the address or phone number listed above.

Bravo-20 is used by the Navy for testing and training for aerial bombing, missile firing, tactical maneuvering and air support, and other defense related purposes. There is a also a need to protect the public's health and welfare from the hazardous operations conducted by the Navy. The land is contaminated with unexploded ordnance.

This withdrawal extension requires legislative action by Congress pursuant to the Act of February 28, 1958, 43 U.S.C. 155–158.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. The objective of a public meeting is to solicit public comments and meet the regulatory requirement for proposed extension of withdrawals that exceed 5,000 acres (43 CFR 2310.3–1(b)(2)(v)). A notice of the time and place will be published in the **Federal Register** and a newspaper in the general vicinity of the lands to be withdrawn at least 30 days before the scheduled date of the meeting.

Three public meetings were held in December 1997 for the purpose of scoping the environmental documentation to meet National Environmental Policy Act requirements for the proposed withdrawal extension. A draft environmental impact statement is expected to be released by the Navy for public review in the near future.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, the mining laws, the mineral leasing laws, and the geothermal leasing laws.

Dated: May 28, 1998.

William K. Stowers,

Lands Team Lead.

[FR Doc. 98–14654 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for Visitor Services Plan, Crater Lake National Park, Oregon

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: Pursuant to § 102(2)C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service has prepared a Final Environmental Impact Statement (FEIS) assessing the potential impacts of the Visitor Services Plan for Crater lake National Park, Oregon. Once approved, the plan will guide the management and use of the developed areas of the park.

The Draft Environmental Impact Statement/Visitor Services Plan (DEIS) was released for public review on December 12, 1997. A Notice of Availability was published in the **Federal Register** on December 12, 1997, to formally initiate a 45-day public review period (which closed on January 26, 1998). The FEIS contains responses to the comments received and minor modifications or clarifications to the document as needed in response to comments.

Alternative A (the proposed action) is a mix of proposals that are intended to protect park resources and enhance the visitor experience. Alternative B (no action) would continue the existing conditions at the park and would allow for the completion of any facilities currently under construction. Alternative C would offer more self-directed visitor experiences that would be less facility-dependent and less structured than at present. Alternative D would enhance interpretation and provide a wider variety of commercial and NPS visitor services. Alternative E is primarily based on the planning direction presented in the *Record of Decision* for the 1995 *Development Concept Plan/Environmental Impact Statement*, which focused on concentrating visitor facilities at Rim Village.

The environmental consequences of the proposed action and the alternatives were fully documented in the DEIS, and mitigation provided as appropriate to minimize impacts. The FEIS states that the removal of the parking lot north of the cafeteria building will have an adverse effect on the Rim Village Historic District. However, a programmatic agreement has been developed among the National Park Service, the state historic preservation office, and the Advisory Council on Historic Preservation to provide measures for mitigating the adverse effects.

SUPPLEMENTARY INFORMATION: It should be noted that this FEIS is an ''abbreviated'' final environmental impact statement (changes from the DEIS are minor, with no new information which might have a significant effect on the environment). The FEIS was prepared in accordance with environmental regulations set forth at 40 CFR 1503.4(c). It is recommended that readers of the FEIS have available a copy of the DEIS. The ''no-action'' period for this FEIS will end thirty (30) days after the Environmental Protection Agency has listed the availability of the document in the **Federal Register**. For further information, please contact the Superintendent, Crater Lake National Park, P.O. Box 7, Crater Lake, Oregon, 97064; telephone (541) 594–2211.

Copies of the FEIS will be available for public inspection at the park headquarters, as well as at area libraries.

Dated: May 19, 1998.

William C. Walters,

Deputy Regional Director, Pacific West Region.

[FR Doc. 98–14653 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park Bar Harbor, Maine; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, January 12, 1998.

The Commission was established pursuant to Pub. L. 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1:00 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held October 27, 1997
2. Committee reports
3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda and date of next Commission meeting

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: May 22, 1998.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 98–14652 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, June 12, 1998; 1:30–4:00 p.m.

ADDRESSES: Wilkes University, Darte Center of the Performing Arts, Corners of South River and South Streets, Wilkes-Barre, PA 18766.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Executive Director, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 E. Church Street, Room A–1208, Bethlehem, PA 18018, (610) 861-9345.

Dated: May 26, 1998.

Gerald R. Bastoni,

Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 98–14613 Filed 6–2–98; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Narrows Project, Sanpete County, Utah, INT–DES–98–10

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability for draft environmental impact statement; extension of deadline for comments.

SUMMARY: The Bureau of Reclamation published a notice of availability of a draft environmental impact statement (DEIS) on March 12, 1998 (63 FR 12503). That notice specified how to obtain a copy of the DEIS and provided that comments would be accepted through May 12, 1998. Because of public interest in the Narrows Project and a need for additional time to allow interested parties to review and comment on the DEIS, that comment period has been extended for 30 days.

DATES: Written comments on the environmental impacts of the project should be received on or before June 11, 1998, in accordance with the criteria set forth in the March 12, 1998, notice of availability of the DEIS (63 FR 12503). All comments received between May 14, 1998 and June 11, 1998 will be accepted.

FOR FURTHER INFORMATION CONTACT: Kerry Schwartz, Narrows Project EIS Coordinator, Provo Area Office; telephone: (801) 379–1167.

Dated: May 28, 1998.

Bruce C. Barrett,

Area Manager, Provo Area Office.

[FR Doc. 98–14647 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Draft Environmental Impact Statement/ Environmental Impact Report on the Draft Truckee River Operating Agreement; Correction

AGENCY: Department of the Interior.

ACTION: Notice; correction.

SUMMARY: The Department of the Interior published a document in the **Federal Register** issue of March 13, 1998, concerning the availability for a draft environmental impact statement/ draft environmental impact report; INT-DES–98–8. The comment period has been extended to June 29, 1998.

Correction

In the **Federal Register** issue of March 13, 1998, in FR Doc. 98–6517 on page 12502, in the first column, replace the date by which written comments must be received with the following:

DATES: Written comments on the draft EIS/EIR should be submitted to the Bureau of Reclamation no later than June 29, 1998.

ADDRESSES: Written comments on the draft EIS/EIR should be addressed to: TROA Draft EIS/EIR Comments, Bureau of Reclamation, Lahontan Basin Area Office, PO Box 640, Carson City, NV 89702–0640.

FOR FURTHER INFORMATION CONTACT: Mr. John Davis, Bureau of Reclamation, PO Box 640, Carson City NV 89702–0640, telephone (702) 882–3436; Mr. Chet Buchanan, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Reno, NV 89502–5093, telephone (702) 784–5227; or Mr. Paul Dabbs, California Department of Water Resources, 3251 S Street, Sacramento CA 95816, telephone (916) 227–7564.

Dated: May 28, 1998.

Kenneth D. Naser,

Acting Director, Office of Environmental Policy and Compliance.

[FR Doc. 98–14651 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet to discuss several issues including: status of the May 1998 Proposed Solicitation Package, the development of the other programs for FY 98 funding, revised planning process, funding coordination, CVPIA FY 98 budget, tracking system and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held from 9:30 am to 1:00 pm on Friday, June 19, 1998.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the State of California and the Federal government are working together to stabilize, protect, restore, and enchance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay–Delta system are working together as CALFED to provide direction and oversight for the process.

One area of Bay-Dalta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) an Advisory Council BDAC to advise CALFRED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFRED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1415 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: May 27, 1998.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 98–14671 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: the CALFED Water Use Efficiency and Water Quality programs. Several panels and presentations will focus on progressive water management approaches in agriculture. BDAC members will also discuss the CALFED Program implementation strategy and finance issues. This meeting is open to the public. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 2 p.m. to 5 p.m. on Wednesday, June 17, 1998, and 8:30 a.m. to 5 p.m. Thursday, June 18, 1998. The public meeting will be preceded on Wednesday, June 17, 1998 by a tour of several farms on the west side of the San Joaquin Valley.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Doubletree Hotel, 1055 Van Ness Avenue, Fresno, California (209) 485–9000.

FOR FURTHER INFORMATION CONTACT: Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural

disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: May 27, 1998.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 98–14672 Filed 6–2–98; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–394]

Broom Corn Brooms: Efforts of Workers and Firms in the Industry To Make a Positive Adjustment To Import Competition

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: May 11, 1998.

SUMMARY: Following receipt, on May 11, 1998, of a request from the United States Trade Representative (USTR), the U.S. International Trade Commission (Commission) instituted investigation No. 332–394, Broom Corn Brooms: Efforts of Workers and Firms in the Industry to Make a Positive Adjustment to Import Competition, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested by USTR, the Commission's report on the investigation will focus on developments in the domestic broom corn broom industry, including efforts of workers and firms in the industry to make a positive adjustment to import competition, since November 28, 1996, when the President, pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253), issued Proclamation 6961, temporarily increasing duties on imports of certain types of broom corn brooms.[1] As requested by the USTR, the Commission will transmit its report to the USTR no later than August 10, 1998.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E St., SW, Washington, DC 20436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than 5:15 p.m., June 25, 1998. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons submitting confidential business information should be aware that the Commission may include some or all such confidential business information in its report to USTR. In addition, the Commission may use the confidential business information you provide in this investigation in other investigations of the same products which are conducted under other statutory authority. Any confidential business information so used will be afforded the protection provided under the appropriate statutory authority.

Issued: May 29, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–14751 Filed 6–2–98; 8:45 am]

BILLING CODE 7020–02–P

[1] Broom corn brooms made wholly or in part of broom corn (including broom heads), covered by subheadings 9603.10.40, 9603.10.50, and 9603.10.60 of the Harmonized Tariff Schedule of the United States (HTS).

INTERNATIONAL TRADE COMMISSION

Electrolytic Manganese Dioxide From Greece and Japan

AGENCY: United States International Trade Commission (Commission).

ACTION: Request for comments regarding the institution of section 751(b) review investigations concerning the Commission's affirmative determinations in the following investigations:

Country	Action taken by the Commission			Action taken by the Dept. of Commerce		
	Investigation No.	Date of determination	Federal Register citation	Order No.	Date of order	Federal Register citation
Greece	731–TA–406	04/10/89	54 FR 16010	A–484–801	04/17/89	54 FR 15243
Japan	731–TA–408	4/10/89	54 FR 16010	A–588–806	04/17/89	54 FR 15244

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of investigations pursuant to section 751(b) of the Tariff Act of 1930 (the Act),[1] to review the affirmative determinations of the Commission in the above investigations. The purpose of the proposed review investigations is to determine whether revocation of the existing antidumping orders on imports of electrolytic manganese dioxide (EMD) from Greece and Japan is likely to lead to continuation or recurrence of material injury.[2] EMD is provided for in subheading 2820.10.00 of the Harmonized Tariff Schedule of the United States.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at http://www.usitc.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1998, the Commission received a request to review its affirmative determination, as it applied to imports from Greece (the request), in the light of changed circumstances, pursuant to section 751(b) of the Act.[3] The request was filed by counsel on behalf of Eveready Battery Company, St. Louis, MO. Eveready Battery is one of three U.S. producers of EMD. The company is a captive producer of EMD and a purchaser of EMD from other U.S. and foreign manufacturers. EMD is a major ingredient in the manufacture of dry cell batteries used in portable electronic devices.

The alleged changed circumstances in the request include:

(1) Structural changes in battery consumption (and therefore in EMD consumption) have created significantly increased demand for batteries; existing U.S. EMD producers are operating at full capacity and cannot meet the increased demand for regular or high-drain EMD; forecast growth in demand for batteries and EMD during the next few years will consume all U.S. production of EMD as well as all available capacity from qualified producers in countries not subject to antidumping orders.

(2) In addition to the two types of EMD examined in the Commission's 1988 investigations-low-drain carbon-zinc EMD used in zinc-chloride batteries and low-to-moderate drain alkaline EMD used in alkaline batteries of all sizes—there is now a third recognized type of EMD—high-drain alkaline EMD used in AA and AAA size alkaline batteries suited to meet the power requirements of new high-drain electronic products that have flooded the market in the 1990s; imports from Greece would likely be of a different type of EMD (high-drain EMD) than the EMD originally before the Commission in 1988.

(3) At the time of the Commission's original investigations in 1988, imports of EMD from Greece represented less than 1 percent of total U.S. imports; under subsequent and current trade law, the Commission could have excluded imports from Greece as negligible imports; should the existing antidumping duty order be revoked, available EMD from Greece would be limited to such a small quantity that it could have no material impact on EMD producers in the United States.

Because some of the alleged changed circumstances predominantly relate to the domestic industry and are not limited to imports from Greece, submissions should also address the possibility of the Commission self-initiating a review of the outstanding order on Japan.

Written Comments Requested

Pursuant to § 207.45(b) of the Commission's Rules of Practice and Procedure,[4] the Commission requests comments concerning whether the alleged changed circumstances are sufficient to warrant institution of review investigations.

Written Submissions

In accordance with section 201.8 of the Commission's rules,[5] the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 500 E Street, SW, Washington, DC 20436. All comments must be filed no later than July 6, 1998, which is at least 30 days after the date of publication of this notice in the **Federal Register**. The Commission's determination regarding initiation of review investigations is due within 30 days of the close of the comment period. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under section § 201.6 of the Commission's rules.[6] Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top ''Confidential Business Information.'' The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the non-confidential version of the request and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission; telephone 202–205–2000.

Issued: May 29, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–14747 Filed 6–2–98; 8:45 am]

BILLING CODE 7020–02–P

[1] 19 U.S.C. § 1675(b).

[2] 19 U.S.C. § 1675(b)(2)(A).

[3] 19 U.S.C. § 1675(b).

[4] 19 CFR 207.45(b).

[5] 19 CFR 201.8.

[6] 19 CFR 201.6.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–396]

Certain Removable Electronic Cards and Electronic Card Reader Devices and Products Containing Same and Components Thereof; Notice of Commission Decision To Review Portions of an Initial Determination and Schedule for the Filing of Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of the initial determination (ID) issued by the presiding administrative law judge (ALJ) on March 24, 1998, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3095.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.43 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.43).

The Commission instituted this investigation on April 2, 1997, based on a complaint by Innovatron S.A. (''Innovatron'') of Paris, France. The complaint, as subsequently amended, named two respondents—Thomson Multimedia, S.A. of Paris, France; and Thomson Consumer Electronics, Inc. of Indianapolis, Indiana.

In its complaint, Innovatron alleged that respondents violated section 337 by importing into the United States and selling in the United States after importation television receivers and receiver access cards that infringe claim 8 of Innovatron's U.S. Letters Patent 4,404,464 (the '''464 patent'').

The presiding ALJ held an evidentiary hearing from September 29 to October 7, 1997. On March 24, 1998, the ALJ issued his final ID, in which he concluded that there was violation of section 337, based on the following findings: (a) There have been importations and sales after importation of the accused devices; (b) claim 8 is not invalid due to anticipation or obviousness; (c) the accused devices directly infringe claim 8 of the '464 patent; (d) respondents actively induced infringement of and contributorily infringed claim 8 of the '464 patent; and (e) there is a domestic industry that practices claim 8 of the '464 patent.

On April 6, 1998, respondents filed a petition for review of the ID, arguing that the ALJ erred in all of his adverse findings relating to claim construction, validity, infringement, and domestic industry. Respondents also alleged that the ALJ committed abuses of discretion in his denial of several motions filed by them. The Commission investigative attorney (''IA'') also filed a petition for review, alleging that the ALJ's construction of claim 8 was erroneous.

Complainant Innovatron filed on April 13, 1998, a response in opposition to the petitions filed by respondents and the IA. The IA also filed a response to respondents' petition on that date, supporting the respondents' petition.

On April 1, 1998, the ALJ issued his Recommended Determination (''RD'') on Remedy and Bonding, in the event the Commission concludes there is a violation of section 337.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined not to review the ALJ's finding that 35 U.S.C. section 112, paragraph 6 does not apply to claim 8 of the '464 patent, and his denials of certain motions filed by respondents. The Commission determined to review the remainder of the ID.

On review, the Commission is particularly interested in receiving answers to the following questions:

(1) Regarding step (c) of claim 8, what evidence of record bears on the issue of the meaning of ''tangential'' in the phrase ''in a direction tangential to said corresponding contact surfaces * * *.''? Does tangential mean only in the direction parallel to the direction of elongation of the contact surfaces, or can it include any direction in the plane of the area of contact between the corresponding contact surfaces, including directions transverse and oblique to the direction of elongation of the contact surfaces? Please comment on whether dependent claim 7 indicates by implication that ''tangential,'' as used in independent claim 1, from which claim 7 depends, can include a direction ''transverse'' to the direction of elongation of the contact surfaces.

(2) Does the manual removal and reinsertion of the DSS access card in response to an on-screen message constitute a repetition of steps (a) and (b) of claim 8? If the ''displacing'' of step (c) is construed to mean manual removal and reinsertion, then is step (c) rendered superfluous? Would such a construction be disfavored under *Wright Medical Technology, Inc.* v. *Osteonics Corp.*, 122 F.3d 1440, 1444 (Fed. Cir. 1997)?

(3) Do the three paragraphs of the specification of the '464 patent at column 8, lines 12–37 describe the various aspects of a manual version of the preferred embodiment, or does each paragraph describe different alternative arrangements in the preferred embodiment, indicating in turn: (i) That displacing can be motorized or manual, (ii) that receipt of the portable electronic card can be by a translationally movable drawer or jointed shutter, and (iii) that stopping can be performed by halting the motor or by immobilizing the card and the connection cross bar with respect to one another? Is the latter construction (i.e., the construction involving three different alternative arrangements in the preferred embodiment) supported by the fact that the paragraph describing the alternative stopping arrangement applies regardless of whether displacement is motorized or manual? What significance, if any, is there to the fact that the three paragraphs expressly indicate that displacing can be performed manually, but do not indicate that stopping can be performed manually?

(4) What evidence of record bears on whether a human being can stop manual displacement rapidly enough to prevent the contact surfaces from moving back out of alignment and electrical contact? If the evidence of record indicates that a human being cannot stop manual displacement rapidly enough to prevent the contact surfaces from moving back out of alignment and electrical contact, then is manual stopping consistent with the claim language ''stopping * * * when,'' considering that the specification indicates that the purpose of the patented method is to facilitate ''rapid'' contact and to limit the wearing down of contact surfaces to that which is ''absolutely necessary''

(5) For purposes of determining whether there is contributory infringement, is it more appropriate to define the use of the accused devices in terms of a general end use (such as to view television programming) or in terms of more specific uses (such as testing for the direct or inverse communications convention, testing for proper alignment and electrical contact, and decrypting television programming)?

(a) If the first alternative (general end use) is more appropriate, then do the accused devices have a substantial non-infringing use? Specifically, must the

accused devices have a use that is different from the infringing use, or is it sufficient that the accused devices have a single use that is employed in a non-infringing manner a substantial portion of the time?

(b) If the second alternative (specific uses) is more appropriate, then do the accused devices have a substantial non-infringing use or uses?

(6) Is Gemplus' manufacture of smart cards alone sufficient to satisfy the technical prong of the domestic industry requirement of section 337? Why or why not? In answering this question, the private parties are requested to comment on the Commission investigative attorney's argument that Gemplus' manufacture of cards alone sufficiently exploits the patent for the purpose of the domestic industry requirement.

(7) Discuss whether the following is an appropriate construction of the disputed terms of claim 8 of the '464 patent:

The claim terms are construed as in the ID, except that:

(a) In the phrase ''a predetermined expected response'':

(i) ''[P]redetermined'' means ''to determine, decide, or establish in advance'' and is not limited to ''established at the time of the design of the system;''

(ii) ''[E]xpected'' means ''predicted,'' and is not limited to ''not changing over time.''

(b) ''[D]isplacing * * * in a direction tangential to said corresponding contact surfaces'' means that the corresponding contact surfaces are moved in any direction in the plane of the area of contact between the corresponding contact surfaces of the removable article and the electric device, including directions parallel, transverse, and oblique to the direction of elongation of the contact surfaces, and the phrase does not encompass the removal and reinsertion of the removable article.

(c) ''[S]topping * * * when'' means the instantaneous or near instantaneous cessation of displacing such that movement of the removable article relative to the electric device is halted before the corresponding contact surfaces are moved from a position of proper alignment and electrical contact to a position out of such alignment and electrical contact.

(8) Assuming that the disputed claim terms are construed as set forth in question 7 above, would claim 8 be invalid as anticipated or obvious? Would the accused devices directly infringe claim 8? Would respondents be actively inducing infringement? Would respondents be contributorily infringing? Would Gemplus' domestic activities utilizing the smart card manufacturing and testing equipment discussed at pages 123–131 of the ID satisfy the technical prong of the domestic industry requirement of section 337?

In connection with the final disposition of this investigation, the Commission may issue: (1) An order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Publication 2843 (Dec. 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the April 1, 1998 recommended determination of the ALJ. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on June 11, 1998. Reply submissions must be filed no later than June 18, 1998. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 C.F.R. 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.42–.45 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42–.45).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: May 29, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–14750 Filed 6–2–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–343]

Annual Statistical Report on U.S. Imports of Textiles and Apparel

AGENCY: United States International Trade Commission.

ACTION: Discontinuation of reports and termination of investigation.

EFFECTIVE DATE: May 26, 1998.

SUMMARY: In June 1993, the Commission initiated investigation No. 332–343 for the purpose of compiling and publishing three annual statistical reports on U.S. imports of textiles and apparel covered by the Multifiber Arrangement (MFA). Pursuant to this investigation, the notice of which was published in the **Federal Register** of June 23, 1993 (58 F.R. 34064), the Commission published annual reports on U.S. imports of textiles and apparel for the years 1992, 1993, and 1994. In July 1996, after receiving numerous requests from the public for the report, the Commission decided to continue publishing the reports for three additional years, the notice of which was published in the **Federal Register** of July 24, 1996 (61 F.R. 38472), after which it would review the question of whether to continue issuing such reports. The Commission published the last of these reports in April 1998.

The Commission has decided to discontinue this series of reports and to terminate the investigation. The import data published by the Commission in these reports are now readily available on the Internet server of the U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA), at http://otexa.ita.doc.gov. OTEXA also provides the data on CD-ROMs, which are prepared on a monthly basis. For information on subscribing to the CD-ROM service, please call OTEXA at 202–482–3400 or write the U.S. Department of Commerce, Office of Textiles and Apparel, Room 3100, 14th and Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION: Information on the Commission's most recent report may be obtained from Robert W. Wallace, Office of Industries (202–205–3458). The media should contact Margaret O'Laughlin, Public Affairs Officer, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810.

The Commission's report, Annual Statistical Report on U.S. Imports of Textiles and Apparel: 1997 (USITC publication 3102, April 1998), is available on the Commission's Internet server at http://www.usitc.gov. A printed copy may be requested by writing the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC, 20436, calling them at 202–205–1809, or sending them a fax at 202–205–2104.

Issued: May 27, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–14749 Filed 6–2–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 332–350 and 332–351]

Monitoring of U.S. Imports of Tomatoes; Monitoring of U.S. Imports of Peppers

AGENCY: United States International Trade Commission.

ACTION: Publication of monitoring reports in 1998.

EFFECTIVE DATE: May 22, 1998.

FOR FURTHER INFORMATION CONTACT: For general information, Timothy McCarty (202–205–3324) or Lowell Grant (202–205–3312), Agricultural and Forest Products Division, Office of Industries, or for information on legal aspects, William Gearhart (202–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on these studies by contacting the Commission's TDD terminal on (202) 205–1810.

Background

Section 316 of the North American Free-Trade Agreement Implementation Act (NAFTA Implementation Act), 19 U.S.C. 3381, directs the Commission to monitor imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00), until January 1, 2009, as if a request for such monitoring had been made under section 202(d) of the Trade Act of 1974 (19 U.S.C. 2252(d)), for purposes of expediting an investigation concerning provisional relief under section 202 of the Trade Act of 1974. In response, the Commission instituted investigation No. 332–350, Monitoring of U.S. Imports of Tomatoes (59 F.R. 1763) and investigation No. 332–351, Monitoring of U.S. Imports of Peppers (59 F.R. 1762).

Although section 316 of the NAFTA Implementation Act does not require the Commission to publish reports on the results of its monitoring activities, the Commission has endeavored to do so in those years in which it was not conducting an investigation under other statutory authority with respect to such products. Thus, no monitoring reports were published in 1996 when the Commission conducted investigation No. TA–201–66, Fresh Tomatoes and Bell Peppers (61 F.R. 13875), under section 202(b) of the Trade Act of 1974 (19 U.S.C. 2252(b)); and antidumping investigation No. 731–TA–747 (preliminary), Fresh Tomatoes from Mexico (61 F.R. 15968), under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)). The Commission made a negative injury determination in the section 201 investigation on July 2, 1996; the Commission's antidumping investigation was suspended, effective November 1, 1996, following the signing of a suspension agreement.

The Commission plans to publish both monitoring reports in September 1998.

Issued: May 27, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–14748 Filed 6–2–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN 1218–AB58

Metalworking Fluids Standards Advisory Committee: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Metalworking Fluids Standards Advisory Committee: Notice of meeting.

SUMMARY: The Metalworking Fluids Standards Advisory Committee (MWFSAC), established under section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on appropriate actions to protect

workers from the hazards associated with occupational exposure to metalworking fluids, will meet in Denver, Colorado, on Monday through Wednesday, June 29 through July 1, 1998.

DATES: The meeting will be held June 29 through July 1, 1998. On Monday, June 29, the Committee will meet from 8:00 am to 11:30 am and 2:00 pm to 5:00 pm. On June 30, 1998, the meeting will be from 8:00 am to 5:00 pm; on July 1, the meeting will be from 9:00 am to approximately 4:00 pm.

ADDRESSES: On June 29, 1998, the Committee will meet at the National Jewish Medical and Research Center, 1400 Jackson Street, Denver, Colorado 80206, in conference rooms F–216, F–217 and F–218. On June 30 and July 1, the Committee will meet at the Executive Tower Hotel, 1405 Curtis Street, Denver, Colorado 80202. (1–800–525–6651)

Mail comments, views, or statements in response to this notice to Dr. Peter Infante, U.S. Department of Labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Standards Advisory Committee, Room N–3718, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, (202) 219–8151.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of the Metalworking Fluids Standards Advisory Committee, at the times and places indicated above. Individuals with disabilities wishing to attend should contact Theresa Berry at (202) 219–8615 ext. 106 (Fax: 202–219–5986) no later than June 22, 1998, to obtain appropriate accommodations.

Meeting Agenda

This meeting will focus on non-cancer respiratory effects associated with exposure to metalworking fluids including respiratory irritation, asthma, and hypersensitivity pneumonitis. Early detection methods for these disorders will be discussed. Other items for discussion are: the changing nature of metalworking fluid components including biocides, microorganisms, and new components (such as anti-misting agents); OSHA's regulatory and nonregulatory options for reducing dermatitis by using coolant management; and some discussion of the cancer studies presented in the NIOSH Criteria Document on Metalworking Fluids.

Public Participation

Written data, views, or comments for consideration by the MWFSAC on the various agenda items listed above may be submitted, preferably with 25 copies, to Dr. Peter Infante at the address provided above. Submissions received by June 15, 1998, will be provided to the members of the committee and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Dr. Peter Infante at the address listed above. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 665, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR Part 1912.

Signed at Washington, D.C. this 29th day of May, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–14717 Filed 6–2–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–072]

NASA Advisory Council Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Wednesday, June 17, 1998, 8:30 a.m. to 3:00 p.m.; and Thursday, June 18, 1998, 9:00 a.m. to 3:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Anne L. Accola, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2096.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—ISS Program Status and Assembly Sequence
—ISS Utilization
—Shuttle Upgrades
—Space Transportation Investment Strategy
—Technology Development in the Enterprises
—Commercial Technology Program and SBIR'S/STTR'S
—Radiation-Hardened Electronics
—Committee/TaskForce/Working Group Reports
—Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 27, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–14597 Filed 6–2–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–071]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems (ORIGINS); Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, ORIGINS Subcommittee.

DATES: Tuesday, June 30, 1998, 8:30 a.m. to 5:00 p.m.; Wednesday, July 1, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESSES: NASA Headquarters, Conference Room MIC 7 West, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Edward J. Weiler, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Welcoming Remarks
—OSS Budget Status
—ORIGINS Programmatic Status

—ORIGINS Mission's Status
—Astrobiology Institute Selection

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 27, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–14598 Filed 6–2–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

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, Multidisciplinary Section (Creation & Presentation Category) to the National Council on the Arts will be held on July 8–9, 1998. The panel will meet from 9:00 a.m. to 7:00 p.m. on July 8 and from 9:00 a.m. to 5:00 p.m. on July 9, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 11:30 a.m. to 1:45 p.m. on July 9, will be open to the public for a policy discussion on interdisciplinary creation, artists' communities, guidelines, and leadership initiatives.

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on July 8, and from 9:00 a.m. to 11:30 a.m. and 2:00 p.m. to 5:00 p.m. on July 9, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on 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, if time allows, 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 Access Ability, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 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 Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: May 27, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–14700 Filed 6–2–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

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, Opera Section (Creation & Presentation Category) to the National Council on the Arts will be held on June 29–30, 1998. The panel will meet from 9:00 a.m. to 6 p.m. on June 29 and from 9:00 a.m. to 1:00 p.m. on June 30, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW, Washington, DC 20506. A portion of this meeting, from 9:00 a.m. to 11:00 a.m. on June 30, will be open to the public for a policy discussion on field needs, Leadership/Millennium initiatives, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on June 29, and from 11:00 a.m. to 11:00 p.m. on June 30, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information give 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, if time allows, 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 Accessibility, 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 Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 28, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–14701 Filed 6–2–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 3:00 p.m., Monday, May 18, 1998.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (c)(6) (personal information where disclosure would constitute a clearly invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated: Washington, D.C., May 27, 1998.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 98–14822 Filed 6–1–98; 11:15 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of June 1, 8, 15, and 22, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 1

Tuesday, June 2

8:00 a.m.—Briefing on Remaining Issues Related to Proposed Restart of Millstone Unit 3. (Public Meeting) (Contact: Bill Travers, 301–415–1200).

1:00 p.m.—(Continuation of morning meeting on Millstone.)

Wednesday, June 3

2:00 p.m.—Briefing by the Executive Branch (Closed—Ex. 1).

Thursday, June 4

2:00 p.m.—Briefing by NEI and NRC Staff on Safety Evaluations, FSAR Updates and Incorporation of Risk Insights (Public Meeting).

Friday, June 5

10:00 a.m.—Briefing by EPRI on the Status of their Advanced Light Water Reactor (ALWR) Program (Public Meeting).

11:30 a.m.—Affirmation Session (Public Meeting); a: Private Fuel Storage, L.L.C.; Ruling by Chief Judge of the Atomic Safety and Licensing Board Panel to Establish a Second Board, LBP–98–8 (April 24, 1998).

Week of June 8—Tentative

Thursday, June 11

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Friday, June 12

10:00 a.m.—Briefing by Reactor Vendors Owners' Groups (Public Meeting) (Contact: Bryan Sheron, 301–415–1274).

Week of June 15—Tentative

Wednesday, June 17

10:00 a.m.—Briefing by National Mining Association on Regulation of the Uranium Recovery Industry (Public Meeting).

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

2:00 p.m.—Meeting with Advisory Committee on Medical Uses of Isotopes (ACMUI) and Briefing on Part 35 QM Rule (Public Meeting) (Contact: Larry Camper, 301–415–7231).

Week of June 22—Tentative

Thursday, June 25

9:30 a.m.—Briefing by IG on Results of NRC Organization Safety Culture and Climate Survey (Public Meeting).

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

2:00 p.m.—Briefing on EEO Program (Public Meeting).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule/htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: May 29, 1998.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 98–14821 Filed 6–1–98; 11:15 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 11, 1998, through May 21, 1998. The last biweekly notice was published on May 20, 1998 (63 FR 27757).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve 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. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration 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 6D22, 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 a hearing and petitions for leave to intervene is discussed below.

By July 6, 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 for the particular facility involved. 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 a 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 a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of 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 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 for the particular facility involved.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: March 6, 1998.

Description of amendment request: The proposed change will revise the H. B. Robinson, Unit 2 Technical Specifications to allow use of the Post Accident Monitoring (PAM) source range (SR) neutron flux detector as a compensatory measure in the event that one of the two required BF3 detectors become inoperable while the plant is in MODE 6.

Basis for proposed no significant hazards consideration determination: 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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to Technical Specifications is only applicable during the refueling mode of operation (MODE 6). Neither the BF3 SR nor PAM neutron flux monitors provide an automatic initiation signal for the operation of plant systems or components but are only relied upon to provide indication of core reactivity. Since the proposed change to Technical Specifications does not alter the design or operation of plant equipment or systems, there is no change in the initiating mechanisms for

any accidents previously analyzed. Therefore this change does not involve a significant increase in the probability for an accident previously analyzed.

The UFSAR [Updated Final Safety Analysis Report] identifies two accidents that credit the SR monitoring capability in MODE 6, the boron dilution accident and the fuel handling accident. No other accidents were found to rely on SR monitoring in MODE 6. The proposed change will continue to require BF3 SR visual indication of core reactivity in the control room and a BF3 SR neutron flux monitor audible indication in containment. This change will not result in a significant reduction in operator capability to detect unexpected changes in core reactivity and perform actions credited with termination of those events, therefore the proposed change does not involve a significant increase in the consequences of an accident previously analyzed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to Technical Specifications does not involve any physical alteration of plant systems, structures or components or changes in parameters governing plant operations. The proposed change will not result in a significant reduction in monitoring capability since two BF3 SR channels of SR visual indication in the control room and audible SR indication in the containment are required during core alterations and positive reactivity changes. The use of the PAM SR neutron flux monitor as a compensatory measure does not introduce any new accident initiation scenarios since the SR instruments are for monitoring and criticality assessment only and are not relied upon to initiate automatic accident mitigation measures. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will maintain two BF3 SR monitoring means for visually monitoring core reactivity as currently discussed in the bases for the affected Technical Specifications. Audible indication provided by one BF3 SR neutron flux monitor will still be required and fulfilled by the remaining BF3 SR neutron flux monitor. The PAM SR neutron flux monitors use fission chambers as detectors which have a sensitivity of 4 cps/neutron-volts (cps/nv) for thermal neutrons and 2 cps/nv for fast neutrons. The BF3 SR neutron flux monitors have a sensitivity of 9 cps/nv. The PAM SR neutron flux monitor has comparable range and accuracy (i.e., range of 1E–01 cps to 1E+05 cps with an accuracy of 2% of full scale) to that of BF3 SR neutron flux monitor (i. e., range of 1E–00 cps to 1E + 06 cps with an accuracy of 3% of full scale) which meets the Technical Specifications Section 3.9.2 Bases requirements of 6 decades of indication and 5% accuracy. Therefore, this change does not involve a significant reduction in a 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.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: P. T. Kuo, Acting.

Commonwealth Edison Company, Docket No. 50–249, Dresden Nuclear Power Station, Unit 3, Grundy County, Illinois

Date of amendment request: May 6, 1998.

Description of amendment request: The proposed amendment would amend Technical Specification (TS) 4.6.E to allow a one-time extension of the 40-month requirement to pressure set test or replace all Main Steam Safety Valves (MSSVs) to a maximum interval of 60 months as currently allowed by the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code).

Basis for proposed no significant hazards consideration determination: 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. Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

The proposed changes request a one-time change to the surveillance requirement for the MSSVs. The surveillance interval between safety valve testing is not a precursor assumed in any previously analyzed accident. Therefore, the probability of a previously evaluated accident has not been increased.

The proposed extension is consistent with the ASME Code requirement to test all valves within 60 months. The proposed changes are also consistent with NUREG–1433 and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. Operating experience and superior materiel condition of the MSSVs support the expectation that they will continue to perform their intended function. Therefore, the consequences of a previously evaluated accident have not been increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

No new equipment is required, nor will the MSSVs be operated in a different manner during the period of the extended surveillance interval. The proposed change is consistent with NUREG–1433 requirements for safety valve surveillance intervals as well as the ASME Code for requirements testing safety valves. Operating experience and superior materiel condition of the MSSVs support the expectation that they will continue to perform their intended function. Therefore, the possibility of a new or different accident has not been increased.

3. Involve a significant reduction in the margin of safety because:

The proposed amendment represents an extension to the current TS requirements, but would otherwise be provided generically by ASME Code. The proposed changes are also consistent with NUREG–1433, request a shorter total interval than previously granted by the Staff (Reference b), [J.F. Stang (NRC) to D. L. Farrar, SER dated October 8, 1996] and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The proposed changes have been evaluated and found to be acceptable for use at Dresden based on system safety analysis requirements and operational performance. The MSSV provisions continue to be adequately maintained during plant operation. The proposed changes to the MSSV surveillance interval do not significantly reduce existing plant safety margins since excellent materiel condition and acceptable surveillance test results support the expectation that no significant degradation will occur over the extended interval.

The proposed changes are based on NRC accepted provisions at other operating plants that are applicable at

Dresden and maintain necessary levels of system or component reliability.

The proposed amendment for Dresden will not reduce the availability of systems required to mitigate accident conditions; therefore, the proposed changes do 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 requested amendments involve no significant hazards consideration.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Stuart A. Richards.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: May 4, 1998.

Description of amendment request: The proposed amendment would incorporate Technical Specifications Requirements for the protection systems for the new static VAR compensators being installed onsite to address degraded electrical grid voltage.

Basis for proposed no significant hazards consideration determination: 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 changes addressed by this amendment request involve the addition of SVCs and their associated protection systems to the onsite circuit connections for the plant offsite electrical power sources, i.e., to the RAT and ERAT. As noted throughout this request, the addition of the SVCs will help to maintain voltage at the site for both of the offsite electrical power sources consistent with the ''capacity and capability'' requirements of GDC 17. Further, the regulating effect of the SVCs will compensate for the voltage drop that can occur without the SVCs when the plant trips off-line (and thus no longer supports grid voltage) during normal or accident conditions. This supports compliance with the GDC 17 requirement to minimize the probability of losing electric power from the offsite supplies as a result of, or coincident with, the loss of power from the offsite supplies as a result of, or coincident with, the loss of power generated by the nuclear power unit. Consequently, the likelihood of transferring to the onsite emergency power supplies (diesel generators) during an accident will be reduced. At the same time, as also addressed in this amendment request, incorporation of the SVCs into the CPS auxiliary power system requires consideration of failure modes that could be introduced by the SVCs wherein such failure modes could involve a significant increase in the probability or consequences of any accident previously evaluated.

By supplying each of the SVCs with an enhanced protection system, consisting of dual, redundant protection subsystems, either of which will isolate the SVC from the bus (by automatically opening the SVC main circuit breakers) in response to postulated SVC failures or associated abnormal conditions, the potential for such conditions or failures to adversely affect the plant safety busses, the associated plant loads, or the onsite emergency electrical power sources is reduced to a very low probability. The protection systems designed for the SVCs include consideration of failure modes or abnormal conditions that may be postulated or expected to occur with some degree of probability for the offsite electrical sources or grid with or without the presence of the SVCs, (such as a sustained degraded voltage condition), as well as consideration of any new or other failure modes or abnormal conditions potentially introduced by the SVCs that would be less likely to occur in the offsite electrical network without the presence of the SVCs (such as the introduction of harmonics). The proposed change to the CPS Technical Specifications to incorporate requirements for the SVC protection systems will ensure that the SVC protection systems are adequately maintained in an operable condition to perform their intended function of protecting against such conditions or failure modes. Operable SVC protection systems will reduce the probability of an SVC failure event that leads to equipment damage and subsequent core damage to a level that makes such an event incredible.

It should be noted that tripping of the SVCs in response to an SVC failure or abnormal condition does not result in a loss of power from the offsite sources. Thus, the probability of a loss of offsite power, which is an analyzed event in the plant safety analyses, will not be significantly increased by the SVC protection systems.

As noted previously, the proposed change to the Technical Specifications to incorporate SVC protection system operability and testing requirements would ensure that plant safety systems or components are not electrically affected by the SVCs in an adverse manner. In addition, except where the SVCs are physically located and connected to the ERAT and RAT via bus ducts, plant safety-related structures and supporting systems would not be mechanically affected by the SVCs. Separation, clearance and related requirements to ensure no other interaction with the RAT, ERAT and offsite source connections, as well as for maintaining offsite source independence would be maintained. On this basis, the safety functions of systems for preventing or mitigating analyzed events or accidents would not be impacted by the SVCs.

Based on the above, the proposed change to the Technical Specifications does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) In consideration of the potential adverse impacts that the SVCs may have on plant systems, structures or components, such impacts are primarily confined to potential electrical faults or abnormal conditions. As noted above, the SVCs have no mechanical impact on safety-related plant systems, structures or components. Thus, no new failure modes or precursors to potentially new and unanalyzed events would be introduced via any mechanical means.

With respect to potential adverse electrical impacts, the potential electrical failure modes or abnormal conditions postulated for the SVCs include conditions or events that, although could be considered possible for the offsite sources (i.e., the grid), were not in fact considered credible and therefore previously evaluated for the offsite electrical sources. These conditions or events, such as the introduction of harmonics or excessive overvoltage or phase imbalance caused by an SVC failure, would have the potential to degrade plant safety-related equipment connected to the busses at the time of the SVC failure if no protection for such conditions was provided. However, enhanced protection systems are provided for the SVCs to ensure that such failures cannot damage plant equipment. As noted previously, the probability of an event involving an SVC failure that leads to equipment damage and subsequent core damage has been calculated to be 1.5 x 10^{-8}/year. This low probability makes such an event incredible just as comparable events that could be postulated for the offsite electrical power sources were not previously

considered credible and therefore were not considered to be design basis events. The calculated probability of 1.5 x 10^{-8}/year for an SVC failure event involving core damage is an order of magnitude lower than the threshold probability criterion specified in Section 2.2.3 of the Standard Review Plan (NUREG 0800) for design basis events involving an offsite hazard that can lead to core damage and radioactive release with dose consequences in excess of the limits specified in 10 CFR Part 100.

The proposed change to the Technical Specifications incorporates requirements for maintaining operability of the SVC protection systems. On this basis and as described above, no new credible accidents that could be associated with the SVCs (i.e., failure of the SVCs) are thus introduced, so that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As noted previously, incorporation of the SVCs into the CPS auxiliary power system will support or regulate plant bus voltage for both of the offsite sources. Specifically, analysis has shown that the SVCs will recover reduced margin that has occurred or would occur in the future (without the SVCs) with respect to the voltage required for plant safety loads and the minimum expected offsite voltage, under normal and accident conditions (i.e., under steady-state and transient voltage conditions). This also means that the SVCs will enhance the capability and capacity of the offsite sources such that, when compared to the configuration of not having the SVCs, either source will be more likely to reset the safety bus degraded voltage relays in the event of an accident, thus permitting the preferred offsite sources to remain connected (and not causing a transfer to the diesel generators). These desirable results constitute a significant increase in the margin of safety with respect to voltage requirements for plant loads.

Based on the above, IP has concluded that the proposed change to the Technical Specifications to support use of the SVCs and their protection systems 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.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, IL 62525.

NRC Acting Project Director: Ronald R. Bellamy.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 22, 1998.

Description of amendment request: The proposed change would revise selected Technical Specification (TS) surveillance requirements to accommodate fuel cycles of up to 24 months for surveillances that are currently performed at each 18-month or other specified outage interval. Specifically, the following TS surveillance requirements would be revised by the proposed change: 4.1.2.2.b and c, ''Boration Systems Flow Paths—Operating;'' 4.3.3.5.2, ''Remote Shutdown System;'' 4.4.3.2, ''Pressurizer;'' 4.4.4.1, ''Relief Valves;'' 4.4.6.2.2.a and b, ''Operational Leakage;'' 4.4.11.2, ''Reactor Coolant System Vents;'' 4.5.1.1.d.1 and 2, ''Accumulators;'' 4.5.2.d, e, g.2), and h, ''Emergency Core Cooling System (ECCS) Subsystems—Tavg Greater Than or Equal to 350°F;'' 4.6.3.2, ''Containment Isolation Valves;'' and 4.7.1.2.1.c, ''Auxiliary Feedwater System.'' In conjunction with the proposed change, components addressed in the following TS surveillance requirements have been evaluated to support an extension in frequency to accommodate fuel cycles of up to 24 months: 4.6.3.1 and 3, ''Containment Isolation Valves;'' 4.7.1.2.2, ''Auxiliary Feedwater System;'' 4.7.1.5, ''Main Steam Line Isolation Valves;'' and 4.7.1.6, ''Atmospheric Relief Valves.'' In addition, the proposed change would delete the restriction ''during shutdown'' in those TS surveillance requirements where this restriction is stated.

Basis for proposed no significant hazards consideration determination: 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 proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes have no adverse affect on accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative in nature and do not change the level of programmatic controls or the procedural details associated with aforementioned surveillance requirements.

Changing the frequencies of the aforementioned surveillance requirements from at least once per 18 months to at least once per refueling interval does not change the basis for the frequencies. The frequencies were chosen because of the need to perform these verifications under the conditions that are normally found during a plant refueling outage, and to avoid the potential of an unplanned transient if these surveillances were conducted with the plant at power.

Equipment performance over several operating cycles was evaluated to determine the impact of extending the surveillance intervals. This evaluation included a review of surveillance results, preventative maintenance records, and the frequency and type of corrective maintenance activities, and a failure mode analysis. The evaluations conclude that the subject SSCs are highly reliable, presently exhibiting no time dependent failure modes of significance, and that there is no indication that the proposed extension could cause deterioration in the condition or performance of the subject SSCs. There are no known mechanisms that would significantly degrade the performance of the evaluated equipment during normal plant operation. Although there have been generic or repetitive failures of some components in the past, which may have affected the ability of the SSCs to consistently and successfully perform their safety function, those items have been resolved through design changes and rework such that they have not recurred. There have been no repetitive failures or time dependent failures that were significant in nature which would have prevented the SSCs from performing their intended safety function.

Deletion of the restriction ''during shutdown'' where this restriction is stated will permit performance of certain maintenance and testing activities during conditions or modes other than shutdown. North Atlantic

will ensure, through the implementation of administrative controls that proper regard to their effect on safe operation of the plant is given prior to conduct of a particular surveillance in a condition or mode other than shutdown.

Since the proposed changes only affect the surveillance intervals for SSCs that are used to mitigate accidents, the changes do not affect the probability or consequence of a previously analyzed accident. While the proposed changes will lengthen the intervals between surveillances, the increase in intervals has been evaluated. Based on the reviews of the surveillance tests, inspections, and maintenance activities, it is concluded that there is no significant adverse impact on the reliability or availability of these SSCs.

Since there are no changes to previous accident analyses, the radiological consequences associated with these analyses remain unchanged, therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. There are no changes to the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. Existing system and component redundancy is not being changed by the proposed changes. The proposed changes have no adverse impact on component or system interactions. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details associated with the aforementioned surveillance requirements. Therefore, since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There is no adverse impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details associated with the aforementioned surveillance requirements.

From the evaluations performed on the subject SSCs there are no indications that potential problems would be cycle-length dependent or that potential degradation would be significant for the time frame of interest and, therefore, increasing the surveillance interval to the bounding limit of 30 months (24 months plus 25%) will have little, if any, impact on safety.

The proposed changes to the surveillance intervals are still consistent with the basis for the intervals and the intent and method of performing the surveillance is unchanged. Deletion of the restriction ''during shutdown'' where this restriction is stated will permit performance of certain maintenance and testing activities during conditions or modes other than shutdown. North Atlantic will ensure, through the implementation of appropriate administrative controls, that proper regard to their effect on safe operation of the plant is given prior to conduct of a particular surveillance in a condition or mode other than shutdown. In addition, use of the subject SSCs during normal plant operation, combined with their previous history of availability and reliability, provide assurance that the proposed changes will not affect the reliability of the subject SSCs. Thus, it is concluded that the subject SSCs would be available upon demand to mitigate the consequences of an accident and, therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270

NRC Project Director: Cecil O. Thomas.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: April 29, 1998.

Description of amendment request: The proposed amendment would allow NNECO to revise the Updated Final Safety Analysis Report (UFSAR) for Millstone Unit 2 by deleting the diversity requirement for the two low-range pressurizer pressure transmitters, PT–103 and PT–103–1.

NNECO proposes to replace PT–103 and PT–103–1 with transmitters that are more accurate in a post-accident environment to provide assurance that entry into shutdown cooling in a post-accident environment is not compromised and to provide relief for the reactor coolant system pressure/temperature curves. NNECO further indicates that only a single model series of Rosemount transmitters meet the revised design requirements and has specifically requested to delete the diversity requirement in the UFSAR, Section 4.3.8.2.3, ''Pressurizer Pressure.'' NNECO has determined that this deviation from the current design basis constitutes an unreviewed safety question as defined in 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: 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. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The replacement of the low-range pressurizer pressure transmitters with non-diverse transmitters will reduce the instrument uncertainties post—SBLOCA [small break loss-of-coolant accident] or MSLB [main steamline break]. The probability of a post-accident intersystem LOCA [loss-of-coolant accident] as a result of aligning the SDC [shutdown cooling] system to RCS [reactor coolant system] pressures beyond its design pressure is reduced due to the reduced uncertainties of low-range pressurizer pressure signals to the SDC suction valve interlocks. The reduced uncertainty associated with the low-range pressurizer pressure transmitters in a harsh environment will not significantly reduce the probability of previously evaluated accidents relative to the use of the transmitter signal as an input variable to the ICC [inadequate core cooling] system, or to the other functions of LTOP [low temperature overpressure protection], SIT [safety injection tank] interlock, and Hot Shutdown Panel indication since these are functions not required in post-accident design bases. With respect to ICC, other parameters are available to the operator to determine adequate cooling of the core is taking place and

saturation conditions are being approached or are occurring.

The loss of diversity in manufacturer and operating principle results in a small increase in the susceptibility of the replacement transmitters to common cause events that are primarily linked to internal failures of the transmitters verses failure that result from external events or conditions. To some extent, externally related common cause failures that can result from calibration or maintenance errors can be expected to also increase slightly because of commonality of procedures. Common cause failure increase is considered for the identified functions and all accidents. Because of the slight increase in the probability of common cause failures, the probability of exceeding RCS pressure/temperature (P/T) curves at temperatures [less than] 275°F is slightly increased (assuming a common cause failure of the replacement transmitters that would result in indicating a pressure lower than actual RCS pressure). Also, the potential for exceeding ASME Section III, Appendix G, pressure/temperature limit curves on cooldown and heatup is also slightly increased due to the slight increase in potential for common cause failure. This small increase in the potential for common cause failure will not significantly affect the probability of previously evaluated accidents. The reasons for this are:

—Exceedance of P/T limit curves does not in and of itself result in an accident initiator.

—Internally caused common cause failures are not expected to have a significant impact on the overall common cause potential of the transmitters. Typically, the majority of common cause potential is due to external reasons. Further, many times simultaneous internal failures of instrumentation can be recognized by direct comparison at which time alternative means can be sought, if available. Unless failure of the replacement transmitters was simultaneous and resulted in consistent output signals, transmitter failure would likely be recognized before requiring LTOP.

—The narrow-range pressurizer pressure loops (1500–2500 psia [pounds per square inch absolute]) are fully qualified Class 1E with transmitters manufactured by a different vendor. They provide a check against the low-range pressurizer pressure transmitters in the overlapped range of 1500–1600 psia.

—The non-class 1E wide-range pressurizer pressure loop (0–3000 psig [pounds per square inch gauge]), although not environmentally qualified, utilizes a qualified type transmitter manufactured by a different vendor and has been demonstrated to be reliable. It provides a check against the low-range pressurizer pressure transmitters in the overlapped range of 0–1600 psia.

The probability of an intersystem LOCA will not increase, due to the multiple means of determining that RCS pressure is beyond the SDC system design pressure and the multiple failures that would have to occur. All other functions evaluated (ICC, Hot Shutdown Panel and the SIT interlock) would not increase the probability of a previously evaluated accident.

Because the function and output of the replacement transmitters is the same as the existing transmitters and the transmitter failure types has not changed, the radiological consequences of previously evaluated accidents are not affected by the proposed change. The exception to this occurs when considering consequences of accidents that result in a harsh environment inside Containment and requiring SDC for long term cooling. In these cases, (SBLOCAs and MSLBs inside containment) given that transmitter accuracy is improved, the ability of getting onto SDC improves. This allows getting onto SDC more consistently. By doing so, a reduction in the radiological consequences of these accidents may be improved.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The function and output of the replacement transmitters are the same as the existing transmitters, and the transmitter failure types have not changed.

Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Improvement of the transmitters' ability to provide an accurate interpretation of RCS pressures in the operating range of 0–1600 psia (post-accident harsh environment in Containment) results in a positive benefit in the ability to control cooldown rates, establish SDC, and operate at the proper RCS pressures. However, the Margin of Safety is not impacted when the original transmitters/uncertainty calculations are compared to the proposed replacement transmitters/uncertainty calculations with regard to RCS P/T curves.

Therefore, the change will not involve a reduction in a 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.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 25, 1997.

Description of amendment request: The proposed amendment would change the Indian Point 3 Technical Specifications to allow the use of zirconium alloy or stainless steel filler rods in fuel assemblies to replace failed or damaged fuel rods.

Basis for proposed no significant hazards consideration determination: 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:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response:

The proposed changes modify the technical specification only to the extent that the reconstitution is recognized as acceptable under limited circumstances. Reconstitution is limited to substitution of zirconium alloy or stainless steel filler rods, and must be in accordance with approved applications of fuel rod configurations. Although

these changes permit reconstitution to occur without the need for a specific technical specification change, use of an approved methodology is required prior to its application. Since the changes will allow substitution of filler rods for leaking, potentially leaking rods or damaged rods, the changes may actually reduce the radiological consequences of an accident. It is noted that the specific changes requested in this letter have previously been found acceptable by the NRC in GL [Generic Letter] 90–02, Supplement 1. For these reasons, we conclude that the changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated because they will only affect the assembly configuration and can only be implemented if demonstrated to meet current plant requirements in accordance with an NRC-approved methodology. The other aspects of plant design, operation limitations, and responses to events will remain unchanged. It is noted that the changes have previously been determined acceptable by the NRC in GL 90–02, Supplement 1.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed change will not involve a reduction in a margin of safety because the changes can only be implemented if demonstrated to meet current plant requirements in accordance with an NRC-approved methodology. It is noted that the changes have previously been determined acceptable by the NRC in GL 90–02, Supplement 1.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: S. Singh Bajwa.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: April 24, 1998.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 3/4.3.1.1, ''Reactor Protection System Instrumentation,'' TS Section 3/4.3.2.1, ''Safety Features Actuation System Instrumentation,'' TS Section 3/4.3.2.2, ''Steam and Feedwater Rupture Control System Instrumentation,'' and the associated TS bases. The TS tables of response time limits would be relocated to the Davis-Besse Technical Requirements Manual. Other changes in these TS sections consistent with the relocation are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiator, conditions or assumptions are affected by the proposed changes to Technical Specification (TS) 3/4.3.1.1, Reactor Protection System (RPS) Instrumentation, TS 3/4.3.2.1, Safety Features Actuation System (SFAS) Instrumentation, and TS 3/4.3.2.2, Steam and Feedwater Rupture Control System (SFRCS) Instrumentation and the associated TS Bases to relocate their tables of response time limits to the Technical Requirements Manual (TRM) of the DBNPS Updated Safety Analysis Report (USAR).

The RPS, SFAS and SFRCS response time limits and surveillance intervals currently prescribed in the TS are not changed under the proposed License Amendment. The RPS, SFAS and SFRCS will continue to function in the manner described in the DBNPS USAR. Therefore, the performance of these protection systems will remain within the bounds of the USAR accident analysis.

Under the proposed changes, the response time limits of the RPS, SFAS and SFRCS would continue to be tested in accordance with plant procedures in the same manner as in the past. The specific RPS, SFAS and SFRCS tables of response time limits will be relocated and remain controlled by the TRM of the DBNPS USAR following the guidance of the NRC's Generic Letter (GL) 93–08, ''Relocation of Technical Specification Tables of Instrument Response Time Limits,'' dated December 29, 1993. Any change to the relocated tables for response time limits will be subject to review and evaluation under Section 50.59, ''Changes, Tests, and Experiments,'' of Title 10 of the Code of Federal Regulation (10 CFR) prior to any changes being made.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. As described above, the changes are consistent with the guidance of NRC GL 93–08. The proposed changes administratively relocate response time tables and do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes, which involve only the administrative relocation of response time limit tables. No new accident scenarios, transient precursors, failure mechanisms, or limiting failures are introduced as a result of the proposed changes. As described above, the changes are consistent with the guidance of NRC GL 93–08. The proposed changes do not alter any accident scenarios and future changes to the response time limits will be subject to the regulatory requirements in 10 CFR 50.59.

3. Not involve a significant reduction in a margin of safety because the proposed changes only administratively relocate the response time tables from the TS to the USAR TRM, and do not reduce or adversely affect the capabilities of any plant structures, systems or components. No response times will be changed by this amendment request. Future changes to the response time limits will be subject to the regulatory requirements of 10 CFR 50.59. Accordingly, there is not a reduction in a 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.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Acting Project Director: Ronald R. Bellamy.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 14, 1998.

Description of amendment request: The proposed Technical Specification (TS) amendment would redefine the parent tube pressure boundary location for Westinghouse mechanical hybrid expansion joint (HEJ) steam generator (SG) tube sleeves. The proposed amendment would change the parent tube pressure boundary definition from a minimum required interference lip to a minimum required length of non-degraded hardroll engagement.

Basis for proposed no significant hazards consideration determination: 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:

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated.

Mechanical testing shows inherent structural integrity of the HEJ upper joint such that the requirements of RG 1.121 are met even for 360 degree, 100 percent throughwall parent tube indications (PTIs). Structural test results are documented in WCAP–15050. Based on the test data, the structural recommendations of RG 1.121 are satisfied when there is a minimum length of non-degraded hardroll which measures 0.92 inch (plus an allowance for NDE measurement uncertainty) or more from the bottom of the hardroll upper transition (HRUT), as measured on the inside of the sleeve. Based on the structural integrity of the HEJ upper joint, it can be concluded that application of the revised parent tube pressure boundary will not result in a significant increase in the probability of an accident previously evaluated.

A conservatively bounding primary-to-secondary steam line break (SLB) leak rate of one gpm will be applied to the calculation for postulated SLB leakage. This leak rate encompasses all HEJs left inservice with PTIs located outside the revised parent tube pressure boundary. This one gpm is based on a normal operating leakage limit of 150 gpd. This leak rate is based on tests and analysis documented in WCAP–15050. Application of this leak rate to the postulated leakage calculation will ensure primary-to-secondary leakage will not exceed the current maximum allowable during a SLB event. Maintenance of the current maximum allowable primary-to-secondary leak rate during a SLB event ensures off-site doses will not exceed a small fraction of 10 CFR 100 and control room doses will not exceed GDC–19 criteria. Therefore, it can be concluded that the application of the revised parent tube pressure boundary will not increase the consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

Implementation of the revised parent tube pressure boundary will not introduce a change to the design basis or operation of the plant. The configuration of the currently installed sleeves is not physically changed. As with the initial installation of the sleeves and previous changes to the parent tube pressure boundary for HEJs, implementation of the revised parent tube pressure boundary does not interact with other portions of the reactor coolant system. Neither the sleeve design nor the implementation of the revised parent tube pressure boundary affects any other component or location of the tube outside of the immediate repaired area. Mechanical testing of representative specimens supports the conclusions that the joint retains structural integrity consistent with RG 1.121 and leakage integrity with regards to 10 CFR 100 and GDC–19. Any hypothetical accident as a result of potential PTIs is bounded by the existing steam generator tube rupture analysis. Therefore, application of the revised parent tube pressure boundary will not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in the margin of safety.

The safety factors used in establishment of the HEJ sleeved tube pressure boundary are consistent with safety factors in the ASME Boiler and Pressure Vessel Code used in the SG design. Based on the sleeve-to-tube geometry, it is unrealistic to consider that application of the revised parent tube pressure boundary could result in single tube leak rates exceeding the normal makeup capacity during normal operating conditions. The parent tube pressure boundary developed in WCAP–15050 has been developed using the methodology of RG 1.121. The performance characteristics of postulated degraded parent of HEJ sleeve/tube joints have been verified through testing to retain structural integrity and preclude significant leakage during both normal operating and SLB conditions. The existing off-site and control room dose evaluation performed for KNPP established a faulted loop primary-to-secondary leak rate of 12.85 gpm. Combined leakage from all sources including the assumed leak rate for the voltage based repair criteria and for HEJs with PTIs that are left inservice will not exceed 12.85 gpm in the faulted loop. Maintenance of this limit will ensure off-site doses will not exceed a small fraction of the 10 CFR 100 guidelines nor will it exceed the GDC–19 criteria for control room dose. Therefore, the application of the revised parent tube pressure boundary will not result in 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.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

Acting NRC Project Director: Ronald R. Bellamy.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in

10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendments: February 23, 1998, as supplemented March 27, 1998.

Brief description of amendment: The amendment modifies the values for the safety limit for the Minimum Critical Power Ratio (SLMCPR) in the TS and the associated action statement for Cycle 12 operation only. A reference in TS 6.9.3.2.c is also revised.

Date of issuance: May 11, 1998.

Effective date: May 11, 1998.

Amendment No.: 194.

Facility Operating License No. DPR–71: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 10, 1998 (63 FR 17900).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 11, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: September 26, 1997, as supplemented on April 7, 1998, and May 1, 1998.

Brief description of amendments: The amendments revise the Technical Specifications to upgrade the ventilation filter testing program to the current industry standards and specify that the auxiliary electric equipment room is required to be habitable during design bases accidents. Revisions related to drywell and suppression chamber purge and the editorial changes requested in the September 26, 1997, application were approved and issued under Amendment Nos. 125 and 110 dated April 27, 1998.

Date of issuance: May 13, 1998.

Effective date: Immediately, to be implemented prior to restart from L1F35 for Unit 1 and prior to restart from the current outage for Unit 2.

Amendment Nos.: 126 and 111.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 19, 1997 (62 FR 61840). The April 7 and May 1, 1998, submittals provided additional information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 8, 1994, as supplemented August 13, 1996, and February 12, 1998.

Brief description of amendment: The amendment revises Technical Specifications Sections 3.7 and 3.3.E to clarify offsite power availability requirement, revise emergency diesel generator fuel oil availability requirements and specify the configuration requirements for removing Component Cooling Pump 22 from service.

Date of issuance: May 8, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 196.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 17, 1994 (59 FR 42336).

The August 13, 1996, and February 12, 1998, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: January 18, 1996, as supplemented October 1, 1997, and January 29 and April 27, 1998.

Brief description of amendment: The amendment revises the technical specifications regarding inspection requirements for the reactor coolant pump (RCP) flywheels. The staff denied a portion of the amendment request regarding application to the flywheel testing program of the Surveillance Requirement 4.0.2 allowance for surveillance interval extension of up to 25%. A separate Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing has been published in the **Federal Register**.

Date of issuance: May 15, 1998.

Effective date: May 15, 1998.

Amendment No.: 182.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 5, 1997 (62 FR 59915).

The January 29 and April 27, 1998, letters provided additional clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 19, 1997, as supplemented March 6, 1998.

Brief description of amendment: This amendment changes the wording of Section 4.2.2, ''Terrestrial Ecology Monitoring,'' of the Environmental Protection Plan to include completion of the Salt Drift Monitoring Program.

Date of issuance: May 8, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 111.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 28, 1998 (63 FR 4321) The March 6, 1998, supplement provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Southern Nuclear Power Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: January 22, 1998, as supplemented by letter dated March 18, 1998, April 21, 1998, and May 15, 1998.

Brief description of amendments: The amendments change the Technical Specifications to allow an extended allowed outage time for one emergency diesel generator of 14 days.

Date of issuance: May 20, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–100; Unit 2–78.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications and Operating Licenses.

Date of initial notice in **Federal Register**: February 11, 1998 (63 FR 6998) The March 18, 1998, April 21, 1998, and May 15, 1998, supplements provided clarifying information that did not change the scope of the January 22, 1998, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant , Units No. 2 and 3, Limestone County, Alabama

Date of amendment request: December 11, 1996, as supplemented by letter dated November 3, 1997 (TS–386).

Description of amendment request: The amendment modifies the Appendix A Technical Specifications (TSs) Limiting Safety System Setting 2.2.A, which relates to the main steam safety/relief valve set points and the set point tolerance. Specifically, the revision increases the set point tolerance to ±3% vice the current ± 11 pound per square inch (approximately 1% of set point value) tolerance. Bases 1.2 and 3.6D/4.6D also are revised.

Date of issuance: May 18, 1998.

Effective date: May 18, 1998.

Amendment No.: 251 and 210.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68. Amendment revised the TSs.

Date of initial notice in **Federal Register**: January 15, 1997 (62 FR 2194). The licensee's letter dated November 3, 1997, provided additional supporting information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, 405 South Street, Athens, Alabama 35611.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: March 20, 1998

The licensee proposed to modify the licensing basis by limiting the time the large (18″) purge and vent valves may be open to 90 hours per year. This is a change to the Final Safety Analysis Report (FSAR) and technical specification bases.

Date of Issuance: May 14, 1998.

Effective date: May 14, 1998.

Amendment No.: 161.

Facility Operating License No. DPR–28: Amendment authorizes revision to the FSAR.

Date of initial notice in **Federal Register**: March 27, 1998 (63 FR 14976).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, Maryland, this 27th day of May 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–14519 Filed 6–2–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Revision of Information Collection, RI 20–64 & RI 20–64A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management will submit to the Office of Management and Budget a request for revision of the following information collection. RI 20–64, Former Spouse Survivor Annuity Election, is used by the Civil Service Retirement System to provide information about the amount of annuity payable after a survivor reduction and obtain a survivor benefits election form from annuitants who are eligible to elect to provide survivor benefits for a former spouse. RI 20–64A, Information On Electing A Survivor Annuity For Your Former Spouse, is a pamphlet that provides important information to retirees under the Civil Service Retirement System who want to provide a survivor annuity for a former spouse.

Approximately 30 RI 20–64 forms are completed annually. Each form takes about 45 minutes to complete. The annual estimated burden is 23 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–0001

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Service Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–14548 Filed 6–2–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

January 1998 Pay Adjustments

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The rates of basic pay and locality payments for certain categories of Federal employees were adjusted in January 1998, as authorized by the President. This notice documents those pay adjustments for the public record.

FOR FURTHER INFORMATION CONTACT: Sharon Herzberg, Office of Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, (202) 606–2858, FAX (202) 606–0864, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On August 29, 1997, the President transmitted to Congress an alternative plan under the authority of 5 U.S.C. 5303(b) and 5304a that established the January 1998 across-the-board adjustments for statutory pay systems and the 1998 locality pay adjustments for General Schedule (GS) employees in the 48 contiguous States and the District of Columbia. On December 29, 1997, the President signed Executive Order 13071 (62 FR 68521). This order implemented increases in rates of basic pay for various categories of Federal employees in 1998, as required by 5 U.S.C. 5303 and other statutes. The 1998 General Schedule, reflecting the 2.3 percent general increase, was published as Schedule 1 of Executive Order 13071. Executive Order 13071 also included the percentage amounts of the 1998 locality payments as established by the President's alternative plan of August 29, 1997. (See Section 5 and Schedule 9 of Executive Order 13071.) The publication of this notice satisfies the requirement in section 5(b) of Executive Order 13071 that the Office of Personnel Management (OPM) publish appropriate notice of the 1998 locality payments in the **Federal Register**.

Locality payments are authorized for General Schedule employees under 5 U.S.C. 5304 and 5304a. They apply in the 48 contiguous States and the District of Columbia. In 1998, there are 32 separate locality pay areas with locality payments ranging from 5.42 percent to 12.06 percent. These 1998 locality pay percentages, which replaced the locality pay percentages that were applicable in 1997, became effective on the first day of the first applicable pay period beginning on or after January 1, 1998. An employee's locality-adjusted annual rate of pay is computed by increasing his or her scheduled annual rate of basic pay (as defined in 5 U.S.C. 5302(8) and 5 CFR 531.602) by the applicable locality pay percentage. (See 5 CFR 531.604 and 531.605.)

On December 4, 1997, the Director of OPM, on behalf of the President's Pay Agent, extended the 1998 locality-based comparability payments to the same Governmentwide and single-agency categories of non-GS employees that were authorized to receive the 1997 locality payments. The Governmentwide categories include members of the Senior Executive Service (SES), the Foreign Service, the Senior Foreign Service, employees in senior-level (SL) and scientific or professional (ST) positions, administrative law judges, and members of Boards of Contract Appeals. By law, the maximum locality rate of pay for these employees is the rate for level III of the Executive Schedule.

Executive Order 13071 shows the 1998 Executive Schedule reflecting the 2.3 percent pay adjustment granted under 5 U.S.C. 5318. The Executive order also reflects a decision by the President to increase the rates of basic pay for members of the Senior Executive Service (SES) by 2.3 percent (rounded to the nearest $100) at levels ES–1 through ES–6. Because of previous pay cap restrictions, the new ES–5 and ES–6 rates of basic pay are the same.

The rates of basic pay for administrative law judges (ALJs) and Board of Contract Appeals (BCA) members are calculated as a percentage of the rate for level IV of the Executive Schedule. (See 5 U.S.C. 5372 and 5372a.) Therefore, ALJ and BCA rates have been increased by 2.3 percent. Also, the maximum rate of basic pay for senior-level (SL) and scientific or professional (ST) positions has been increased by 2.3 percent (to $118,400) because it is tied to the rate for level IV of the Executive Schedule. The minimum rate for SL/ST positions is equal to 120 percent of the minimum rate of basic pay for GS–15, and it has been increased by 2.3 percent (to $87,030) because of the 2.3 percent across-the-board GS pay adjustment. (See 5 U.S.C. 5376.)

OPM has published ''Salary Tables for 1998'' (OPM Doc. 124–48–6, March 1998), which provides complete salary tables incorporating the 1998 pay adjustments, information on general pay administration matters, locality pay area definitions, Internal Revenue Service withholding tables, and other related information. The rates of pay shown in ''Salary Tables for 1998'' are the official rates of pay for affected employees and are hereby incorporated as part of this notice. Copies of ''Salary Tables for 1998'' may be purchased from the Government Printing Office (GPO) by calling (202) 512–1800 or FAX (202) 512–2250. Copies of ''Salary Tables for 1998'' may also be ordered directly from GPO on the Internet at http://www.gpo.gov/su__docs/sale/prf/prf.html.

In addition, pay tables may be downloaded from OPM's Internet website at http://www.opm.gov/ oca/ payrates/ index.htm. Pay schedules also may be downloaded directly from OPM's electronic bulletin board, OPM ONLINE, which is reached by dialing (202) 606–4800 via modem.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–14547 Filed 6–2–98; 8:45 am]

BILLING CODE 6301–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23225]

Allied Capital Financial Corporation (file no. 811–3811) and Allied Investment Corporation (File No. 811–2707); Notice of Proposed Deregistration

May 28, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of proposed deregistration under section 8(f) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF NOTICE: The SEC proposes to declare by order on its own motion that the registrations of Allied Capital Financial Corporation (''Allied Financial'') and Allied Investment Corporation (''Allied Investment'') under the Act have ceased to be in effect as of January 5, 1998, the date upon which each elected to be regulated as a business development company (''BDC'').

HEARING OR NOTIFICATION OF HEARING: An order will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the relevant registrant 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 23, 1998, and should be accompanied by proof of service on the registrant, 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 5th Street, N.W., Washington, D.C. 20549. Allied Financial and Allied Investment, 1666 K Street, N.W., 9th Floor, Washington, D.C. 20006–2803.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION:

Statement of Facts

1. Allied Financial and Allied Investment, both Maryland corporations and closed-end investment companies registered under the Act, filed Notifications of Registration under the Act on July 21, 1983 and November 23, 1976, respectively. Both companies were formed as wholly-owned subsidiaries of Allied Capital Corporation. Therefore, no public offering of Allied Financial's or Allied Investment's shares were made and they were not required to register their shares under the Securities Act of 1933.

2. Section 54(a) of the Act provides that any company that satisfies the definition of a BDC under sections 2(a)(48) (A) and (B) of the Act may elect to be subject to the provisions of sections 55 through 65 of the Act and be regulated as a BDC by filing with the SEC a notification of the election, if the company: (i) has a class of its equity securities registered under section 12 of the Securities Exchange Act of 1934 (the ''Exchange Act''); or (ii) has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities. On January 5, 1998, Allied Financial and Allied Investment each elected BDC status by filing a Form N–54A and a registration statement under the Exchange Act.

3. Section 8(a) of the Act, which requires registration of investment companies, does not apply to BDC's. After an existing registered investment company has filed an election to be regulated as a BDC, the SEC on its own motion will declare by order under section 8(f) that the company's registration under the Act has ceased to be in effect. The order will be effective retroactively, as of the date the SEC received the company's election. See Investment Company Act Release No. 11703 (March 26, 1981).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14673 Filed 6–2–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26878]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

May 27, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 22, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 22, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

NIPSCO Industries, Inc.

(70–9197)

NIPSCO Industries, Inc. (''NIPSCO''), 801 East 86th Avenue, Merrillville, Indiana 46410, an Indiana public utility holding company exempt under section 3(a)(1), under rule 2, from all provisions of the Act except section 9(a)(2), has filed an application under sections 9(a)(2) and 10 of the Act, in connection with a proposed acquisition of Bay State Gas Company (''Bay State''), a Massachusetts public utility holding company exempt under section 3(a)(2), under rule 2, from all provisions of the Act except section 9(a)(2).

NIPSCO owns all of the issued and outstanding common stock of three public utility subsidiary companies that provide electric and retail natural gas [1] service exclusively within Indiana.

[1] As of December 31, 1997, the NIPSCO gas distribution system was comprised of approximately 13,400 miles of distribution mains and 729,400 customer meters. NIPSCO currently purchases approximately 89% of its total system gas requirements from production in the on-shore and off-shore Texas and Louisiana producing areas, and approximately 8% from production in the Mid-Continent (Oklahoma and Kansas), Permian (west Texas) and San Juan (New Mexico) Basins. It is anticipated, however, that, beginning as early as 1999, with the completion of construction of new pipeline capacity from western Canada to the upper Midwest markets, NIPSCO will begin to purchase significant amounts of lower-cost gas produced in the Western Canadian Sedimentation Basin (Alberta and British Columbia). NIPSCO estimates that, by 2002, western Canadian gas could potentially account for as much as 40% of its total system supply. Currently, NIPSCO subsidiaries have contracted for ''firm'' transportation capacity and storage service on five different long-haul interstate

Continued

Northern Indiana Public Service Company (''Northern Indiana''), NIPSCO's largest and dominant utility subsidiary, is a combination gas and electric utility company which operates in 30 counties in the northern part of Indiana, serving an area of about 12,000 square miles with a population of approximately 2,200,000. Northern Indiana distributes gas to approximately 662,500 residential, commercial and industrial customers and generates, purchases, transmits and sells electricity to approximately 416,300 retail and wholesale customers. Northern Indiana also provides gas transportation service to approximately 200 customers.[2]

Kokomo Gas and Fuel Company (''Kokomo Gas'') supplies natural gas to approximately 33,500 retail customers in a six county area of north central Indiana having a population of approximately 100,000. The Kokomo Gas service territory is contiguous to Northern Indiana's gas service territory.

Northern Indiana Fuel and Light Company, Inc. (''NIFL'') supplies natural gas to approximately 33,400 retail customers in five counties in the northeast corner of Indiana having a population of approximately 66,700. The NIFL service territory is also contiguous to Northern Indiana's gas service territory, and overlaps Northern Indiana's electric service territory.[3]

NIPSCO's three utility subsidiaries (collectively, ''NIPSCO Operating Companies'') are subject to regulation by the Indiana Utility Regulatory Commission as to rates, service, accounts, issuance of securities, and other matters.

NIPSCO also owns all of the outstanding common stock of Crossroads Pipeline Company (''Crossroads''), a non-utility natural gas transportation company that was certificated by the Federal Energy Regulatory Commission (''FERC'') in May 1995 to operate as an interstate pipeline.[4] Crossroads owns and operates a 201-mile, 20-inch, pipeline that extends from Schererville, in northwestern Indiana, where it takes delivery from the interstate pipeline facilities of Natural Gas Pipeline Company of America (''NGPL''), to Cygnet, in northwestern Ohio, where it interconnects with facilities owned by Columbia Gas Transmission Corporation (''CGTC'').[5]

NIPSCO's other principal non-utility subsidiaries include IWC Resources Corporation which owns and operates seven subsidiaries, including two regulated water utility companies, the Indianapolis Water Company and Harbour Water Corporation, which provide water service in Indianapolis, Indiana and surrounding areas;[6] NIPSCO Development Company, Inc., which holds various investments, including investments in real estate and venture capital enterprises; NI Energy Services, Inc., which is engaged in various energy-related activities, such as retail gas marketing, energy efficient lighting sales and installations, and gas and electricity wholesale marketing; Primary Energy, Inc., which arranges energy-related projects with large industrial customers; and NIPSCO Capital Markets, Inc., which handles financing for ventures of NIPSCO and certain of its subsidiaries, other than Northern Indiana.

For the year ended December 31, 1997, the NIPSCO Operating Companies reported combined net income of $205.3 million on combined operating utility income of $286.2 million. Gas sales of the NIPSCO Operating Companies (including revenues from transportation only customers) of approximately $803 million and electric sales of approximately $1 billion accounted for approximately 44% and 56%, respectively, of the NIPSCO Operating Companies' gross utility revenues of approximately $1.8 billion for the year ended December 31, 1997. Consolidated assets of NIPSCO, its Operating Companies and its non-utility subsidiaries (collectively, ''the NIPSCO System'') as of December 31, 1997, were approximately $4.9 billion, consisting of $3.1 billion in net utility plant and associated facilities and $1.8 billion in net non-utility plant and other non-utility assets. Consolidated operating revenues, operating income and net income for the NIPSCO System were approximately $2.6 billion, $410 million and $191 million, respectively, for the year ended December 31, 1997.

Bay State, which is both a public utility company and a holding company, distributes natural gas at retail in parts of Massachusetts and, through a wholly owned subsidiary, Northern Utilities, Inc. (''Northern''), in contiguous areas of Maine and New Hampshire.[7]

Bay State provides gas service to approximately 261,000 residential, commercial and industrial customers in three separate areas of Massachusetts covering approximately 1,344 square miles and having a combined population of approximately 1,340,000. These include the greater Springfield area in western Massachusetts, an area southwest of Boston that includes the cities of Attleboro, Brockton and Taunton, and an area north of Boston extending to the New Hampshire border that includes the city of Lawrence. Bay

pipelines (Tennessee Gas Pipeline Company (''Tennessee Gas''), NGPL, ANR Pipeline Company, Panhandle Eastern Pipeline Company and Trunkline Gas Company).

[2] Northern Indiana owns and operates underground gas storage facilities located at Royal Center, Indiana, with a storage capacity of 6.75 billion cubic feet (Bcf), and a liquified natural gas plant in LaPorte County, Indiana, having a storage capacity of 4.0 Bcf, which is used for system pressure maintenance and peak season (November–March) deliveries. Northern Indiana also holds under long-term contract storage capacity totaling approximately 9.11 Bcf in the Markham, Moss Bluff and Egan salt-dome storage caverns in Texas and Louisiana. These facilities, which provide the NIPSCO system with a significant amount of ''high deliverability'' storage capacity are located at or near major supply ''hubs'' which have formed at locations where interstate pipelines serving the upper Midwest, Northeast and Southwest markets intersect.

[3] NIPSCO was originally incorporated in 1987 to serve as the holding company for Northern Indiana and various non-utility subsidiaries. NIPSCO was authorized to acquire Kokomo Gas in 1992, Holding Co. Act Release No. 25470 (February 3, 1992), and NIFL in 1993, Holding Co. Act Release No. 25766 (March 25, 1993).

[4] *See Crossroads Pipeline Company*, 71 FERC ¶ 61,076 (April 21, 1995).

[5] Crossroads recently announced plans to construct a 20-mile extension of its pipeline facility in Ohio to a point of interconnection with a unit of Consolidated Natural Gas Company. This extension will form a link in a chain of interstate pipeline projects that are designed to transport natural gas from the Chicago area market to eastern markets served by CNG Transmission Corp. and Transcontinental Gas Pipe Line Corp. (''Transco'') by late 1999.

[6] The other five subsidiaries of IWC Resources Corporation, and each company's principal business are: (i) Utility Data Corporation (customer billing and data processing services); (ii) IWC Services, Inc. (waste water treatment); (iii) Waterway Holdings, Inc. (real estate development); (iv) SM&P Utility Resources, Inc. (utility location and marking services); and (v) Miller Pipeline Corporation (pipeline construction).

[7] As of December 31, 1997, the combined gas system of bay State and Northern (together, the ''Bay State System'') consisted of 5,158 miles of distribution mains; 29 miles of transmission lines, together with associated pumping and regulating stations; liquid natural gas liquefaction, vaporization and storage facilities; propane storage tanks; 270,108 customer service connections; and 306,446 customer meters. The Bay State System purchases approximately 40% of its total system gas requirements from the on-shore and off-shore Texas and Louisiana producing areas and approximately 49% of its total system requirements from the Western Canadian Sedimentation Basin. The Bay State System has contracted for ''firm'' transportation capacity on four domestic long-haul pipelines (Tennessee Gas, Transco, Texas Eastern Transmission Corp. and Texas Gas Transmission Corp.) as well as on TransCanada Pipe Line Corp. and several regional pipelines. Like NIPSCO, the Bay State System projects that it will purchase an increasing amount of its gas requirements from the Western Canadian Sedimentation Basin. This gas will reach the Bay State service area directly via the PNGTS pipeline (see below), which is scheduled to be completed in late 1998, as well as indirectly by means of any one of several different pipeline expansions/extensions (including the Crossroads/CNG expansions) that have been announced and will provide the Bay State System with greater access to supplies available in the Chicago area market.

State is subject to regulation by the Massachusetts Department of Telecommunications and Energy as to rates, service, accounts, issuance of securities, and other matters.

Northern provides gas service to approximately 46,000 residential, commercial and industrial customers in an area of approximately 808 square miles in New Hampshire and Maine having a population of approximately 450,000. Northern's service area extends north from the Massachusetts-New Hampshire border to the Portland/Lewiston area in Maine. Northern is subject to regulation by the New Hampshire Public Utilities Commission and Maine Public Utilities Commission as to rates, service, accounts, issuance of securities, and other matters.

Bay State has one direct wholly owned non-utility subsidiary, Granite State Gas Transmission, Inc. (''Granite State''), which owns and operates a 105-mile-6, to 12-inch diameter, interstate pipeline that extends from Haverhill, Massachusetts, where it interconnects with the facilities of Tennessee Gas Pipeline Company (''Tennessee Gas''), in a northeasterly direction to a point near Westbrook, Maine. Granite State also leases a 166-mile, 18-inch diameter, converted oil pipeline, which is used to transport western Canadian gas to Portland, Maine.

Through a wholly owned subsidiary, Natural Gas Development, Inc. (''NGD''), Granite State is a partner in the Portland Natural Gas Transmission System (''PNGTS''), which was formed to construct a 292-mile, 24-inch diameter, natural gas transmission line in northern New England that will form the northern link in a new gas transmission system designed to bring western Canadian gas supplies to the New England market. When complete, these facilities will interconnect with the Tennessee Gas pipeline facilities near Dracut, Massachusetts, and with Granite State at locations in Maine and New Hampshire.

In addition to NGD, Bay State also has four other indirect non-utility subsidiaries, all of which are wholly owned subsidiaries of Granite State: (1) EnergyUSA, Inc., a company organized to provide unregulated energy products and services, including water heater rentals, insurance programs for heating systems, and strategic energy supply management; (2) EnergyEXPRESS, Inc., an unregulated natural gas, electricity, propane and fuel oil marketer; (3) LNG Development Corp., which was established to invest in a proposed liquefied natural gas storage facility in Wells, Maine; and (4) Bay State Energy Enterprises, Inc., which is inactive.

For the year ended December 31, 1997, the combined gas revenues (including revenues for transportation-only customers), utility operating income and net utility income of Bay State and Northern (as adjusted to eliminate the effect on earnings of a one-time write-off of restructuring costs)[8] were approximately $441 million, $39.2 million and $21.6 million, respectively. Consolidated assets of Bay State and its subsidiaries as of December 31, 1997 were approximately $788 million, consisting of $496.4 million in combined net utility plant of Bay State and Northern and $291.6 million in non-utility plant and other non-utility assets.

In accordance with an Agreement and Plan of Merger dated December 18, 1997, as amended and restated as of March 4, 1998 (the ''Merger Agreement''), NIPSCO seeks authorization to acquire all of the issued and outstanding common stock of Bay State (''Merger'').[9] Under the terms of the ''preferred merger''[10] structure set forth in the Merger Agreement, Bay State would be merged with and into a wholly-owned NIPSCO subsidiary to be formed under the laws of Massachusetts which, upon completion of the Merger, would change its name to and operate under the name of ''Bay State Gas Company.''[11] The Merger has been structured to qualify as a tax-free reorganization under section 368(a) of the Internal Revenue Code of 1986, as amended.

Under the Merger Agreement, upon the effective date of the Merger, each outstanding share of common stock of Bay State (''Bay State Shares'') will be converted into the right to receive common shares of NIPSCO (''NIPSCO Shares''), or at the election of any Bay State shareholder and subject to certain limitations, cash, in either case having a value of $40.00 per share. The number of NIPSCO Shares that would be issued in exchange for each Bay State Share (the ''Exchange Ratio'') would be determined by dividing (i) $40.00 by (ii) the NIPSCO Share Price, which is the average of the closing prices of NIPSCO, as reported in The Wall Street Journal's NYSE Composite Transactions Report, for the 20 trading days immediately preceding the second trading day prior to the effective date of the merger.[12] Bay State shareholders may elect to receive $40.00 in cash, without interest, for some or all of their Bay State Shares (''Cash Election''). The aggregate number of Bay State Shares that will be converted into the right to receive $40.00 in cash in the Transaction (the ''Cash Election Maximum)'' may not exceed an amount determined by dividing (A) the dollar number equal to the difference between (i) one-half of the product of (x) $40.00 multiplied by (y) the aggregate number of Bay State Shares outstanding on the second day prior to the effective date of the Merger less (ii) the dollar amount of a special dividend, if any, paid by Bay State prior to the Merger and certain other cash payments to be determined prior to such time, by (B) $40.00. Further, cash amounts paid to electing shareholders would be subject to proration if the aggregate number of Bay State Shares covered by the Cash Election exceeds the Cash Election Maximum.[13]

[8] The restructuring charges, which related primarily to retirement benefits and consulting fees, totaled $11.4 million, and had the effect of reducing the combined net utility income of Bay State and Northern to approximately $14.7 million in 1997.

[9] The Merger Agreement is subject to the approval of Bay State's shareholders at a special meeting called for that purpose to be held on May 27, 1998. The affirmative vote of the holders of two-thirds of the outstanding shares of Bay State is required for approval. The Transaction is also subject to various regulatory approvals in addition to the approval of this Commission. Insofar as it relates to Bay State and Northern, the Merger is subject to the jurisdiction of the Massachusetts Department of Telecommunications and Energy, the New Hampshire Public Utilities Commission, and the Maine Public Utilities Commission. In addition, certain aspects of the Merger may be subject to the jurisdiction of the Federal Energy Regulatory Commission under the Federal Power Act. The Merger is also subject to the notification and reporting requirements of the Hart-Scott-Rodino Act.

[10] Applicant states that the Merger Agreement also provides for an ''alternative merger'' transaction which would be carried out in the event that it is not possible to consummate the ''preferred merger'' transaction. Applicant contends that the ''alternative merger'' transaction would not be subject to Commission jurisdiction under the Act and the request for approval made in its application concerns only the ''preferred merger'' transaction.

[11] Applicant notes that, following the Merger, the stock of Northern may be transferred to NIPSCO, which would result in Northern becoming a direct wholly-owned utility subsidiary of NIPSCO. If, however, Northern is maintained as a subsidiary of Bay State, Bay State will continue to claim exempt holding company status under section 3(a)(2) and rule 2.

[12] On a *pro forma* basis, based on the number of Bay State Shares and NIPSCO Shares outstanding on April 17, 1998, and assuming that 100% of the outstanding Bay State Shares are converted into the right to receive NIPSCO Shares at a conversion price of $27.38 per share (the 20-day trading average for the NIPSCO Shares determined as of April 17, 1998), the current shareholders of Bay State would effectively acquire, in exchange for their Bay State Shares, about 13.7% of the issued and outstanding NIPSCO Shares.

[13] Applicant states that the terms of the Merger Agreement, including the Exchange Ratio, reflect months of due diligence and analysis and evaluation of the assets, liabilities and business prospects of Bay State and were the product of extensive and vigorous arm's-length negotiations between NIPSCO and Bay State. Applicant also states that Bay State engaged SG Barr Devlin (''Barr Devlin'') a nationally recognized investment banking concern, to evaluate NIPSCO's offer for Bay

Continued

Following the Merger, the board of directors of ''new'' Bay State will consist of ten members, of whom three will be officers of NIPSCO, three will be officers of ''old'' Bay State, and four will be current outside directors of ''old'' Bay State. The current officers of ''old'' Bay State will continue to serve in similar capacities in ''new'' Bay State. The Merger Agreement also provides that NIPSCO shall nominate and recommend for election to the NIPSCO board of director one ''new'' Bay State directors to be mutually determined by NIPSCO and Bay State. ''New'' Bay State will continue to maintain its principal executive offices in Westborough, Massachusetts.

Applicant states that, upon consummation of the Merger, NIPSCO will own an integrated gas utility system comprised of its gas distribution system in Indiana and Bay State's gas distribution system in Massachusetts, Maine and New Hampshire, as well as an integrated electric utility system in Indiana.[14]

Applicant also states that the Merger is expected to produce various benefits to the public, investors and consumers and will satisfy all of the applicable standards under section 10 of the Act. Among other things, applicant states that, following the Merger, the combined companies will be better positioned to take advantage of operating economies and efficiencies through, among other measures, joint management optimization of their respective portfolios of gas supply, transportation and storage assets. Applicant also notes that the Merger is expected to provide benefits in the form of greater flexibility and capacity in financing the operations of the combining companies and an enhanced ability to take advantage of future strategic opportunities in the competitive marketplace for energy and energy services that is rapidly evolving in New England.

Applicant contends that, after the Merger, NIPSCO will remain predominantly an intrastate (i.e., Indiana) holding company that will not derive any material part of its income from any out-of-state utility subsidiary and has requested an order under section 3(a)(1) declaring NIPSCO, after consummation of the Merger, to be exempt from all sections of the Act except section 9(a)(2).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14623 Filed 6–2–98; 8:45 am]

BILLING CODE 8010–01–M

State. Barr Devlin subsequently delivered a ''fairness'' opinion to the Bay State board of directors to the effect that, based on certain assumptions stated therein, the consideration offered in connection with the Transaction is fair, from a financial point of view, to the holders of Bay State Shares. Applicant notes that a *pro forma* analysis prepared by Barr Devlin indicates that the Transaction would result in accretion to Bay State's shareholders in terms of earnings per share and that NIPSCO's shareholders would also realize accretion in earnings per share (assuming NIPSCO's shares continue to trade at current levels).

[14] Post-merger, the NIPSCO System will provide gas distribution service to approximately 1,036,400 residential, commercial and industrial customers in a 14,152-square mile area in four states, as well as electric service to approximately 416,300 customers, all in Indiana. On a *pro forma* basis, the combined net utility plant (gas and electric) of NIPSCO and Bay State as of December 31, 1997 would have totaled approximately $3,61 billion and combined gross utility revenues for the twelve months then ended would have totaled approximately $2.3 billion.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40035; File No. SR–NASD–98–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq Market Data Distributors or Vendors

May 27, 1998.

On May 14, 1998,[1] the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or SEC'') a proposed rule, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder.[3] The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] The NASD initially submitted this proposal on March 16, 1998. However, a substantive amendment was requested to clarify the applicability of the proposed fee. The NASD filed Amendment No. 1 on April 28, 1998. *See* letter from Thomas P. Moran, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., to Mignon McLemore, Esq., Division of Market Regulation, SEC, dated April 28, 1998.

On May 14, 1998, the Board filed another substantive amendment modifying the proposed rule language. *See* letter from Thomas P. Moran, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., to Katherine A. England, Division of Market Regulation, SEC, dated May 14, 1998 (''Amendment No. 2'').

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010 to establish an annual, scaled administrative fee, payable by Nasdaq market data distributors or vendors, for data usage monitoring costs and other administrative expenses incurred by Nasdaq. Once effective, Nasdaq will suspend indefinitely is current contractual requirement that Nasdaq real-time data distributors or vendors provide an annual accountant-certified list of its subscribers who receive Nasdaq data. Below is the text of the proposed rule change. Proposed new language is italicized.

7010. System Services

(a)–(n) No change

(o) Market Data Distributor or Vendor Annual Administrative Fee

Nasdaq Market Data Distributors or Vendors shall be assessed the following annual administrative fee:

Delayed distributor	$250.00
0–999 real-time terminals	$500.00
1,000–4,999 real-time terminals	$1,250.00
5,000–9,999 real-time terminals	$2,250.000
10,000 + real-time terminals	$3,750.00

* * * * *

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statenents may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to establish an annual, scaled fee for the Nasdaq real-time market data distributors or vendors to cover the expenses Nasdaq incurs to administer and monitor market data usage. Currently, Nasdaq real-time market data distributors or vendors are annually required to submit a list, certified by a public accountant paid for by the distributor or vendor, of all subscribers receiving real-time Nasdaq data. Alternatively, a Nasdaq real-time market data distributor or vendor may elect to pay a generally lower fee and have its service usage verified by an on-

site review (''OSR'') conducted by Nasdaq staff. The purpose of both the accountant certification and the OSR is to provide Nasdaq with independent confirmation of Nasdaq data consumption. Nasdaq proposes to eliminate the certified-list requirement and OSR alternative, and thus their attendant costs, and replace them with the annual scaled administrative fees proposed in this filing.[4] Nasdaq will retain the right to demand a certified usage report, paid for by the distributor or vendor, in cases involving discrepancies in distributor or vendor reporting.[5]

Nasdaq believes that a scaled, annual administrative fee will more closely align data usage monitoring costs with Nasdaq expenditures. In addition, the new structure, will allow Nasdaq staff to directly and uniformly apply its expertise in data usage monitoring as well as provide a more efficient means of fee collection than its current practices. Moreover, a scaled fee based on the scope of a distributor or vendor's dissemination of Nasdaq data will also permit those date distributors or vendors to estimate their costs more effectively. Once the proposed administrative fee is approved, Nasdaq will suspend indefinitely its costly and burdensome annual certification requirement and instead use the new administrative fee revenue to conduct Nasdaq-initiated OSRs, manage distributor applications, monitor vendor services, and perform other compliance activities.

Finally, Nasdaq notes that its proposed fee structure is priced at levels similar to its current OSR fees which, being consistently less expensive than the cost of obtaining an independent verification of data usage from a certified public accountant, are used by the majority of Nasdq realtime market data distributors or vendors. As such Nasdaq believes its proposal will not result in a material increase in overall monitoring fee burdens on most Nasdaq data distributors or vendors.[6]

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act which requires that the rules of the NASD provide for the equitable allocations of reasonable, dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14622 Filed 6–2–98; 8:45 am]

BILLING CODE 8010–01–M

[4] Distributors using per-quote and usage based reporting will have their monitoring fees determined by having their monthly payment totals divided by the professional subscriber fee rate, resulting in a terminal equivalent. For example, a distributor or vendor that is being charged $1,000 a month for its per-quote usage of Nasdaq Level 1 Service will have that $1,000 fee divided by the existing $20 monthly Level 1 per-terminal fee which results in a terminal equivalent of 50 with an annual monitoring fee of $500.

For 1998 billing purposes only, Nasdaq will not impose these administrative fees on any firm that incurs costs and submits a certified usage report in 1998 prior to the effective date of Nasdaq's new fee schedule. *See* Amendment No 2, *supra* note 1.

[5] Similarly, the submission of an unrequested, accountant-certified usage list will not preclude Nasdaq from conducting its own OSR nor will it exempt a distributor or vendor from payment of the administrative fee.

[6] Nasdaq notes that it does not currently require delayed distributors to meet audit requirements or pay an OSR fee. Nasdaq believes that the imposition of new minimal charges on delayed distributors is justified to reimburses Nasdaq for the cost of application processing and product monitoring. Nasdaq also advises that those vendors who receive both delayed and real-time data, will not be billed separately for each type of data but will only pay for the highest level of service received. This practice will continue for Nasdaq's proposed administrative fees as well. *See* Amendment No. 1, *supra* note 1.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40034; File No. SR–NSCC–98–3)

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change That Establishes Additional Procedures for Class A Surveillance of Certain Settling Members and Permits the Collection of Clearing Fund and Other Collateral Deposits From These Settling Members

May 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 23, 1998, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–98–3) as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to extend on an accelerated basis temporary approval of the proposed rule change through May 31, 1998.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to extend the temporary approval of additional procedures which govern the placement of NSCC members on Class A surveillance and the clearing fund deposit and other collateral requirements for such members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC seeks to extend the temporary approval of a rule change governing the application of Class A surveillance procedures and the additional collateralization requirements to settling members that engage in certain over-the-counter (''OTC'') market making activities.[3] To decrease the risks associated with OTC market makers, NSCC has added Addendum O to its rules and procedures. Addendum O permits NSCC to place settling members on Class A surveillance under certain conditions.

NSCC has also adopted an interim collateralization policy which permits NSCC in its discretion to require settling members that clear for or are themselves OTC market makers and that are placed on Class A surveillance to deposit special collateral in amounts based upon the settling member's OTC activities relative to its amount of excess net capital.[4]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F)[5] of the Act and the rules and regulations thereunder because the surveillance procedures and additional collateralization will facilitate the prompt and accurate clearance and settlement of securities transactions and, in general, will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and generally to protect investors and the public interest. As the Commission previously stated, it believes that the proposed rule change is consistent with NSCC's obligations under the Act because it will help NSCC protect itself, its members, and investors from members that pose an increased risk because of their involvement in OTC market making. *Supra*, note 3.

Under the proposal, NSCC will continue to have the authority with respect to settling members which participate in OTC market making activities or clear for correspondents that engage in such activity (1) to place such members on Class A surveillance, (2) to require such members to post additional collateral with NSCC, and (3) to calculate an alternative clearing fund requirement for such members when additional risk factors are present. Collectively, the higher level of surveillance, the additional level of collateralization, and the alternative clearing fund requirements should help ameliorate NSCC's exposure which in turn should assist NSCC in fulfilling its obligations under the Act to safeguard securities and funds for which it has control of or is responsible for and to protect investors and the public interest.[7]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow NSCC to continue to utilize its Class A surveillance procedures, the interim collateralization policy, and the alternative clearing fund formula without interruption until it makes a filing requesting permanent approval of the rule change, and therefore will allow NSCC to continue to protect itself and its participants from the potential risks of OTC market making activities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–98–3 and should be submitted by June 24, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–98–3) be, and hereby is, approved through May 31, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

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[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] For a complete discussion of NSCC's Class A surveillance procedures and collateralization requirements, refer to Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR–NSCC–95–17] (temporary approval of proposed rule change) and 38622 (May 19, 1997), 62 FR 27285 [File No. SR–NSCC–97–04] (temporary approval of proposed rule change).

[4] The temporary rule change also grants NSCC the discretion to compute the continuous net settlement component of the clearing fund requirements for any settling member on Class A surveillance according to an alternative formula based upon close-out risk.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] Id.

[7] As noted in the May 1996 approval order, prior to filing a proposed rule change seeking permanent approval of the procedures set forth in this temporary approval order, NSCC shall present to the Commission a more detailed report on its findings regarding the adequacy of the controls and discussing any changes to be made to the procedures.

[8] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 98–14675 Filed 6–2–98; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40036; File No. SR–NYSE–98–13]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Trading of Bonds

May 28, 1998.

I. Introduction

On April 15, 1998, the New York Stock Exchange, Inc. (''NYSE'' 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 amend its rules and procedures governing the trading of bonds. The proposed rule change was published for comment in the **Federal Register** on April 28, 1998.[3] No comments were received regarding the proposal. On April 30, 1998, the NYSE filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change. In addition, the Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change and is simultaneously approving Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The NYSE proposes to amend its rules and procedures governing the trading of bonds. The Exchange seeks to delete obsolete provisions of its bond trading rules, to streamline those rules, and to consolidate the bond trading rules in a new Exchange Rule 86. In addition, the proposal would amend Exchange Rule 13, Exchange Rule 61, Exchange Rule 70, Exchange Rule 72, Exchange Rule 76, Exchange Rule 79A, and Exchange Rule 85.

The Exchange currently trades non-convertible bonds in its Automated Bond System (''ABS'') and convertible bonds on its bond floor. Later this year, the Exchange intends to move all bond trading into the ABS.[5] Currently, various Exchange rules govern the trading of bonds, particularly Rule 85, governing the trading of ''cabinet'' securities. The proposed rule change provides for uniform bond trading procedures and consolidates those procedures in new Rule 86.[6] The rule change: (i) incorporates into new Rule 86 the same price/time priority matching procedures as Rule 85; (ii) establishes appropriate cross references to new Rule 86 in other NYSE rules; and (iii) eliminates the rules governing trading on the bond floor, which will no longer be necessary.

The proposed rule change also alters the procedure for the crossing of bonds. Currently, Rule 85 requires that a member hold a proposed cross for a ''reasonable'' period of time before effecting the cross, and that the member announce the intention to effect the cross on the bond floor. For the purposes of the ABS, the Exchange has interpreted this as requiring a member to display a proposed cross in the ABS for two minutes prior to effecting the trade. Based on its experience, the Exchange represents that these crossing procedures are no longer necessary.

Another change to the bond trading rules moves the rules governing transactions at wide variations from Rule 79A.40 to new Rule 86(g). For non-convertible bonds, the Exchange would retain the requirement that a Floor Official approve all sales made two points away from the last sale or more than 30 days after the last transaction. The Exchange would not apply this requirement in all instances to convertible bonds, noting such bonds generally are priced in relation to the underlying equity security. However, new Rule 86(g) allows a Floor Governor to impose the same requirement on the trading of convertible bonds if market conditions warrant.

Finally, Amendment No. 1 to the proposed rule change corrects typographical errors in the original submission.[7]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirement of Section 6 of the Act. In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act.[8] Section 6(b)(5) requires, among other things, that the rules of the Exchange ''foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities'' and ''protect investors and the public interest.''

The proposed rule change is part of a large effort to move bond trading from the bond floor, where trading activity has declined, to the ABS which should allow for the more economic and efficient trading of bonds.[9] Moreover, by consolidating bond trading procedures in a new Rule 86 and more clearly defining aspects of the ABS in that rule, bond trading at the Exchange should become more transparent for investors and market participants.

As for the proposed changes to the crossing procedures under the ABS, the Commission is satisfied that safeguards will prevent crosses from occurring in the ABS, under new Rule 86, at quotes outside of the spread reflecting the best bid and best offer in the ABS. The ABS will not allow for trading below and above the highest bid and lowest offer prices in the ABS without first completing orders at better prices.[10] And although new Rule 86 will no longer require that a member hold a proposed bond cross for a ''reasonable'' period of time before effecting that cross, the Commission accepts that the infrequency and small size of crosses for bonds,—a distinct type of security traded at the Exchange,—makes this permissible. The Commission also notes the character of bond crosses on the Exchange, with most crosses involving bond brokers receiving matching buy and sell orders from two different

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39903 (April 22, 1998), 63 FR 23324.

[4] In Amendment No. 1, the Exchange corrected typographical errors in the proposed rule change. *See* Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated April 29, 1998 (''Amendment No. 1'').

[5] On March 13, 1998, the Exchange submitted a proposed rule change, which became effective immediately upon filing pursuant to Section 19(b)(3)(A) of the Act, that interpreted Exchange Rule 85 to make convertible bonds eligible for trading in the ABS. *See* Securities Exchange Act Release No. 39808 (March 26, 1998), 63 FR 15908 (April 1, 1998).

[6] New Rule 86 specifies that these bond trading procedures apply only to bonds ''traded through ABS.'' The Exchange trades certain bonds, such as equity-linked securities, on its stock floor. These securities are traded pursuant to NYSE equity-trading procedures and are not subject to Rule 86. *See* Securities Exchange Act Release No. 32650 (July 16, 1993), 58 FR 39586 (July 23, 1993).

[7] *See* Amendment No. 1.

[8] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] *See supra* Note 5.

[10] *See* Letter from Fred Siesel, Director, Fixed Income Markets, Exchange, to Kenneth M. Rosen, Attorney, Division of Market Regulation, Commission, dated May 21, 1998.

correspondent firms within two minutes of each other. Of course, should the nature of crosses on the ABS change, so that crosses become more significant in size and frequency, the Commission would expect the Exchange to consider modifying ABS crossing procedures to reflect such changes.

Finally, because convertible bonds generally are priced in relation to an underlying equity security, it is acceptable that the new Rule 86 would not require the same approval process as that for non-convertible bonds for all sales made two points away from the last sale or more than 30 days after the last transaction. The Commission is satisfied that the provision allowing a Floor Governor to impose a more rigorous approval process when market conditions warrant should adequately protect investors.

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**. The Amendment merely corrects typographical errors in the original proposal which received no adverse comments following its publication.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed Amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 the NYSE. All submissions should refer to the File No. SR–NYSE–83–13 and should be submitted by June 24, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–98–13), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14674 Filed 6–2–98; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, et seq.) the Department of Transportation has submitted the following Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice requesting an emergency approval on the following collection of information was published on March 6, 1998 [FR 61, page 11326].

FOR FURTHER INFORMATION CONTACT: Charles McGuire, 202/366–1037, and refer to the OMB Control Number.

DATES: Comments on this notice must be received on or before July 6, 1998.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Report of DBE Awards and Commitments.

OMB Control Number: 2105–0510.

Type of Request: Extension of a currently approved collection.

Form(s): DOT F 4630.

Affected Public: DOT financially-assisted state and local transportation agencies.

Abstract: 49 CFR Part 23 establishes requirements for the Department of Transportation (DOT) so as to comply with the mandates of the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991 (Public Law 102–240, December 18, 1991). 49 CFR Part 23.49(a) requires that DOT and its Operating Administrations develop a recordkeeping system to monitor, assess and identify contract awards and progress in achieving DBE subcontract goals. In addition, PL 102–240 section 1003(b) requires that each state annually survey and compile a list of small business concerns and the location of such concerns, and notify the Secretary of Transportation of the percentage of such concerns controlled by women and by socially and economically disadvantaged individuals other than women. If these reporting requirements were not available, firms controlled by minorities would not achieve the fullest possible participation in DOT programs, and the Department would not be able to identify its recipients and evaluate the extent to which financial assistance recipients have been awarded a reasonable amount.

In order to minimize the burden on DOT recipients the Department has limited its informational request and reporting frequency to that necessary to meet its program and administrative monitoring requirements. The informational request consists of 17 data items on one page and one attachment, to be completed on an annual, semi-annual or quarterly basis. It is the overall long range objective of DOT to permit all DOT recipients to report on a yearly basis depending upon their past experience in meeting their goals.

Estimated Annual Burden Hours: 20,824 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention OST Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to OMB are best assured of having their full effect if OMB receives them within 30 days of publication.

Issued in Washington, DC, on May 26, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–14709 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending May 22, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3861
Date Filed: May 19, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR 0170 dated May 15, 1998 r1
PTC2 EUR 0171 dated May 15, 1998 r2–13
PTC2 EUR 0172 dated May 15, 1998 r14
PTC2 EUR 0173 dated May 15, 1998 r15
PTC2 EUR 0174 dated May 15, 1998 r16
PTC2 EUR 0175 dated May 15, 1998 r17
PTC2 EUR o176 dated May 15, 1998 r18
PTC2 EUR 0177 dated May 15, 1998 r19
PTC2 EUR 0178 dated May 15, 1998 r20–23
PTC2 EUR 0179 dated May 15, 1998 r24
PTC2 EUR 0180 dated May 15, 1998 r–25
PTC2 EUR 0181 dated May 15, 1998 r–26–27
PTC2 EUR 0182 dated May 15, 1998 r–28
PTC2 EUR 0183 dated May 15, 1998 r29–33
PTC2 EUR 0184 dated May 15, 1998 r34–36
PTC2 EUR 0185 dated May 15, 1998 r37
PTC2 EUR 0186 dated May 15, 1998 r38
PTC2 EUR 0187 dated May 15, 1998 r39
Expedited Within Europe Resolutions
Minutes—PTC2 EUR 0168 dated May 15, 1998; PTC2 EUR 0169 dated May 15, 1998
Intended effective date: as early as June 15, 1998

Docket Number: OST–98–3874
Date Filed: May 22, 1998
Parties: Members of the International Air Transport Association
Subject:
CTC COMP 0099 dated May 19, 1998 r1
CTC COMP 0102 dated May 19, 1998 r2–4
Expedited Cargo Resolutions r1–033k r2–002bb r3–015aa r4–501
Intended effective date: August 1, 1998

Docket Number: OST–98–3878
Date Filed: May 22, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC3 Telex Mail Vote 940
Japan-Guam/Saipan fares
r–1—053i r–4—063ii r–7—091mm r–10—010k r–2—043i r–5—081ww/074h r–8—090L r–3—063i r–6—090 r–9—091f
Intended effective date: July 3, 1998

Docket Number: OST–98–3879
Date Filed: May 22, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC3 Telex Mail vote 939
Okayama-Shanghai fares (Reso 010j)
Intended effective date: June 30, 1998

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 98–14706 Filed 6–2–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending May 22, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3857.
Date Filed: May 18, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 15, 1998.
Description: Application of Inland Aviation Services, Inc. pursuant to Title 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requests authority to engage in interstate scheduled air transportation of persons, property and mail between any point in any State in the United States or the District of Columbia, or any Territory or Possession of the United States, and any other point in any State of the United States or the District of Columbia, or any Territory or Possession of the United States.

Docket Number: OST–98–3864.
Date Filed: May 20, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 17, 1998.
Description: Application of Air New Zealand Limited pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Rules of Practice, requests an amendment to its foreign air carrier permit to allow it to engage in scheduled and charter foreign air transportation of persons, property and mail to the full extent authorized by the Air Transport Agreement between the Government of the United States and the Government of New Zealand, (the ''Open Skies Agreement''): (1) to engage in scheduled foreign air transportation of persons, property and mail from points between New Zealand via New Zealand and intermediate points to a point or points in the United States and beyond; (2) for all-cargo service, to engage in scheduled foreign air transportation between the United States and any point or points; (3) to engage in charter foreign air transportation of persons, property and mail between any point or points in New Zealand and any point or points in the United States; (4) to engage in charter foreign air transportation of persons, property and mail between the United States and any point or points not in New Zealand or the United States provided that, except with respect to cargo charters, such service constitutes part of a continuous operation that includes service to New Zealand; and (5) to engage in other charter foreign air transportation as may be authorized pursuant to the Department's regulations.

Docket Number: OST–98–3876.
Date Filed: May 22, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 19, 1998.
Description: Application of Shuttle America Corporation pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing the carrier to engage in interstate scheduled air transportation of persons, property and mail.

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 98–14707 Filed 6–2–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on Wednesday, June 17, 1998, at 10:00 a.m., at the Department of Transportation, Nassif Building, room 10214, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 10th floor.

TYPE OF MEETING: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: John E. Budnik or Jean B. Lenderking, Corporate Human Resource Leadership Division, M–13, Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 9425, Washington, DC 20590, (202) 366–9439 or (202) 366–8085, respectively.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to address the next steps on the Life with Cancer Signature Project in memory of the late American Federation of Government Employees (AFGE) President John Sturdivant; explore further analysis of DOT labor-management climate survey; and brief Council on DOT mentoring program.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by June 10, 1998 in order to be considered at the June 17 meeting.

Issued in Washington, DC, on May 26, 1998.

For the Department of Transportation.

John E. Budnik,

Associate Director, Corporate Human Resource Leadership Division.

[FR Doc. 98–14708 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21–12B, Application for U.S. Airworthiness Certificate, FAA Form 8130–6

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular (AC) 21–12B, Application for U.S. Airworthiness Certificate, FAA Form 8130–6, for review and comments. The proposed AC provides guidance and information on the preparation and submittal of FAA Form 8130–6 Application for Airworthiness Certificate. This application will be completed to obtain an airworthiness certificate and for any amendment or modification to a current airworthiness certificate. This AC provides a means, but not the only means, of demonstrating compliance with the requirements of Title 14, Code of Federal Regulations, part 21, Certificate Procedures for Products and Parts.

DATES: Comments submitted must identify the proposed AC 21–12B and be received on or before August 3, 1998.

ADDRESSES: Copies of the proposed AC can be obtained from and comments may be returned to the following: Federal Aviation Administration, Policy, Evaluation and Analysis Branch, AIR–230, Production and Airworthiness Certification Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Dennis Hamler, Policy, Evaluation and Analysis Branch, AIR–230, Production and Airworthiness Certification Division, Room 815, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–7990.

SUPPLEMENTARY INFORMATION:

Background

Proposed AC 21–12B provides information and guidance on the preparation and submittal of FAA Form 8130–6. This application is completed to obtain an airworthiness certificate and for any amendment or modification to a current airworthiness certificate.

Comments Invited

Interested persons are invited to comment on proposed AC 21–12B listed in this notice by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. All communications received on or before the closing date will be considered by the Aircraft Certification Service before issuing the final AC.

Comments received on the proposed AC may be examined before and after the comment closed date in Room 815, FAA headquarters building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on May 27, 1998.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Certification Division.

[FR Doc. 98–14758 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–10]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 23, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on May 29, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petiton for Exemption

Docket No.: 29216.

Petitioner: Mid East Jet, Inc.

Regulations Affected: 25.813(e).

Description of Petition: To exempt Mid East Jet, Inc. from the requirements of 14 CFR 25.813(e), which prohibits installation of a door in any partition between passenger compartments. This aircraft operates under the provisions of FAR parts 91 or 125 and is not engaged in providing ''air transportation.'' If granted, this exemption would permit the carriage of an additional 16 passengers, for a total of 41, on an executive configured Boeing 757–200 aircraft intended for non-revenue use only.

Petitions for Exemption

Docket No.: 29197.

Petitioner: The Stallion 51 Corporation.

Sections of the FAR Affected: 14 CFR 91.315.

Description of Relief Sought: To permit Stallion 51 to provide initial and recurrent training, orientation flights, and training under contract with the U.S. military in its two North American P–51 airplanes certificated as limited category civil aircraft.

Dispositions of Petitions

Docket No.: 28824.

Petitioner: Traid International Maintenance Corporation.

Sections of the FAR Affected: 14 CFR 25.807(c)(1).

Description of Relief Sought/ Disposition: To permit deactivation of the existing passenger emergency escape exit door R1 on Boeing 767–200 aircraft converted by TIMCO from a passenger to an all-freight configuration with accommodations for up to four supernumerary occupants in the flight deck area forward of the main deck Class E cargo compartment. *GRANT, May 1, 1998, Exemption No. 6698A.*

Docket No.: 29110.

Petitioner: ERA Aviation, Inc.

Sections of the FAR Affected: 14 CFR 119.2(a) and 121.356(b).

Description of Relief Sought/ Disposition: To permit ERA to operate two Douglas DC–3 (DC–3) airplanes under part 121 passenger-carrying operations without those airplanes being equipped with a Traffic Alert and Collision Avoidance System (TCAS). *GRANT, May 14, 1998, Exemption No. 6765.*

Docket No.: 26006.

Petitioner: Raytheon Aircraft Company.

Sections of the FAR Affected: 14 CFR 47.69(b).

Description of Relief Sought/ Disposition: To permit the use of a Dealer's Aircraft Registration Certificates outside the United States for demonstrating, testing, selling, and marketing its aircraft, subject certain conditions and limitations. *GRANT, April 30, 1998, Exemption No. 6758.*

Docket No.: 28479.

Petitioner: Strong Enterprises, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To permit Strong Enterprises, Inc., and Strong Certified Tandem Instructors to conduct parachute jumps while wearing a dual-harness, dual-parachute pack, having at least one main parachute and one auxiliary parachute. The exemption also authorizes the pilot-in-command of aircraft involved in these operations to allow such persons to make tandem parachute jumps. *GRANT, May 6, 1998, Exemption No. 6474C.*

Docket No.: 28468.

Petitioner: Honolulu Community College Aeronautics.

Sections of the FAR Affected: 14 CFR 65.75, 65.77 and 65.80.

Description of Relief Sought/ Disposition: To permit the petitioner to institute a continuous practical examination program in which students enrolled in HCC's approved 14 CFR part 147 program undergo practical testing concurrent with its training program, in lieu of the students taking the practical test at the completion of the training program. *GRANT, May 12, 1998, Exemption No. 6764.*

Docket No.: 26048.

Petitioner: National Test Pilot School.

Sections of the FAR Affected: 14 CFR 91.319(a) (1) and (2).

Description of Relief Sought/ Disposition: To permit the petitioner to operate aircraft that have experimental certificates to train flight test students who are pilots and flight engineers through the demonstration and practice of flight test techniques and to teach those students flight test data acquisition methods for compensation. *GRANT, May 21, 1998, Exemption No. 5778C.*

Docket No.: 27167.

Petitioner: Corporate Aviation Services, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit CAS to operate certain aircraft under the provisions of part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *GRANT, May 21, 1998, Exemption No. 5756B.*

Docket No.: 28573.

Petitioner: FAA's Office of Aviation System Standards.

Sections of the FAR Affected: 14 CFR 135.251 and 135.255(a).

Description of Relief Sought/ Disposition: To permit the petitioner to use the drug and alcohol testing program mandated by Department of Transportation (DOT) Order 3910.1C, ''The Drug and Alcohol-Free Departmental Workplace,'' for its Flight Inspection Program management, pilot, and maintenance personnel in lieu of the drug and alcohol testing programs mandated by the Federal Aviation Regulations. *GRANT, May 21, 1998, Exemption No. 6484A.*

Docket No.: 26690.

Petitioner: AMR Eagle, Inc.

Sections of the FAR Affected: 14 CFR 121.411(a)(2), (a)(3), and (b)(2); 121.413(b) (c), and (d); appendix H to part 121; 135.337(a)(2), (a)(3), and (b)(2); and 135.339(a)(2), (b), and (c).

Description of Relief Sought/ Disposition: To permit AMR Eagle to use qualified AMR Eagle or AMR Eagle-affiliated instructor pilots and check airmen to use certain FAA-approved simulators to train and check Eagle certificate holders' pilots without those instructors and check airmen meeting all the applicable training requirements of parts 121 and 135. *GRANT, May 21, 1998, Exemption No. 5486C.*

Docket No.: 28530.

Petitioner: John A. Porter.

Sections of the FAR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/ Disposition: To permit the petitioner to conduct certain flight instruction and

simulated instrument flights to meet recent instrument experience requirements, in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *GRANT, May 21, 1998, Exemption No. 6521A.*

Docket No.: 28905.

Petitioner: Petroleum Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought/ Disposition: To permit the petitioner to operate two Bell 214st helicopters and one Bell 412SP helicopter, currently owned by PHI, that are not equipped with approved flight data recorders. *GRANT, May 21, 1998, Exemption No. 6713A.*

Docket No.: 28955.

Petitioner: James W. Shafer.

Sections of the FAR Affected: 14 CFR 91.307(c).

Description of Relief Sought/ Disposition: To permit Mr. Shafer to permanently mount and use a Ballistic Recovery Systems, Inc. (BRS), 1050 ballistic parachute in his Rans S–10 experimental category aircraft in lieu of the individual approved parachutes required by § 91.307(c). *DENIAL May 21, 1998, Exemption No. 6767.*

Docket No.: 28434.

Petitioner: Mercy Air Service, Inc.

Sections of the FAR Affected: 14 CFR 135.142(c)(2).

Description of Relief Sought/ Disposition: To permit the petitioner to operate certain aircraft without a TSO–C112 (Mode S) transponder installed. *GRANT, May 21, 1998, Exemption No. 6769.*

Docket No.: 28977.

Petitioner: Freight Runners Express, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit the petitioner to operate its Beechcraft B–99A aircraft without a TSO–C112 (Mode S) transponder installed. *GRANT, May 21, 1998, Exemption No. 6768.*

Docket No.: 29181.

Petitioner: Northwest Airlines.

Sections of the FAR Affected: 14 CFR 93.217.

Description of Relief Sought/ Disposition: To permit Northwest, who holds two international slots at O'Hare, to conduct domestic operations utilizing the two subject international slots. Northwest may trade these two slots on a one-for-one basis at the same airport; these slots may not be bought, sold, or leased. *GRANT, May 27, 1998, Exemption No. 6766.*

[FR Doc. 98–14711 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of change in time of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a change in time for a special meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee (63 FR 8315, February 19, 1998).

DATES: The meeting to be held on June 26, 1998, will begin at 10 a.m.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 6244–6248, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

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 Executive Committee to be held on June 26, 1998, at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 6244–6248, Washington, DC, 10 a.m. The agenda will include:

- A vote on a revised proposed task concerning Flight Time Limitations and Rest Requirements.
- An update on the status of the Fuel Tank Harmonization Working Group effort.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by June 16, 1998, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

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**. A copy of the revised proposed task being put to a vote may also be obtained from that person.

Issued in Washington, DC, on May 28, 1998.

Brenda D. Courtney,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–14752 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Orange, Santa Ana, Garden Grove, Westminster, Seal Beach, Los Alamitos and Unincorporated Parts of Orange County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Orange County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, Chief, District Operations—South, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400, Sacramento, California 95814–2724, Telephone: (916) 498–5037.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans) and the Orange County Transportation Authority (OCTA), will prepare an environmental impact statement (EIS) on a proposal to improve State Route 22 (SR–22) in Orange County, California. The project area includes SR–22 from SR–55 to I–405 (20.1 km), as well as a section of the former Pacific Electric right-of-way between SR–22 in the City of Garden Grove and Raitt Street in the City of Santa Ana (4.5 km), and I–405 from SR–22 to I–605 (5.3 km) inclusive of the freeway-to-freeway interchanges, (28.2 km). It is known collectively as the SR–22/West Orange County Connection.

The SR–22/West Orange County Connection has insufficient capacity on the freeway and major adjacent surface streets to handle existing and projected travel demand between the SR–55 interchange and I–605, and to and from destinations within the corridor. The situation is aggravated by inadequate freeway interchanges, lack of

continuous parallel arterial routes and available arterial/intersection capacity, absence of alternatives other than single-occupant-vehicle travel (HOV lanes or transit services), and lack of a major program of Transportation System Management (TSM) strategies.

Alternatives under consideration include (1) take no action; (2) implementation of TSM/Expanded Bus Service; (3) construction of a fixed guideway from the MTA Blue Line in Long Beach to the Santa Ana Transportation Center; (4) construction of an additional general purpose lane in each direction on SR–22 between SR–55 and I–405 and construction of a general purpose limited access arterial on the former Pacific Electric right-of-way; (5) construction of an HOV lane in each direction on SR–22 between SR–55 and I–405, and (6) construction of HOV lanes on SR–22, a four-lane HOV section on I–405 between SR–22 and I–605, development of the Pacific Electric right-of-way as a general purpose arterial including direct connector ramps with SR–22, and construction of HOV connectors at the SR–22/SR–55 interchange, the I–5/SR–22 interchange, the SR–22/I–405 interchange, and the I–405/I–605 interchange.

Letters describing the proposed action and soliciting comments are being sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Letters were sent February 25, 1998, to the resource/regulatory agencies seeking their input as cooperating agencies. A public and agency scoping meeting will take place on June 23, 1998, from 3:30 p.m. to 7:00 p.m. in Garden Grove at the Garden Grove Community Center, 11300 Stanford Avenue. A public hearing will be held in the Spring of 1999 and a public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program)

Issued: May 7, 1998.

C. Glenn Clinton,

Chief, District Operations—South Sacramento, California.

[FR Doc. 98–14625 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–3637]

Qualification of Drivers; Waiver Applications; Vision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of petitions and intent to grant applications for waiver; request for comments.

SUMMARY: This notice announces the FHWA's preliminary determination to grant the applications of twelve individuals for a waiver of the vision requirements in the Federal Motor Carrier Safety Regulations. Granting the waivers will enable these persons to qualify as drivers of commercial motor vehicles in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thomas, Office of Motor Carrier Research and Standards, (202) 366–8786, or Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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

Background

Twelve individuals have requested a waiver of the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles in interstate commerce. Under 49 U.S.C. 31136(e), the FHWA may waive application of the vision standard if the agency determines the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.

The FHWA has evaluated each request on its merits, as required by the decision in *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), and made a preliminary determination that granting the waivers is consistent with the public interest and the safe operation of commercial motor vehicles.

Qualifications of Applicants

1. Larry A. Dahleen

Mr. Dahleen is a 48-year-old individual who contracted a retinal disease in his right eye at the age of 5. The disease decreased Mr. Dahleen's visual acuity in the eye and prevents him from meeting the vision requirement of 49 CFR 391.41(b)(10).

A 1997 letter from an optometrist states Mr. Dahleen has light perception in his right eye and 20/15 vision in his left eye. In the optometrist's opinion, Mr. Dahleen can perform the tasks necessary to operate a commercial motor vehicle. Because the retinal disease occurred in 1954, Mr. Dahleen has had almost 44 years to adapt to his vision deficiency. His driving experience and record demonstrate he has adapted successfully.

Mr. Dahleen holds an Iowa commercial driver's license with a hazardous materials endorsement. He has operated tractor-trailer combination vehicles for 11 years and has driven more than 1,250,000 miles since 1987. His driving record contains no traffic violations and no accidents. He has been employed by the same company

since 1988 and the company, Heartland Express, says it has given Mr. Dahleen ''safety bonuses and safety awards'' since 1989 for his driving performance.

2. Earl D. Edland

Mr. Edland is 53 years old and has been employed as a commercial truck driver for 35 years. In 1975, he sustained a retinal detachment in his right eye. This condition prevents him from meeting the vision requirement of 49 CFR 391.41(b)(10), and it renders him unqualified as a driver of commercial motor vehicles in interstate commerce unless the standard is waived.

A 1997 medical report indicates Mr. Edland has no light perception in his right eye. He has 20/20 vision in his left eye with corrective lenses. In his ophthalmologist's opinion, Mr. Edland is capable of operating a commercial motor vehicle. Because the retinal detachment occurred in 1975, Mr. Edland has had almost 23 years to adapt his driving skills to accommodate his vision deficiency. His safe driving record demonstrates he has adapted successfully.

Mr. Edland holds a Minnesota commercial driver's license and intrastate vision waiver. He has driven commercial motor vehicles more than 1 million miles since 1963. His driving record for the last 6 years in all vehicles reflects one speeding ticket and no accidents. He has been employed by the same company since 1993 and prior to that was a driver for another company for more than 25 years until it filed for bankruptcy.

3. Dale Hellmann

Mr. Hellmann has been employed as a commercial truck driver for 37 years. He has had a congenital irregularity called amblyopia in his left eye since birth. Because of this eye condition, Mr. Hellmann is unable to meet the vision requirement of 49 CFR 391.41(b)(10).

A 1997 medical report indicates Mr. Hellmann has light perception in his left eye and 20/30 vision in his right eye with corrective lenses. His optometrist states Mr. Hellmann has the skills to operate a commercial motor vehicle. Having had amblyopia since birth (1941), he has had a lifetime to adapt to it.

He has driven straight trucks approximately 1.3 million miles since 1963. His driving record for the 3 years preceding his waiver application reflects no traffic violations and no accidents. Mr. Hellmann operates a commercial motor vehicle for a towing company. He has been employed by the towing company since 1986 and intends to continue driving for it if his waiver is granted. His employer states Mr. Hellmann's driving record ''[has] been exemplary.''

4. Dan E. Hillier

Mr. Hillier, 35, has had amblyopia of the right eye since birth and cannot meet the Federal vision standard. A 1997 examination by an optometrist revealed the vision in his left eye to be 20/20 with corrective lenses. The optometrist stated Mr. Hillier can perform ''all visual tasks required'' to operate commercial motor vehicles.

Mr. Hillier has a Minnesota commercial driver's license with a hazardous materials endorsement. He has driven many types of commercial motor vehicles in his 7-year professional driving career, including straight trucks, tractor-trailer combinations, and buses. His official State driving record reflects no traffic violations or accidents in any commercial vehicle in the last 3 years.

5. Robert J. Johnson

Mr. Johnson is a 36-year-old individual who has had amblyopia of the right eye since birth. He has 20/20 vision in his left eye with corrective lenses. An ophthalmologist examined him in December 1997 and asserted Mr. Johnson ''can safely drive a vehicle of any type . . . both day and night . . . .''

Mr. Johnson has 13 years of experience operating straight trucks and tractor-trailer combinations. He holds a Minnesota commercial driver's license with an intrastate waiver and has driven more than 1 million miles in commercial vehicles. He has no traffic citations or accidents on his official driving record in the last 3 years. Mr. Johnson's employer affirms he has driven trucks ''in a safe, professional manner'' since his 1994 hiring.

6. Bruce T. Loughary

Mr. Loughary's right eye has a macular scar which makes him unable to meet the Federal vision standard. His ophthalmologist says the scar has been present since Mr. Loughary, now 35, was about 6 years old. The vision in his left eye is 20/20 with corrective lenses, and the ophthalmologist believes he is able to operate a commercial motor vehicle.

Mr. Loughary has a commercial driver's license with hazardous materials and tank vehicle endorsements. He has been a professional truck driver for 16 years and has driven straight trucks and combination vehicles. There are no traffic violations or accidents in commercial motor vehicles on his official driving record. Mr. Loughary has been employed by a delivery service since 1991 and intends to continue driving for it if he receives a vision waiver.

7. Michael L. Manning

Mr. Manning, 31, had an accident when he was 16 which left him blind in his right eye. The vision in his left eye is 20/20 with glasses. His optometrist states Mr. Manning is able to perform the duties of a commercial motor vehicle driver.

Mr. Manning holds a Missouri commercial driver's license. He has operated tractor-trailer combinations for 7 years and has accumulated more than 900,000 miles behind the wheel. His official driving record for the last 3 years reveals no accidents and one speeding ticket in a commercial motor vehicle. Mr. Manning's two most recent employers wrote letters affirming his ''excellent'' driving performance.

8. Leo L. McMurray

Mr. McMurray is 56 years old and has had amblyopia of the left eye since early childhood. He has 20/20 vision in his right eye with corrective lenses. His optometrist recommends he ''be allowed [to] continue his job as a truck driver.''

Mr. McMurray has driven straight trucks for 34 years. He has no traffic violations or accidents in a commercial motor vehicle on his official State driving record. Like the other waiver applicants, Mr. McMurray has had many years to adjust to his vision deficiency. His safe driving record indicates he has adjusted successfully.

9. Gerald Rietmann

Mr. Rietmann, 55, has had amblyopia of the right eye since birth. His left eye was measured at 20/20 with corrective lenses in a September 1997 examination, and the ophthalmologist asserts Mr. Rietmann ''can more than adequately perform'' the tasks required to operate a commercial motor vehicle.

Gerald Rietmann has a Minnesota commercial driver's license and a Minnesota intrastate vision waiver. He has operated straight trucks for 22 years and has driven more than 900,000 miles. His driving record contains no traffic violations or accidents in a commercial motor vehicle in the last 3 years. Mr. Rietmann has been employed as a delivery driver by the same company for the past 20 years, and its traffic manager calls him a ''valued employee'' who has driven in an ''exemplary fashion with no incidents.''

10. Jimmy E. Settle

Mr. Settle has had amblyopia of the right eye since birth. His vision in the

eye with corrective lenses is 20/50, according to a December 1997 examination, but this is not sufficient to meet the vision standard at 49 CFR 391.41(b)(10). His left eye is correctable to 20/20. According to his optometrist, Mr. Settle can perform the tasks associated with driving a commercial motor vehicle.

Mr. Settle is 47 years old; he has operated tractor-trailer combinations for 23 years and driven more than 2.5 million miles. He has worked for the same company all those years. He has had no traffic violations or accidents in a commercial motor vehicle in the last 3 years.

11. Robert A. Wagner

Mr. Wagner, 34, was diagnosed with amblyopia of the right eye when he was 4 years old. The vision in his left eye is 20/20 without glasses. His optometrist says Mr. Wagner is able to perform the tasks associated with operating a commercial motor vehicle.

Mr. Wagner has driven straight trucks, tractor-trailer combinations and buses more than 1.2 million miles in an 18-year driving career. He has a Missouri commercial driver's license and his official State driving record contains no traffic violations or accidents in a commercial motor vehicle. He has operated a combination vehicle for the same company since 1990.

12. Hubert Whittenburg

Mr. Whittenburg, 51, has had amblyopia in his left eye since birth. A 1997 medical report indicates he has 20/20 vision in his right eye with corrective lenses and 20/100 corrected in his left eye. In his ophthalmologist's opinion, Mr. Whittenburg is capable of operating a commercial motor vehicle.

Mr. Whittenburg holds a Missouri commercial driver's license and has been employed as a commercial truck driver since 1967. He has driven straight trucks approximately 500,000 miles and tractor-trailer combinations 3.5 million miles. His driving record for the last 3 years reflects one speeding ticket in a commercial motor vehicle and no accidents in any vehicle. Mr. Whittenburg has been employed by the same company since 1983, and his employer attests to his driving safety.

Basis for Preliminary Determination To Grant Waivers

Independent studies support the principle that past driving performance is a reliable indicator of an individual's future safety record. The studies are filed in FHWA Docket No. FHWA–97–2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). All twelve waiver applicants have many years of experience operating commercial motor vehicles with their vision deficiency and have demonstrated their ability to drive safely.

The FHWA believes waiving 49 CFR 391.41(b)(10) is consistent with the public interest and the safe operation of commercial motor vehicles as long as the applicants' vision continues to measure at least 20/40 (Snellen) in the better eye. As a stipulation of the waiver, therefore, the FHWA proposes to impose requirements on these individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's former vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) that each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests his vision continues to measure at least 20/40 (Snellen) in the better eye, and (b) by a medical examiner who attests he is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to his employer for retention in its driver qualification file or keep a copy in his driver qualification file if he becomes self-employed. He must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

Authority: 49 U.S.C. 31136; 23 U.S.C. 315; 49 CFR 1.48.

Issued: May 26, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98–14677 Filed 6–2–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–32 (Sub–No. 84X)]

Boston and Maine Corp.—Abandonment Exemption—in New Haven County, CT

Boston & Maine Corporation (B&M) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances* to abandon an approximately 0.48-mile line of railroad on the Watertown Industrial Track between Engineering Station 19+50 (approximately milepost 0.94) and Engineering Station 44+66 (approximately milepost 1.42) in Waterbury, New Haven County, CT. The line traverses United States Postal Service Zip code 06701.

B&M has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 3, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 15, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 23, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John R. Nadolny, Esq., Boston and Maine Corporation, Law

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Department, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

B&M has filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 8, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by June 3, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 22, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–14268 Filed 6–2–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of a General Test Regarding the International Trade Prototype

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

ACTION: General Notice.

SUMMARY: This notice announces Customs' plan to conduct what is expected to be a series of prototypes collectively called the International Trade Prototype (ITP). This notice invites public comments concerning any aspect of the planned prototype, informs interested members of the public of the eligibility requirements for voluntary participation in the first phase of the first prototype called International Trade Prototype 1 (ITP1) and outlines the development and evaluation methodology to be used in the test. To participate in the first phase of ITP1, the necessary information, as outlined in this notice, must be filed with Customs and approval granted. It is important to note that resources expended by the trade and Customs on these prototypes may not carry forward to the final program.

This notice supersedes the information on the International Trade Prototype published by the International Trade Data System Project Office of the Treasury Department in the **Federal Register** on December 31, 1997.

DATES: The first phase of ITP1 will commence no earlier than June 8, 1998 and will run for approximately six months with evaluations of the prototype occurring periodically. Comments concerning any aspect of this phase must be received on or before July 6, 1998. Future phases, prototypes, or participant expansion of this prototype will be announced in a **Federal Register** notice.

ADDRESSES: Written comments regarding this notice, and information submitted to be considered for voluntary participation in this first phase of ITP1 should be addressed to the U.S. Customs Service, International Trade Prototype Team, Attn: Linda LeBaron Grasley, 4455 Genesee Street, Bldg. 10, Room #342, Buffalo, New York 14225. Note that all comments received by U.S. Customs will be part of the public record.

FOR FURTHER INFORMATION CONTACT: For any prototype or participation questions please contact Daniel Buchanan, U.S. Customs Service at (617) 565–6236, or Linda LeBaron Grasley, U.S. Customs Service at (716) 626–0400 x 204, or Kevin Franklin, United Kingdom, Her Majesty's Custom and Excise at 011 44 171 865 4728 in London, England.

SUPPLEMENTARY INFORMATION:

Background

The ITP has evolved from an international drive to streamline global trade. In both business and government, around the world, processes are being automated and reengineered. Trade and information are moving faster and more effectively all the time. Many international companies share critical data with business and trading partners around the world, and they expect government to maintain the leadership position it has taken in developing domestic electronic trade systems by moving into the global arena.

The ITP concept has been under consideration by both the U.S. Customs Service (USCS) and Her Majesty's Custom and Excise (HMCE) since 1996. The nucleus of this program is an extension of ideas developed in partnership with the trade community by various members of the Trans-Atlantic Team, which is primarily comprised of USCS and HMCE officers. The ITP concept also addresses issues raised by international traders, the World Customs Organization (WCO), the United Nations Conference on Trade and Development (UNCTAD), G–7 and other international organizations. The concept is intended to simplify and standardize customs processes and procedures in order to facilitate trade while maintaining effective and efficient control. Information on an ITP prototype contained in an information collection notice published in the **Federal Register** (63 FR 68353 on December 31, 1997) is superseded by this notice.

In the United States Customs Service Annual Plan for Fiscal Year 1998, USCS states a number of objectives associated with increased cooperation and support of international trade automation. The plan's objectives include increased cooperation with other customs administrations at the multilateral, regional and bilateral levels. The plan further states that USCS will work to promote standardized customs processing through implementation of ''Customs Guidelines'' and establishment of best practices. This is to be accomplished by working with the WCO and the international trade community to promote the development of international instruments to reduce customs procedural barriers to trade and to secure greater standardization, transparency, simplification and automation worldwide.

The developing relationship between the USCS and HMCE leads us to prototype this concept. The USCS and HMCE have agreed that the ITP will be delivered in a series of prototypes. Each prototype will be evaluated against predetermined success criteria. Subsequent ITP prototypes will build on lessons learned in ITP1 and the need for enabling legislation will be evaluated.

It is expected that ITP1 will be rolled out in three phases. USCS and HMCE agree that the first phase of ITP1 will commence no earlier than June 8, 1998. Additional phases are being planned and future prototypes are also under consideration.

The USCS will be testing the ITP in accordance with Section 101.9 of the Customs Regulations (19 CFR 101.9), which provides for the testing to

evaluate the planned components of the National Customs Automation Program (NCAP). By virtue of 19 CFR 101.9, USCS may impose requirements different than those specified in the Customs Regulations; but only to the extent that such different requirements do not affect the collection of revenue, public health, safety, or law enforcement.

Description of Proposed International Trade Prototype

The Mission/Vision of the International Trade Prototype is a standard customs regime that will facilitate the movement of goods internationally. This regime will operate within an electronic environment in which there will be automated systems using data which conform to internationally agreed standards. The amount of information supplied by business to customs will be minimized to the extent possible, consistent with the customs administrations' performance of their missions.

The goal of the project is to allow trade participants to supply their information only once (seamless transaction, i.e., exports equals imports) and will be restricted to the information that is essential to allow customs to effect shipment and clearance of the goods.

More specifically, our Mission/Vision is to deliver an automated system that utilizes internationally-accepted standard message formats and codes, streamlines data transmission, simplifies and facilitates global trade, and assists governments world-wide in enforcing their laws.

I. Goals, Principles and Scope of ITP1

The following goals, principles and scope support USCS and HMCE mission and strategic plans and will guide development of the first ITP prototype.

Customs Administration Cooperation. The ITP will improve international trade practices that are best addressed through cooperative efforts between customs administrations, international traders, and international trade organizations.

International Trade Transactions. This prototype will work toward the development of harmonized and simplified messages and procedures, based upon business practices, for transactions that support import, export, and transportation without the need for redundant entry or transmission of data.

Commercial and Enforcement Compliance Focus. Each country will continue to use its own targeting and compliance measurement approaches and procedures to ensure that the legal requirements of all participating countries are met.

Account-Based Approach. Both countries will work with prototype accounts, primarily importers and exporters, to better understand their systems, procedures, and levels of compliance, with mutual assistance between designated Customs Account Managers.

Automation and Information Sharing. Automation will allow the sharing of information to enable the collection and exchange of standardized information mutually agreed to by both governments in a secured electronic environment.

Reduce the Burden on the Trade. This prototype will work toward streamlining government reporting requirements placed upon the trade community.

The scope of ITP1 will include:

—Air and sea cargo shipments.
—Cargo release, statistical and fiscal reporting, and supporting information.
—Merchandise restrictions and limitations agreed between customs administrations.
—Sharing of agreed standard data using various technological means accepted by both administrations.
—UN/EDIFACT message syntax between governments.
—Unique Consignment Reference Numbers (UCRN) to be used by the USCS and HMCE in separate formats.
—The HMCE conducting ITP1 in an operational environment.
—The USCS phasing ITP1 into an operational environment.
—Both one-step and two-step export reporting being implemented.
—A two-step import process in which data provided to the export customs administration is forwarded to the import customs administration and used to effect import cargo release.
—Acceptance of all participating traders being subject to compliance review.
—Risk assessment, anti-smuggling, and commercial compliance checks continuing to be applied to goods being moved under these simplified procedures.
—Development of agreed joint operational procedures to manage traders' accounts.

II. Development Methodology

ITP will be monitored by a Joint Prototype Team consisting of trade participants, the USCS Offices of Field Operations, Strategic Trade, Information and Technology, International Affairs and other interested government agencies. This team will meet regularly throughout the prototype period in appropriate locations to set development milestones, monitor progress, resolve issues and evaluate program effectiveness. The development effort will be coordinated with other on-going National Customs Automation Program (NCAP) prototype programs such as the NCAP Prototype, Remote Location Filing and Reconciliation, and will be as consistent as possible with the overall direction of USCS development of the Automated Commercial Environment (ACE).

Potential participants should recognize that this is a prototype test of new processes. Data definitions, values and formats for electronic transmission of data will differ from those currently used in the Automated Export System (AES) and the Automated Commercial System (ACS). It is also important to note that development efforts undertaken for ITP may not meet the eventual requirements for programs as they are finally implemented.

The public is invited to comment on any aspect of the ITP test as described by this notice. Public comments received concerning the methodology of the test program or procedures will be reviewed by USCS and HMCE.

III. Account-Based Export/Import Declaration Process

In the United States, ITP1 will become operational under a three-phase implementation.

The general scope of each phase is as follows:

(1) ITP1.1 will be a parallel (non-operational) test of pre-departure export notification;

(2) ITP1.2 will be operational for pre-departure export notification and import cargo release; and

(3) ITP1.3 will be the full implementation of ITP1 and will be operational for full export declaration and import entry summary acceptance and processing.

The full implementation of ITP1 will test an account-based declaration process that integrates preliminary export and preliminary import reporting. For shipments processed under ITP1 procedures, export notification and import cargo examination decisions will be based primarily on pre-established account/entry information, minimizing the transaction data that needs to be transmitted to customs authorities prior to release of cargo. Cargo examinations will also be performed on the basis of selectivity criteria and for random compliance measurement sampling. Complete export declaration data may be transmitted following exportation. Detailed import entry summary data will be reported on a monthly cycle, and

payment of duties, taxes and fees will be based on a monthly statement cycle employing semi-monthly estimated payments. The full developed account-based declaration process will be a fully electronic process; no paper documents will be required or accepted at that time.

When ITP1 is fully implemented, export reporting, import cargo release and assessment of duties, taxes and fees will be based on data transmitted to the ITP1 system. For shipments processed in the fully implemented ITP1 system, participants will not be required to provide parallel filing of ACS or AES data or of paper documents.

In order for a shipment to be eligible for processing under ITP1 procedures, both the exporter and the importer of the shipment must be ITP1 participants in their respective countries. While various automatic notifications and back-up procedures will also be supported, the basic declaration flow for U.S. exports in the full implementation of ITP1 will be as follows:

1. The exporter's application, including any amendments, will be used to assess the suitability of proposed export shipments for ITP processing.

2. The exporter or an authorized agent will transmit a pre-departure export notification message to USCS for each ITP shipment exported from the U.S. The data elements of the pre-departure export notification message are listed under ''DESCRIPTION OF PROPOSED FIRST PHASE OF ITP1,'' below.

3. ITP1 shipments exported from the U.S. will be subject to physical inspections and compliance reviews by various federal agencies.

4. Upon departure of the exporting conveyance, USCS will forward the data from the pre-departure export notification message to HMCE.

5. HMCE will use the forwarded data from the pre-departure export notification message to effect import cargo release in the United Kingdom (U.K.)

6. The U.S. exporter or an authorized agent will transmit a complete export declaration to USCS prior to a specified periodic filing deadline. These data may be transmitted at any time following the pre-departure export notification and may be transmitted following departure of the exporting conveyance. Data from the complete export declaration will not be forwarded to HMCE.

The basic declaration flow for U.S. imports in the full implementation of ITP1 will be as follows. Note that no data transmitted by participants to USCS with regard to importations into the U.S. will be forwarded to HMCE.

1. The U.K. exporter or an authorized agent will transmit a pre-departure export notification message to HMCE for each ITP shipment exported from the U.K. These data will consist of the same data elements as a U.S. pre-departure export notification message. These data elements are listed under ''DESCRIPTION OF PROPOSED FIRST PHASE OF ITP1,'' below.

2. Upon departure of the exporting conveyance, HMCE will forward the data from the pre-departure export notification message to USCS.

3. The importer's application, including any amendments, will serve as a pre-filed entry for each ITP1 shipment. USCS will assign an ITP Authorization Code to each participant who imports into the U.S.A. participating importer or an authorized broker will electronically transmit data to USCS to provide timely and accurate identification of any changes to the original application, e.g., changes in a participant's ITP business partners and merchandise imported under the prototype.

4. USCS will assign a filer and entry number to each shipment. The entry filer, i.e., importer or authorized agents (brokers) designated by the importer, for ITP shipments at the port of unloading will be assigned to the entry. The entry number will be assigned from the range of entry numbers provided in advance by each designated entry filer for that purpose. When an importing conveyance arrives, ITP shipments for which no physical examination of cargo is required will be released without additional data or documentation. For any shipment selected by USCS for physical examination of cargo, USCS will issue an electronic request for additional information to the entry filer. This request may be satisfied by transmission of partial entry summary and commercial data, as defined by USCS, plus packing data. The commercial data required for cargo examination will be at the detailed item level. Cargo will not be examined until these data are received by USCS.

5. The date of entry will be the date, after the merchandise arrives, the merchandise is released into the commerce of the United States. The release will obligate a continuous bond identified for that purpose by the participant importer whose ITP Authorization Code is present in the pre-departure export notification data forwarded to USCS by HMCE.

6. For each shipment released during a calendar month, the entry filer must electronically transmit complete entry summary data to USCS on or before the filing deadline for that month. The filing deadline for each month will be the 10th calendar day of the following month, or, if the 10th falls on a weekend or holiday, the next business day. Entry summary data transmitted prior to this deadline will be considered provisional and may be replaced by the entry filer anytime before the deadline. All summaries filed on or before the deadline will be considered as filed on the deadline date.

7. For any entry summary selected by USCS for data review, USCS will issue an electronic request for complete commercial data to the entry filer. This request must be satisfied by electronic transmission of a complete set of commercial data, as defined by USCS, plus packing data if specifically requested.

8. In order to permit a different procedure to test the periodic deposit of estimated duties without adversely affecting the collection of revenue, participants who import into the U.S. must abide by the following procedures. Each participating importer will make semi-monthly preliminary estimated payments through an electronic medium. Preliminary estimated payments will be initiated electronically using ACH credit on the 15th and the last day of the month. If the 15th or the last day of the month falls on a weekend or holiday, the payment must be initiated the next business day. Under the prototype, special electronic payment procedures will be utilized. The preliminary estimated payments will be based upon the following percentages: (a) the payment initiated on the 15th will be 75% of the estimated amount due on all releases for the 1–15th of the month, and (b) the payment initiated on the last day of the month will be 57% of the estimated amount due on all releases from the 16th to the last day of the month.

These percentages will be reviewed and may have to be adjusted to maintain revenue neutrality. Payment for the remaining balance will be initiated electronically on the 15th of the following month, and it is this date which USCS and the participants agree will serve as the date of actual deposit of estimated duties and fees for purposes of assessing interest under 19 U.S.C. 1505. USCS will issue two statements each month, one before and one after the monthly filing deadline. Each statement will list each importer's ITP activity at all locations for the reporting month, and will indicate whether entry summary data has been filed and, if it has, estimated duties and fees.

IV. Remote Location Filing

Remote location filing allows participants to electronically file data for the entry of merchandise with USCS from any location in the United States other than the port designated in the entry for examination.

One aspect of remote location filing will be supported in ITP1 and use of this aspect is voluntary, but the same electronic data transmission requirements will apply for all prototype participants. A U.S. ITP1 participant who will be filing remotely must meet the criteria for remote filing established in 19 U.S.C. 1414.

An ITP1 participant will be voluntarily utilizing remote filing if the electronic transmission of an entry, entry summary, invoice data (when required by USCS) and payment of duties, fees, and taxes is received from a participant not located in the port of arrival, which for purposes of this prototype will also be the port of examination as designated in the entry information.

The designation of alternative locations for cargo examination will not be supported in ITP1. All cargo examinations will be conducted at the port where the cargo first arrives in the United States.

V. Description of Proposed First Phase of ITP1

USCS and HMCE agreed that the first phase of ITP1 (ITP1.1) will commence on June 8, 1998. The number of U.S. participants will be limited. In order for a shipment to be eligible for processing under ITP1.1 procedures, both the exporter and the importer of the shipment must be ITP1 participants in their respective countries. No more than six U.S. ports will be included in ITP1.1. Port selections will be based on applicants' requests. While ITP1.1 will be a parallel test in the U.S., it will have operational status in the U.K. As a result, pre-departure export notifications transmitted by participating U.S. exporters or their authorized agents will be used to effect operational release of the cargo upon importation into the U.K. Applicants should note that participants must agree to the transmission of these data between governments.

For U.S. exports in ITP1.1:

1. The exporter or an authorized agent will transmit a pre-departure export notification message to USCS for each ITP shipment exported from the U.S. The proposed data elements for pre-departure export notifications in ITP1.1 are:

—Universal Consignment Reference Number (to identify transactions)
—Country of Export
—Mode of Transportation
—Port of Loading
—Shipping Reference (identification of Bill of Lading or Air Waybill)
—Shipping Quantity
—Exporter
—Importer

In the U.S. the ITP1.1 pre-departure export notification will be tested in parallel. All U.S. export reporting requirements for ITP1.1 shipments must be satisfied through existing export reporting procedures and systems.

2. USCS will forward the data from the pre-departure export notification message to HMCE.

3. HMCE will use the forwarded data from the pre-departure export notification message to effect operational import cargo release in the U.K.

For U.S. imports in ITP1.1:

1. The U.K. exporter or an authorized agent will transmit a pre-departure export notification message to HMCE for each ITP shipment exported from the U.K. These data will consist of the same data elements as a U.S. pre-departure export notification message. U.K. filers of pre-departure export notifications will transmit the U.S. importer's ITP Authorization Code to identify the importer. The pre-departure export notification will have operational status for U.K. export reporting.

2. Upon departure of the exporting conveyance, HMCE will forward the data from the pre-departure export notification message to USCS.

3. In the U.S., the ITP1.1 pre-departure export notification will be tested in parallel. All U.S. import reporting requirements for ITP1.1 shipments must be satisfied through existing import reporting procedures and systems.

Note that no ITP1.1 data is transmitted by participants to USCS with regard to importations into the U.S.

VI. Eligibility Requirements

Customs will select a limited number of participants for ITP1.1. In order to be eligible for participation in ITP1.1, a company operating in the United States must:

1. Have the ability to provide electronically, on an entry-by-entry basis, the following: entry, entry summary, invoice information; and payment of duties, fees, and taxes through the Automated Clearing House (ACH);

2. Be scheduled for, participating in, or, in the application, agree to undergo and cooperate fully with a Customs Compliance Assessment. At the time the application is filed, if any Customs audit is in progress, the importer must be fully cooperating in all aspects of the Customs Compliance Assessment and any related audit, providing timely and accurate information and adequate resources necessary for USCS to conduct a Customs Compliance Assessment or audit; and be in full compliance with the terms of any associated Compliance Improvement Plan.

3. Export merchandise from the U.S. for importation into the U.K. and/or import into the U.S. merchandise exported from the U.K. Note that in order for a shipment to be eligible for processing under ITP1 procedures, both the exporter and the importer of the shipment must be ITP1 participants in their respective countries. It is therefore important that potential U.S. participants coordinate their participation with that of their U.K. trading partners; and

4. For participants who wish to include U.S. export shipments in the ITP1.1 test, provide or arrange for provision of timely and accurate electronic transmission to USCS of pre-departure export notification data for all included U.S. export shipments. If a participant does not transmit electronic data for a particular export shipment, USCS may exclude that shipment from ITP processing.

Applications will be accepted from all volunteers; however, priority consideration will be given to:

1. Companies within the top 379 U.S. importers ranked by entered value (the top 379 represent approximately 50 percent of all imports by value);

2. Companies within the top 250 U.S. importers within any of the USCS Primary Focus Industry (PFI) categories, which are:

a. Advanced Displays;
b. Agriculture;
c. Auto/Truck Parts;
d. Automobiles;
e. Bearings;
f. Circuit Boards;
g. Fasteners;
h. Footwear;
i. Manufacturing Equipment;
j. Steel Products;
k. Telecommunications;
l. Textiles and Flatgoods; and
m. Wearing Apparel;

3. Companies at least 50 percent of whose imports are in PFI categories; and

4. Companies that indicate they plan to maintain an average of at least 10 entries per month throughout the prototype period.

ITP1.1 participants who wish to continue to participate in subsequent

operational phases of ITP1 will further be required to file or maintain a continuous bond with sufficient liability coverage. They will also be required to provide or arrange for provision of timely and accurate electronic transmission to USCS of data required to pre-identify parties and commodities involved in ITP transactions, and of all data required in prototype declaration processes as they are phased into ITP1.

VII. General Requirements

For ITP1, the following restrictions will be placed upon participants.

Participants who will include shipments exported from the U.S.:

A. Must export merchandise identified in the application as being from their typical commodities in their established lines of business to pre-identified U.K. importers;

B. Must export only the merchandise identified in the application as being within a range of pre-identified commodities (classified at the 6-digit HTS level);

C. Must export merchandise using carriers pre-identified in the application;

D. Must export merchandise from a port selected by USCS for inclusion in the current phase of ITP1;

E. May not include export shipments of used vehicles or of DEA essential and precursor chemicals for the manufacture of narcotics, shipments subject to State Department licensing or shipments destined to an embargoed nation;

F. Must not export any merchandise subject to export prohibitions or restrictions;

G. May not export ITP1 merchandise under a transportation and exportation (T&E) entry;

H. Are responsible for ensuring that ineligible merchandise is not included in ITP1 shipments. Customs will exclude ineligible shipments from ITP1 processing.

Participants who will include shipments imported into the U.S.:

A. Must provide electronically, on an entry-by-entry basis, the following: entry, entry summary, invoice information; and payment of duties, fees, and taxes through the Automated Clearing House (ACH);

B. Must enter merchandise identified in the application as being from their typical commodities in their established lines of business from pre-identified U.K. exporters;

C. Must enter only the merchandise identified in the application as being within a range of pre-identified commodities (classified at the 6-digit HTS level);

D. Must enter merchandise transported by carriers pre-identified in the application;

E. Must enter merchandise for release into the commerce under a consumption entry at the port of unloading, i.e., may not enter ITP1 merchandise into a warehouse or Foreign Trade Zone, or as an in-bond entry;

F. Must enter merchandise at a port selected by USCS for inclusion in the current phase of ITP1;

G. May not enter merchandise in ITP1 if it is subject to antidumping or countervailing duty, quota, trade preference level or visa requirements, or pre-release reporting requirements imposed by other federal agencies;

H. Must not import prohibited merchandise in prototype shipments; and,

I. Are responsible for ensuring that ineligible merchandise is not included in ITP1 shipments, and that all shipments aboard a conveyance are eligible for ITP1 processing. Customs will exclude ineligible shipments from ITP1 processing.

VIII. Application

Importers and exporters who wish to participate in ITP1.1 must submit a written application within 30 days of this notice including the following information:

1. Participant name, address and designated contact person.

2. For all exported cargo proposed for inclusion in the ITP1.1 test:

—Names and addresses of all U.K. importers;
—For each U.K. importer, a listing of all the 6-digit HTS numbers in which the commodities to be exported are classified;
—Detailed explanation of any licenses or permits required for export of the listed commodities;
—Lists of all air and ocean freight carriers to be used;
—For each carrier, a listing of the U.S. ports of loading at which the carrier will be used; and
—An estimate of the total number of export shipments per month the participant expects to include in the ITP1.1 test for each mode of transportation at each U.S. port of loading.

3. For all imported cargo proposed for inclusion in the ITP1.1 test:

—Names and addresses of all U.K. exporters;
—For each U.K. exporter, a listing of all the 6-digit HTS numbers in which the commodities to be imported are classified
—Lists of all air and ocean freight carriers to be used;
—For each carrier, a listing of the U.S. ports of unloading they prefer to us; and,
—An estimate of the total number of import shipments per month the participant expects to include in the ITP1.1 test for each mode of transportation at each U.S. port of unloading.

4. For applicants not already scheduled for or participating in a Customs Compliance Assessment, a statement in which the applicant indicates agreement to undergo and cooperate fully with a Customs Compliance Assessment.

5. A statement indicating that the participant will comply with the procedures and restrictions of the prototype.

6. A statement indicating that the applicant agrees to the sharing of pre-departure export notification data and other information between the HMCE and USCS. This includes information in regard to imported/exported commodities, value determination, and company structure and finance. This information will be shared between UK and US Account Managers to better understand importer and exporter systems, procedures, and levels of compliance.

USCS will make import admissibility determinations on ITP shipments imported into the U.S. based on any cargo examinations and the information supplied with the application, which shall serve as a pre-filed entry for ITP purposes. Applications may be referred to other government agencies for review. All ITP1.1 applicants will be notified in writing of their acceptance or rejection. USCS will assign an ITP Authorization Code to each accepted participant whose application indicates intent to include imports into the U.S. in the ITP1.1 test. The USCS, with the HMCE, will schedule meetings with each accepted participant to review the current prototype proposal, data elements, technologies, and evaluation criteria.

If an applicant is denied participation, the notification letter will include the reasons for that denial. The applicant may appeal such decision in writing within 10 days to the Trade Compliance Process Owner. Applicants who are denied participation in ITP1.1 may re-apply if USCS subsequently opens participation to additional participants. USCS will publish a notice in the **Federal Register** if an expansion of participation is planned.

Applicants should note that participation is not confidential, and that lists of participants will be made

available to the public. Additionally, all comments provided to U.S. Customs will be part of the public record.

IX. Maintenance of Account Information

Throughout the prototype period, participants must provide USCS with advance notification of any changes in the information provided in the application. This notification must be provided to USCS at least seven days before the effective date of a change and will be considered an amendment to the application. By notification of the participant, USCS may reject such an amendment or prohibit the participant's use of a particular carrier, U.K. importer or exporter, or the export or import of particular merchandise under this prototype.

ITP1.1 participants who wish to include imported cargo in subsequent operational phases of ITP1 will be required to provide additional information, including but not limited to the issuer and number of the continuous surety bond which will cover all cargo imported under ITP1 procedures and designation of a single entry filer for each port at which imported cargo will be unloaded. Each entry filer designated by one or more participant importers must provide USCS with a range of entry numbers to be reserved for assignment by USCS to ITP1 shipments. Entry filers may not assign these numbers to transactions other than ITP transactions.

X. Misconduct Under Prototype

All participants in ITP1 are required to abide by the terms and conditions of this notice.

A participant may be suspended from the prototype, subject to liquidated damages, penalties, and/or other administrative sanctions, and/or prevented from participation in future prototypes if a participant fails to cooperate fully in a Compliance Assessment or audit, provide timely and accurate data and adequate resources in support of a Customs Compliance Assessment or audit, or comply fully with the terms of a Compliance Improvement plan; participant exports or attempts to export goods to U.K. importers or conveyed by carriers not approved by USCS; exports or attempts to export goods classified in commodity ranges not approved by USCS; exports or attempts to export or submits data relating to prohibited merchandise or other non-eligible merchandise; enters or attempts to enter goods from U.K. exporters or conveyed by carriers not approved by USCS; enters or attempts to enter goods classified in commodity ranges not approved by USCS; participant files non-consumption import entries; enters or attempts to enter or submits data relating to prohibited merchandise, merchandise subject to quota or antidumping or countervailing duties, or other non-eligible merchandise; fails to maintain sufficient continuous bond coverage; files erroneous or untimely data; makes late or inadequate payments; fails to supply USCS with requested invoice data; fails to maintain a sufficient level of compliance; fails to exercise reasonable care in the execution of participant obligations; or otherwise fails to follow the procedures outlined herein, and applicable laws and regulations. USCS has the discretion to suspend a prototype participant based on the determination that an unacceptable compliance risk exists. This suspension may be invoked at any time after acceptance in the prototype.

Any decision proposing suspension of a participant may be appealed in writing to the Director, Trade Compliance, within 15 days of the decision date. Such proposed suspension will apprise the participant of the facts or conduct warranting suspension. Should the participant appeal the notice of proposed suspension, the participant should address the facts or conduct charges contained in the notice and state how he does or will achieve compliance. However, in the case of willfulness or where public health interests or safety are concerned, the suspension may be effective immediately.

Regulatory Provisions Suspended

Certain provisions of Parts 24, 111, 113, 141, 142, 143, and 159 of the Customs Regulations (19 CFR Parts 24, 111, 113, 141, 142, 143, and 159) will be suspended during operational phases of the ITP1 test to allow for monthly filing of entry summary data, periodic payment of duties, taxes and fees, liquidation, billing and remote filing by Customs brokers in ports where they currently do not hold permits.

Absent any specified alternate procedure, the current regulations apply.

Prototype Evaluation

Once the participants are selected for ITP1.1, the Joint Prototype Team will, during the initial six months of the test period, evaluate the effectiveness of the automation involved. Subsequent reviews will additionally consist of evaluating the data received from the participants, along with the internal and external process operations of the ITP. The intention of the evaluations is to enhance operational procedures and to develop the detailed data requirements that are needed for ITP.

Note that the fact of participation in the ITP is not confidential information. Lists of participants, comments provided to U.S. Customs, and evaluation results may be made available to the public by means of the Customs Electronic Bulletin Board and the Customs Administrative Message System, and upon written request. The G–7 countries will participate in evaluation development and review. We stress that all interested parties are invited to comment on the design, conduct, and evaluation of ITP at any time during prototype.

Upon conclusion of the prototype the final results will be published in the **Federal Register** and the Customs Bulletin as required by § 101.9(b), Customs Regulations and reported to Congress.

Dated: May 29, 1998.

Samuel H. Banks,

Acting Commissioner of Customs.

[FR Doc. 98–14648 Filed 6–2–98; 8:45 am]

BILLING CODE 4820–02–P

federal register

Wednesday
June 3, 1998

Part II

Department of Education

Individual With Disabilities Education Act (IDEA): Special Education—Technology and Media Services for Individuals With Disabilities; New Awards Applications Invitation (FY 1998); Notice

DEPARTMENT OF EDUCATION

Notice Inviting Applications for New Awards for Fiscal Year 1998

AGENCY: Department of Education.

SUMMARY: On June 4, 1997, the President signed into law Public Law 105–17, the Individuals with Disabilities Education Act Amendments of 1997, amending the Individual with Disabilities Education Act (IDEA).

This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1998 competitions under Special Education—Technology and Media Services for Individuals with Disabilities program authorized by IDEA, as amended.

This notice supports the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice. In order to make awards on a timely basis, the Secretary has decided to publish these priorities in final under the authority of section 661(e)(2).

General Requirements

(a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA);

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA);

(c) Projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project; and

(d) In a single application, an applicant is required to address only one absolute priority in this notice.

Note: The Department of Education is not bound by any estimates in this notice.

Special Education—Technology and Media Services for Individuals With Disabilities [CFDA No. 84.327]

Purpose of Program: The purpose of this program is to promote the development, demonstration, and utilization of technology and to support educational media activities designed to be of educational value to children with disabilities. This program also provides support for some captioning, video description, and cultural activities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria included in regulations for these programs in 34 CFR 332.32 for the Closed Captioned Educational Programming priority; and in 34 CFR 333.21 for the Using Research to Help Children Learn to Read, and the Accessible Formats for Educational Materials priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under section 687 of IDEA and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary funds under these competitions only those applications that meet these absolute priorities:

Absolute Priority 1—Using Research to Help Children Learn to Read (CFDA 84.327B)

The purpose of this priority is to demonstrate the use of existing publicly funded telecommunication systems to provide the public, families, and teachers with research-based information and on early diagnosis of, intervention for, and effective strategies for teaching reading to young children with disabilities who demonstrate difficulties learning to read. For the purposes of this priority, the term ''young'' children refers to children through grade four.

Priority: The Secretary establishes an absolute priority to enhance and expand the capabilities of an existing entity to disseminate research findings on early diagnosis, intervention, and effective strategies for teaching reading to young children with disabilities who demonstrate difficulties learning to read. To receive a grant under this priority applicants must demonstrate a proven track record for dissemination of information on effective research to practice efforts through electronic formats.

Activities conducted by this project should:

(1) Create awareness in parents and teachers about the teaching and learning problems of young children that have been addressed through research;

(2) Create awareness in parents and teachers about how to design an effective teaching strategy to improve reading results of children with disabilities such as developmental disabilities, learning disabilities, and sensory disabilities;

(3) Create awareness in the general public about the accomplishments and contributions made by persons who demonstrate difficulties learning to read despite the significant challenges that these individuals faced as young children in schools; and

(4) Include dissemination of research-based solutions that can be used to address these challenges.

The project funded under this priority must—

(a) Establish a panel of expert research advisors: from the Department of Education's Office of Special Education Programs (OSEP); from other Federal agencies such as the Department of Health and Human Services' National Institute of Child Health and Human Development (NICHD) and National Institute on Mental Health; and from foundations such as the National Academy of Science (NAS) and the National Science Foundation (NSF). The panel also shall include practitioners, family members of students who demonstrate difficulties learning to read, and individuals who experience difficulties learning to read in their youth. The panel will advise the work of the project and assist the project in identifying effective, research-based practices to improve reading results of young children with disabilities who demonstrate difficulties learning to read. The final membership of the panel shall be discussed with, and approved by, OSEP.

(b) Use innovative strategies to interest parents and practitioners in the research-based findings in a way that promotes the use of this information in their homes and classrooms. To accomplish this, the program must—

(1) Develop strategies for information exchange and dissemination to match identified parent and practitioner needs with existing research-based solutions. The vehicles for this information exchange could include, but are not limited to: web sites, chat rooms, listservers, and bulletin boards.

(2) Provide information to families and practitioners that describes effective strategies for diagnosing, teaching, and working with young children with disabilities who demonstrate difficulties learning to read. The topics of such products could include, but are not limited to: early interventions; class-

wide peer tutoring; learning, study and organization strategies; using technology to improve content learning; facilitating language development in young children with disabilities; and vocabulary and comprehension interventions for children with disabilities who demonstrate difficulties learning to read.

(c) Develop a national public awareness campaign that—

(1) Disseminates its products through publicly funded telecommunications systems;

(2) Highlights the accomplishments and contributions of persons who demonstrate difficulties learning to read who have benefitted from early diagnosis, interventions, and effective teaching strategies, and move the general public from a basic understanding of disabilities related to difficulties learning to read to an understanding of the significant contributions that persons who demonstrate difficulties learning to read make to our society;

(3) Features research-based solutions to the challenges that young children with disabilities who demonstrate difficulties learning to read encounter in schools and information on how these disabilities affect other areas of learning, such as mathematics and language acquisition.

(d) Provide an independent evaluation to determine if the project is reaching its intended audiences.

(e) Create partnerships within the existing OSEP technical assistance infrastructure, such as the National Information Center for Children and Youth with Disabilities (NICHCY) and the Technical Assistance Alliance for Parent Centers (the Alliance), to avoid duplication of efforts.

(f) Implement an external review process in which experts review products for technical accuracy and clarity. The expert review process shall be discussed with, and approved by, OSEP.

Project Period: 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $500,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than 60 double-spaced pages, using the following standards: (1) A ''page'' is 8½″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Absolute Priority 2—Closed Captioned Educational Programming (CFDA 84.327E)

Background: The Congress has expressed concern that hundreds of hours of non-commercial educational programming are being produced for classroom use, but that the programming is not fully accessible through closed captions. This priority supports cooperative agreements to continue and expand the closed captioning of widely available educational and instructional programming that is shown on national broadcast, DBS (Direct Broadcast Satellite), or basic cable television networks, and that is suitable for use in the classroom. Captioning provides a visual representation of the audio portion of the programming and enables students who are deaf or hard of hearing to participate in this educational experience with their non-disabled peers.

Priority: To be considered for funding under this competition, a project must—

(1) Include criteria that takes into account the preference of educators, students, and parents for particular educational programs, the diversity of this type of programming available, and the contribution of programs to the general educational experiences of students who are deaf or hard of hearing;

(2) Identify the extent to which the commercial-free programming to be captioned under this project may be taped for later classroom use;

(3) Identify the extent to which the programming is widely available;

(4) Identify the total number of hours captioned and the cost per hour for each of the programs captioned;

(5) Identify for each program to be captioned the source of private or other public support and the projected dollar amount of that support, if any;

(6) Identify the method of captioning to be used for each program and identify the cost per hour for each method used;

(7) Demonstrate the willingness of program providers or owners of programs to permit captioning of their programs;

(8) Provide assurances from program providers or owners of programs stating the extent to which programs captioned under this project will air, and will continue to air, without re-captioning;

(9) Implement procedures for monitoring the extent to which the project provides full and accurate captioning and uses this information to make refinements in captioning operations; and

(10) Make captions available at no cost to providers or owners of programming, who may use, reformat, or otherwise adapt these captions for future airings or other distributions.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $125,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is 8½″ × 11″ (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget

justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Absolute Priority 3—Accessible Formats for Educational Materials (CFDA 84.327R)

Background: The purpose of this priority is to provide textbooks and other educational materials in accessible formats for students at all educational levels who are visually or print disabled. These materials will help provide equal educational opportunities to these students and lessen some of the barriers they face in the classroom.

Priorty: To be considered for funding under this priority, the projects must—

(1) Handle all requests for educational materials from students who are visually or print disabled at all educational levels at no cost;

(2) Obtain statements of eligibility by disability for each requestor;

(3) If access to materials is provided through section 121 of the Copyright Act, as amended, provide publishers rights to copies of any master tapes or disks and rights to market the cassettes or disks as they see fit;

(4) Apply new technology for producing and distributing educational materials in accessible formats for individuals who are blind or otherwise print disabled, such as electronic text or digital audio sychronization;

(5) Distribute the materials that are produced through means such as audio tapes, diskettes, CD–ROMs, or the Internet;

(6) Handle associated administrative and circulation functions such as any returned cassettes, disks, CD–ROMs, or preservative re-recording;

(7) To the extent that funds are not sufficient to meet the demand for free materials, place a priority on providing materials, such as supplemental reading textbooks and workbooks, that are not otherwise required to be provided by educational agencies or institutions; and

(8) Coordinate and collaborate with publishers, software developers, other manufacturers of accessible materials for individuals who are visually impaired or otherwise print disabled, disability and educational organizations, and government agencies to ensure effective coordination and nonduplication of effort.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $1,500,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than 40 double-spaced pages, using the following standards: (1) A ''page'' is 8½″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

For Applications and General Information Contact: Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 600 Independence Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for Research and Innovation Projects) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for those programs.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—APPLICATION NOTICE FOR FISCAL YEAR 1998

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year)*	Page limit**	Estimated number of awards
84.327B Using Research to Help Children Learn to Read	6/12/98	7/24/98	9/22/98	$500,000	60	1
84.327E Closed Captioned Educational Programming	6/12/98	7/24/98	9/22/98	125,000	40	5
84.327R Accessible Formats for Educational Materials	6/12/98	7/24/98	9/22/98	1,500,000	40	1

*The Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months.

**Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the ''Page Limit'' section of this notice for the specific requirements. The Secretary rejects and does not consider an application that does not adhere to this requirement.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: May 28, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–14629 Filed 6–2–98; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
June 3, 1998

Part III

Environmental Protection Agency

40 CFR Part 745

Lead; Identification of Dangerous Levels of Lead; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62156; FRL–5791–9]

RIN 2070–AC63

Lead; Identification of Dangerous Levels of Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with section 403 of the Toxic Substances Control Act (TSCA), as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as ''Title X,'' EPA is proposing a regulation to establish standards for lead-based paint hazards in most pre-1978 housing and child-occupied facilities. This proposed regulation is a focal point of the Federal lead program and supports the implementation of regulations already promulgated and others under development which deal with worker training and certification, lead hazard disclosure in real estate transactions, requirements for lead cleanup under State authorities, lead hazard evaluation and control in Federally-owned and Federally-assisted housing, and U.S. Department of Housing and Urban Development (HUD) grants to assist in lead hazard abatement. In addition, today's action also proposes, under the authority of TSCA section 402, residential lead dust cleanup levels and amendments to dust and soil sampling requirements and, under the authority of TSCA section 404, amendments to State program authorization requirements. By supporting the implementation of the national lead program, this proposed regulation would help to prevent lead poisoning in children under the age of 6.

DATES: Written comments in response to this proposed rule must be received on or before September 1, 1998.

ADDRESSES: Each comment must bear the docket control number OPPTS–62156. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit X. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three copies, sanitized of any comments containing information claimed as CBI, must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information, any portion of which they believe is entitled to treatment as CBI by EPA, must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

If requested, EPA will schedule public meetings where oral comments will be heard. EPA will announce in the **Federal Register** the time and place of any public meetings. Oral statements will be scheduled on a first come first served basis by calling the telephone number listed in the **Federal Register** notice that announces these meetings. All statements will be made part of the public record and will be considered in the development of the final rule.

FOR FURTHER INFORMATION CONTACT: For general information contact: National Lead Information Center's Clearinghouse, 1-800-424-LEAD(5323). For specific technical and policy questions contact: Jonathan Jacobson, (202) 260-3779; jacobson.jonathan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

This overview identifies entities potentially affected by the rule, summarizes the proposed rule, describes the uses and key limitations of the proposal's scope, and provides a roadmap of the preamble.

A. Regulated Entities

The following table identifies the entities that would be involved in the implementation of regulations that would be affected by today's proposal and the effect of the proposal on implementation of those regulations.

Category	Examples of Entities	Effect of Proposal
Lead abatement professionals	Workers, supervisors, inspectors, risk assessors, and project designers engaged in lead-based paint activities	Provides standards that risk assessors would use to identify hazards and evaluate clearance tests; helps determine when certified professionals would be required to perform abatements
Training providers	Firms providing training services in lead-based paint activities	Provides standards that training providers would have to teach in their courses
HUD and other Federal agencies that own residential property		Proposed standards identify hazards that Federal agencies would have to abate in pre-1960 housing prior to sale
Property owners who receive assistance through Federal housing programs	State and city public housing authorities, owners of multi-family rental properties who receive project-based assistance, owners of rental properties who lease units under HUD's tenant-based assistance program	Proposed standards identify hazards that property owners would have to abate or reduce as specified by regulations currently be developed by HUD under authority of Title X, section 1012
Property owners	Owner occupants, rental property owners, public housing authorities, Federal agencies	Proposed standards identify hazards that would have to be disclosed under EPA/HUD joint regulations promulgated under Title X, section 1018

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be affected by this action through implementation of the elements of the programs discussed in this proposal. To determine whether

you, your business, or your agency is affected, you should carefully examine the Requirements for Lead-Based Paint Activities at 40 CFR part 745, subpart L and subpart Q and Lead-Based Paint Disclosure at 40 CFR part 745, subpart F and 24 CFR part 35, subpart H. The regulations covering evaluation and control of lead-based paint hazards in HUD-associated and Federally-owned housing are currently under development. Proposed regulations were published in the **Federal Register** on June 7, 1996 (61 FR 29169). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. Summary of the Proposed Rule

1. *Lead-Based Paint Hazard Standards*. EPA is proposing the amendments in this document primarily under the authority of section 403 of TSCA. Section 403 requires EPA to promulgate regulations that ''identify . . . lead-based paint hazards, lead-contaminated dust and lead-contaminated soil'' for purposes of the entire Title X which includes Title IV of TSCA. Lead-based paint hazards, under TSCA section 401, 15 U.S.C. 2681, are defined as of conditions of lead-based paint and lead-contaminated dust and soil that ''would result'' in adverse human health effects (15 U.S.C. 2681(10)). Lead-based paint hazards from all three sources apply to target housing (i.e., most pre-1978 housing) and child-occupied facilities.

The proposed standard for the paint component, called hazardous lead-based paint, is lead-based paint in poor condition. Paint in poor condition is defined as more than 10 square feet (ft^2) of deteriorated paint on exterior components with large surface areas, more than 2 ft^2 of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors), or deteriorated paint more than 10 percent of the total surface area of exterior or interior components with small surface areas (e.g., trim, baseboards). The proposed standards for dust-lead hazards are the average levels of lead in dust that equals or exceeds 50 micrograms per square foot ($\mu g/ft^2$) on uncarpeted floors and 250 $\mu g/ft^2$ on interior window sills. The proposed standard for soil-lead hazards is the total lead that equals or exceeds 2,000 parts per million (ppm) based on a yard-wide average soil-lead concentration rather than maximum or worst-case values.

Although the proposed regulation does not require property owners to respond to the presence of lead-based paint hazards, EPA would recommend that appropriate measures should be taken, commensurate with the risk reduction achieved, to reduce or eliminate the hazards. Small amounts of hazardous lead-based paint can be addressed by repairing deteriorated paint. Larger amounts of hazardous lead-based paint should be abated, meaning that the paint can be removed from the component, the component can be replaced, or the paint can be enclosed.

Dust-lead hazards should be addressed through intensive cleaning. If household surfaces are smooth and cleanable, regular household cleaning can probably maintain acceptably low levels of lead in dust in the absence of any event (e.g., remodeling project) that reintroduces large amounts of dust contaminated with lead. Soil-lead hazards should be eliminated. Currently available options include soil removal and permanently covering the soil (i.e., paving).

In addition, this document proposes to identify a soil-lead level of concern of 400 ppm based on a yard-wide average, which represents a level at which risk should be communicated to the public as compared to the more active risk reduction measures recommended for hazards. This level will not be included in the regulation because it would impose no legally recognizable requirements on any person or entities subject to this regulation. Nevertheless, if a soil-lead hazard is not present, but lead in soil exceeds the level of concern, EPA recommends that low cost measures, which may be sufficient to reduce exposure, be implemented. These measures include but are not limited to covering bare soil, placement of washable doormats, more frequent washing of hands and toys, and access restrictions. Access restrictions should only be used if there are other parts of the yard that are available to the residents.

EPA is planning to develop a guidance document to accompany the final regulation that will explain these recommended responses to lead-based paint hazards and the soil-lead level of concern in greater detail.

It is important to note that the proposed standards are intended to be used prospectively. That is, they should be used to identify properties that present risks to children before children are harmed. These standards would not be appropriate to use when identifying the sources of exposure for a lead-poisoned child. When a property is being evaluated in response to the identification of a lead-poisoned child, the risk assessor in cooperation of a local public health official should identify and consider all sources of lead exposure.

The proposed TSCA section 403 standards are based on the best data and analytical tools currently available to the Agency. EPA expects that the standards may need to be modified over time as better tools and data become available. The Agency, however, believes that issuing standards now, even in the face of considerable uncertainty, is consistent both with the public's need for information from EPA and the statutory intent to develop standards with currently available information.

In this document, EPA is also proposing amendments to the existing rules issued under TSCA sections 402 and 404, including: (1) Requirements for interpreting the results of sampling of lead materials for purposes of assessing risk; (2) clearance standards for cleaning up hazardous lead dust of 50 $\mu g/ft^2$ for uncarpeted floors, 250 $\mu g/ft^2$ for interior window sills, and 800 $\mu g/ft^2$ for window troughs; (3) amendments to the dust and soil sampling locations in the risk assessment work practice standards at 40 CFR 745.227; (4) work practice standards for the management of soil removed during a soil abatement; and (5) amendments to the State and Tribal program authorization requirements under 40 CFR part 745, subpart Q.

C. Uses of the Standards

The TSCA section 403 standards support implementation of key provisions of Title X which would require action with respect to lead-based paint hazards by both private parties and the government, principally for EPA and programs under the auspices of the Department of Housing and Urban Development (HUD). These provisions include eligibility criteria for the Department of Housing and Urban Development's (HUD) lead hazard control grant program (section 1011 of Title X), which authorizes grants to clean up lead-based paint hazards. In addition, Title X imposes certain requirements on owners of HUD-associated housing (section 1012 of Title X) and Federal agencies selling residential properties they own to evaluate and control lead-based paint hazards (section 1013 of Title X). Sellers and lessors of housing built before 1978 have obligations to disclose known lead-based paint and lead-based paint hazards prior to sale or rental (section 1018 of Title X). Regulations also impose requirements to use certified workers for evaluation and cleanup of

lead-based paint hazards (section 402 of TSCA). These provisions are described in more detail in Unit VIII. of this preamble.

EPA does note, however, that the regulations would not require private property owners to undertake hazard control actions when hazards are identified. Instead, EPA expects that concern about children's health, liability exposure and other market forces will provide incentive for property owners to take action voluntarily.

In addition to their applicability within Title X, EPA anticipates that the TSCA section 403 regulations will have broader uses. The proposed regulations will play a significant role in public education, communicating the Agency's best judgment concerning the identification of lead-based paint hazards to property owners, State and local officials, tenants, and other decision-makers. EPA also expects that public and private institutions may incorporate the standards into State and local laws, housing codes, and lending and insurance underwriting standards.

D. Limitations of the Proposed Rule

During the regulatory development process, it became clear that significant confusion and uncertainty exists about the requirements and purpose of the TSCA section 403 regulations. To address this confusion and uncertainty, EPA wishes to highlight the major limitations and other issues related to the scope and use of today's proposal.

First, this proposal does not establish a new definition for lead-based paint, defined by statute as paint with lead levels equal to or exceeding 1.0 milligrams per square centimeter (mg/cm^2) or 0.5 percent by weight (see section 302(c) of the Lead-Poisoning Prevention Act, 42 U.S.C. 4822(c) and TSCA section 401(9)). Under Title X, only the Secretary of Housing and Urban Development has the authority to change the standard for lead-based paint in target housing (see TSCA section 401(9)). Title IV provides EPA the authority to change the standard only for lead-based paint in non-residential applications (e.g., public and commercial buildings, steel structures) (see TSCA section 401(9)). This proposal does not include any changes to this statutory definition.

Second, the proposed standards are intended to identify lead-based paint hazards when the lead-based paint risk assessment is performed. Because the conditions of lead-based paint and the levels of lead in dust and soil are constantly changing, the results of the risk assessment communicate conditions at the time the measurements are taken and the observations made. The proposed standards do not address the potential for hazards to develop. EPA recognizes, however, that potential hazards (e.g., intact lead-based paint on a ceiling) may become actual hazards as conditions change over time. Periodic reevaluation of a property would enable a property owner to determine whether potential hazards have become actual hazards. Recommendations concerning reevaluation will be provided in a separate guidance document that EPA is planning to issue.

Third, because the TSCA section 403 standards are established for the purposes of Title X and TSCA Title IV, they do not apply to housing and facilities occupied by children built during or after 1978, as well as some pre-1978 housing that is not included in the definition of target housing (e.g., 0-bedroom dwellings). EPA recognizes, however, that property owners and other decision-makers may be concerned about the presence of elevated levels of lead in dust and soil in housing and facilities occupied by children not covered by the standards. In such cases, EPA encourages these owners and decision-makers to use the standards to help determine whether actions should be taken to reduce risks to young children.

Fourth, the proposed regulations do not set standards that can be used to identify housing that is free from risks associated with exposure to lead. Such standards would be difficult to define, unworkable in practice, and inconsistent with the intent of Title X. Virtually all target housing has some lead present in paint, dust, and/or soil, which, under certain circumstances, may present risk to children. Furthermore, these risks often will depend on circumstances that may change quickly, such as the physical condition of the property. Thus, housing that presents minimal risks when examined may present substantial risks later.

E. Preamble Overview

The remainder of this preamble consists of eleven units. Unit II. provides background information, including: a description of the residential lead-based paint problem; Title X as a legislative response; key aspects of the regulatory development process; and the Agency's general standard-setting approach. Unit III. is a section-by-section review of the proposed regulatory provisions. Unit IV. presents EPA's interpretation of the statutory authority for the proposed TSCA section 403 standards, the Agency's policy basis for the proposed standards, and EPA's decisions for the proposed TSCA section 403 standards. This unit includes a summary of the technical analyses conducted by the Agency to support these decisions. Unit V. discusses a range of issues that affected EPA's decision-making during the regulatory development process. Unit VI. presents EPA's rationale and decisions for requirements on comparing risk assessment sampling results to the TSCA section 403 standards. Unit VII. describes the Agency's rationale and decisions concerning clearance standards and other amendments to the TSCA section 402 regulations related to work practice standards and TSCA section 404 regulations concerning EPA authorization of State and Tribal programs. Unit VIII. describes the effect that today's proposal will have on other Title X regulations and programs, and Unit IX. discusses the relationship between the proposed regulations and other EPA programs. Unit X. provides information on the public record supporting this regulation (''the docket''). Unit XI. presents the bibliographic references cited in the preamble, which are also part of the docket. Unit XII. presents a summary of the regulatory assessment analyses and Agency determinations conducted in response to various Federal laws and Executive orders concerning the public health and economic impact of the proposed regulation.

II. Background

A. Nature of the Problem

Elemental lead is a heavy, soft, and malleable bluish metal that has been used for thousands of years. Its favorable physical and chemical properties account for its versatility and extensive use in many common products including lead acid batteries, ammunition, chemicals (e.g., plastic stabilizers, pigments, and ceramic glazes), alloys (e.g., solder in piping and electronics), pipe/sheet lead, and radiation and cable sheathing. Centuries of mining, smelting, and use have released millions of tons of lead into the environment. With no known or foreseeable technology to render anthropogenic sources of environmental lead harmless, it remains ubiquitous in air, water, soil, dust, and in older homes and commercial structures. As a result, practically all people have some exposure to lead of anthropogenic origin.

Lead affects virtually every system of the human body. Exposure to high doses of lead can cause coma, convulsions,

and even death. Exposure to low levels of lead can cause harm gradually and imperceptibly, with no obvious symptoms. In adults, chronic exposure to low levels of lead may cause memory and concentration problems, hypertension, cardiovascular disease, and damage to the male reproductive system. Exposure to lead before or during pregnancy can alter fetal development and cause miscarriages. A more detailed description of the health effects of lead can be found in Chapter 2 of the Risk Analysis to Support Standards for Lead in Paint, Dust, and Soil, which can be found in the public record for this proposal (Ref. 1).

While potentially harmful to individuals of all ages, lead exposure is especially harmful to children. Their rapidly developing nervous systems are particularly sensitive to the effects of lead. In addition, children absorb a greater portion of the lead to which they are exposed than adults do. Excessive exposure to lead in children causes learning disabilities, lower intelligence, behavioral problems, growth impairment, permanent hearing and visual impairment, and other damage to the brain and nervous system.

The concentration of lead in a child's blood is typically used as an index of lead exposure. As recent studies have identified previously unrecognized effects of exposure to lead at lower levels, there has been increasing concern about blood-lead levels once thought to be safe. Since 1975, the Centers for Disease Control and Prevention (CDC) have lowered the blood-lead level considered elevated for children from 40 μg/dl (micrograms per deciliter) to 10 μg/dl (Ref. 2). Although the scientific community has not been able to identify a threshold of exposure below which adverse health effects do not occur, the evidence of health effects below 10 μg/dl is not sufficiently strong to warrant concern.

Ingestion of lead-contaminated dust and soil through normal hand-to-mouth activity appears to be the primary pathway of lead exposure to U.S. children under 6 years of age. (Refs. 3 and 4.), Dust is contaminated by lead when: lead-based paint deteriorates; lead-based paint is disturbed in the course of renovation, repair, or abatement activity; or lead is tracked into, blown into, or otherwise enters the home from soil in the yard or other external sources (e.g., workplace). Soil contaminated with lead from deterioration of exterior lead-based paint, industrial emissions, and/or deposition of lead from past use of leaded gasoline may be ingested directly or contribute to indoor levels of lead-contaminated dust when tracked into the home. Children may also be exposed to lead through the ingestion of lead-based paint chips from flaking walls, windows, and doors or from chewing on surfaces covered with lead-based paint. Other sources of lead exposure include, but are not limited to, lead-contaminated food and drinking water and occupational exposure to dust and airborne lead particles.

Considerable progress has been made in reducing environmental lead levels. Concrete steps taken by the Federal government to eliminate sources of lead include the phase-out of leaded gasoline by EPA (40 CFR part 80) and the ban by the Consumer Product Safety Commission (CPSC) of the production and sale of lead-based paint for residential use in 1978 (16 CFR part 1303). The CPSC action placed a maximum limit on the amount of lead in paint (0.06 percent by weight) for residential use, as well as for furniture and toys. In addition, EPA has implemented more stringent standards for lead in drinking water, and the domestic canning industry voluntarily eliminated the use of lead in solder to seal food cans (40 CFR parts 141 and 142).

Consistent with these improvements, the percentage of children with elevated blood-lead levels has declined over the last 20 years. The National Health and Nutrition Examination Survey (NHANES) conducted by the National Center for Health Statistics indicates that over the past 2 decades the average child's blood-lead level has decreased from 12.8 micrograms/deciliters (μg/dl) to 2.8 μg/dl (Ref. 5). According to NHANES III Phase 2, completed in 1994, approximately 900,000 U.S. children of ages 1 to 5 years had blood-lead levels equal to or exceeding the 10 μg/dl (Ref. 6).

Excessive exposure to lead affects children across all socio-economic strata and in all regions of the country. Children in poor inner-city families, however, are disproportionately affected because lead-based paint hazards are more prevalent in older housing and the overall ambient level of environmental lead from all sources tends to be higher in inner cities (Ref. 7). Studies indicate that children living in central cities are three to four times more likely to have blood-lead levels equal to or exceeding 10 μg/dl than those outside central cities, with the highest prevalence in cities where populations exceed 1 million (Ref. 7).

According to EPA's report on the HUD National Survey of Lead-Based Paint in Housing, 83 percent of privately-owned, occupied homes built before 1980, or 64.4 million homes, contain some lead-based paint (Ref. 8). The likelihood, extent, and concentration of lead-based paint vary with the age of the building. Eighty-eight percent of privately-owned, occupied housing units constructed before 1940, 92 percent of units constructed between 1940 and 1959, and 76 percent of units constructed between 1960 and 1979 contain some lead-based paint (Ref. 8). Over 12 million (or 19 percent) of these pre-1980 homes with some lead-based paint have children aged 7 years or younger in residence (Ref. 8). (The HUD National Survey presents results for children aged 7 years or younger; Title X, which was enacted after the survey was conducted, focuses upon children younger than 6 years.)

All homes containing lead-based paint pose a potential future hazard to the occupants if the paint is not managed properly. Intact lead-based paint may deteriorate over time to create a hazardous condition. According to EPA's analysis of the HUD National Survey, about 19 percent of pre-1980 privately-owned units contained non-intact lead-based paint in 1989-90, which was defined at the time of the survey as greater than 5 square feet of peeling, chipping, or otherwise deteriorated paint (Ref. 8). Assuming that the percent of pre-1980 homes with non-intact lead-based paint that have young children is the same as the percent of pre-1980 homes with some lead-based paint that have young children (19 percent), about four percent of pre-1980 homes in the United States contained both non-intact lead-based paint and young children.

Based on the HUD National Survey, EPA estimates that 13 million or 17 percent of pre-1980 privately-owned homes have ''elevated'' lead dust levels, which were defined at the time of the Survey as lead dust exceeding 200 μg/ft^2 on floors, 500 μg/ft^2 on window sills, or 800 μg/ft^2 on window troughs (Ref. 8). Homes with non-intact lead-based paint were five times more likely to have elevated lead dust levels than homes with intact lead-based paint (Ref. 9).

EPA's analysis of the HUD National Survey also estimates that approximately 16 million or 21 percent of privately-owned pre-1980 housing units have soil-lead concentrations exceeding 400 ppm (Ref. 8). The prevalence of soil-lead levels exceeding 400 ppm varies greatly with the age of housing. Sixty percent of pre-1940 units, but only eight percent of 1940-1959 units and four percent of 1960-

1979 units have such soil-lead concentrations (Ref. 9).

B. Structure of Basic Legal Authorities

The Housing and Community Development Act of 1992 (Pub. L. 102-550), enacted on October 29, 1992, contains 16 titles amending and extending a number of laws relating to housing and community development. Title X of this Act, entitled the ''Residential Lead-Based Paint Hazard Reduction Act of 1992,'' contains five subtitles extending and establishing programs for reducing exposure to lead, principally, in paint and residential dust and soil. Provisions of Title X are codified in the United States Code (U.S.C.) at volume 42, section 4851 and at various other sections of volume 42, as well as of volumes 12 and 15.

Subtitle A of Title X (codified at volume 42 U.S.C. 4852, and at various other sections of volumes 42 and 12) applies primarily to grants and other programs under the jurisdiction of the Secretary of Housing and Urban Development (HUD). Subtitle B of Title X amends the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601, *et. seq.*, by adding Title IV, which requires EPA to establish requirements for training and accreditation of contractors performing lead-based paint related work, issue the standards being proposed today, sponsor public education programs, establish programs for studying the effectiveness of lead-based paint hazard evaluation and control products, and establish a laboratory accreditation program. Subtitle C of Title X deals with worker protection and training under jurisdiction of the Occupational Safety and Health Administration (OSHA) and the National Institute of Occupational Safety and Health (NIOSH). Subtitles D and E provide for research and reporting on various aspects of lead-based paint activities. These last three subtitles are codified at volume 42 U.S.C. 4853 to 4856.

An overview of the particular regulatory sections in the Subparts of Title X that relate to this proposed rule follows.

1. *EPA responsibilities*. Under TSCA section 402 (15 U.S.C. 2682), EPA has promulgated regulations governing the training and certification of individuals and firms engaged in lead-based paint activities, the accreditation of programs to train such individuals, and work practice standards for conducting lead-based paint activities. These regulations were published in the **Federal Register** of August 29, 1996 (61 FR 45778) (FRL–5389–9), and are codified at 40 CFR part 745, subpart L. EPA will amend these regulations at a later date to address deleading in public and commercial buildings, and other structures, such as bridges.

In conjunction with these activities, EPA developed specific guidelines under section 402(c)(1) for renovation and remodeling activities that may create a risk of exposure to dangerous levels of lead (Ref. 10). Under TSCA section 402(c)(3), EPA is required to revise the certification and accreditation regulations under 40 CFR part 745, subpart L, to address renovation and remodeling activities that create lead-based paint hazards, after conducting a study of such activities.

In conjunction with the TSCA section 402 rule, EPA, under TSCA section 404 (15 U.S.C. 2684), developed a Model State Program, which States and Indian Tribes are encouraged to reference and use as guidance to develop their own Federally-authorized lead-based paint activities programs. The regulations in 40 CFR part 745, subpart Q, include procedures for States and Indian Tribes to follow when applying to EPA for authorization to administer and enforce a State or Tribal training, accreditation, and certification program.

Under TSCA section 406(a) (15 U.S.C. 2686(a)), EPA, HUD, and CPSC jointly released a lead hazard information pamphlet, *Protect Your Family from Lead in Your Home* (60 FR 39167, August 1, 1995) (FRL–4966–6). The pamphlet is designed to educate families about the potential health risks associated with lead exposure and ways to avoid such exposure.

Under TSCA section 406(b), EPA has promulgated a regulation to require persons performing renovation work for compensation in residential housing built before 1978 to provide owners and occupants with a lead hazard information pamphlet before renovation begins.

Under Title X, section 1018 (42 U.S.C. 4852(d)), EPA and HUD have jointly developed regulations requiring a seller or lessor of most pre-1978 housing to disclose the presence of any known lead-based paint or lead-based paint hazards to the purchaser or lessee (24 CFR part 35, subpart H; 40 CFR part 745, subpart F). Under these rules, the seller or lessor also must provide the purchaser or lessee any available records or reports pertaining to such paint or hazards and a copy of the lead hazard information pamphlet. Additionally, the seller must allow the purchaser 10 days to conduct an inspection or risk assessment for the presence of lead-based paint or lead-based paint hazards. Finally, the sale or leasing contract must include certain disclosure and acknowledgment provisions, and real estate agents must ensure compliance with these standards.

2. *HUD responsibilities*. In addition, to the joint regulations issued with EPA under section 1018 of Title X, HUD has a number of programs under its own authorities that will be affected by the rule.

Under section 1011 of Title X (42 U.S.C. 4852), HUD provides grants to State and local governments to evaluate and reduce lead-based paint hazards in pre-1978 housing that qualifies as affordable housing and is not Federally-assisted, Federally-owned, or public housing.

Under Title X sections 1012 and 1013, HUD is required to establish lead-based paint hazard notification, evaluation, and reduction requirements for HUD-associated housing and Federally-owned housing under provisions codified at various parts of 42 U.S.C. These regulations, which HUD proposed on June 7, 1996 (61 FR 29170), will establish programmatic lead-based paint hazard notification, evaluation, and reduction requirements and will describe how these activities should be performed. The latter set of standards are based on the detailed *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (hereinafter HUD Guidelines) (Ref. 11), which HUD developed under Title X section 1017 (42 U.S.C. 4852c), and on EPA's TSCA section 402 standards described above. The HUD Guidelines reflect input from housing, public health, and environmental professionals with broad experience in lead-based paint hazard identification and control.

3. *Other agencies*. The Department of Health and Human Services (HHS), CPSC, the Department of Labor, and other Federal agencies have contributed to the development of standards and other programs under Title X, including through their consultation with EPA and HUD. EPA, HUD, and CPSC jointly released the lead hazard information pamphlet in consultation with CDC. Under section 1031 of Title X (subpart C), OSHA promulgated interim final employee protection requirements for construction workers exposed to lead, which apply to lead-based paint activities in residential housing and other construction settings (29 CFR 1926.62).

C. Regulatory Development Process

EPA began development of the proposed rule immediately following enactment of Title X. The Agency quickly encountered significant challenges in its design and

implementation of the risk and economic analyses needed to guide selection of the standards. Recognizing the growing need for advice on this issue, EPA released an interim guidance document in July 1994 to provide public and private decision-makers with guidance on identifying and prioritizing lead-based paint hazards for control. The recommendations in the guidance represented the Agency's best judgment given the state of knowledge at the time. EPA subsequently published the interim guidance document in the **Federal Register** of September 11, 1995 (60 FR 47248) (FRL–4969–6). The interim guidance will continue to serve as EPA's official policy until EPA promulgates final standards under TSCA section 403.

The TSCA section 403 regulations are a significant component of the national lead-based paint hazard reduction program. As such, these regulations will likely have a broad impact on public health and housing. In light of these potential impacts as well as intense interest in this proposed rule expressed by a large number of stakeholders, EPA established a Dialogue Process to provide a forum where EPA could obtain input early in the rulemaking process from representatives of a range of groups that have an interest in the TSCA section 403 regulations. Interested parties included lead-poisoning prevention experts, environmental advocates, housing providers, the lead industry, State and local governments, the banking and insurance industries, and the lead risk assessment and abatement industry. EPA did not use the Dialogue Process to develop a consensus among the participants, but rather used the Process to gather individual points of view. Meetings were open to the public and a summary of each meeting was placed in the public record for this proposed rule (Refs. 12-16).

EPA held five meetings using the Dialogue Process: October 19, 1995; December 14, 1995; February 15, 1996; March 21, 1996; and November 12, 1997. The first four meetings focused on a range of policy and implementation issues for which EPA presented a range of potential options. Participants commented on these options and sometimes suggested options EPA had not previously considered. Dialogue Process participants also identified issues EPA had not presented to the group. The Dialogue Process did not address questions related to the risk analysis or the technical basis for the rule. These are important and difficult issues but were beyond the scope of the policy level input EPA was seeking from the Dialogue. The Agency, instead, presented its risk analysis document for an expedited peer review in August 1997. Comments provided by the reviewers can be found in the public record for this proposed rule. EPA will also ask its Science Advisory Board (SAB) to review the risk analysis during the public comment period for today's proposed rule. The SAB report will also be placed in the public record, and EPA will consider this report in its development of the final rule.

At the final meeting, EPA staff presented a draft of the options for the proposed rule being recommended to senior Agency managers. This meeting provided an opportunity for interested parties to express their concerns about the current direction of the proposed rule and allowed EPA to address these concerns by clarifying the Agency's rationale or by seeking additional input. By addressing the concerns of interested parties in the proposal, EPA hopes to facilitate the process of finalizing the proposed regulations.

In addition to the Dialogue Process, EPA staff met with the public in a variety of other forums to discuss issues related to the rule. These forums included conferences sponsored by trade associations, seminars sponsored by real estate groups (e.g., Owners and Managers Group of the Mid-Atlantic Region, Real Estate Board of New York) and legal publications (e.g., New York Law Journal), and meetings with interested parties. In most of these settings, EPA staff provided an update on the status of the rulemaking and responded to questions. Occasionally, EPA met with interested parties to obtain information on specific issues of concern. For example, Agency staff met with representatives of rental property owners to gauge owner response to the regulatory standards. In several instances, interested parties requested meetings with EPA to provide their perspective on specific regulatory and/or technical issues. EPA has placed a summary of all meetings between its staff and interested parties in the public record for this proposed rule (Ref. 17). EPA did not prepare summaries of presentations delivered at conferences and seminars.

D. General Approach to Standard Setting

Before EPA could formulate and analyze options for the TSCA section 403 standards, the Agency had to develop an overall approach for the rulemaking. EPA's standard-setting approach was based on the outcome of two decisions. The first decision was whether the Agency should develop uniform national standards or standards that are targeted (e.g., to specific communities or populations). The second decision was whether EPA should develop independent, media-specific standards or joint standards. This unit presents EPA's analysis of these issues and its decisions.

1. *Uniform, national standards, or targeted standards.* The establishment of the standards in today's proposal required estimates of the relationship between environmental lead levels (from paint, dust, and soil) and their effects on the health of exposed children. This relationship is extremely complex, and is dependent upon numerous site-specific and child-specific factors. These estimates are more accurate on a smaller (residence or community) scale, where more site-specific factors can be considered.

A targeted approach to standard-setting (i.e., community- or resident-specific standards) would result in numerically different standards for each residence or community. Developing national standards, on the other hand, would produce the same numerical standard for all residences and communities, but with an attendant loss of accuracy. That is, national standards would be more protective at some locations and less protective at others because national standards would not account for community- or residence-specific factors.

EPA decided, based on considerations of feasibility and ease of implementation, that national standards are the most appropriate regulatory approach. First, the data needed to establish standards at a smaller scale are neither collected under the Title X program nor available for communities nationwide. Much of the necessary residence-specific data could be collected to establish residence-specific standards, but lead-based paint risk assessments would have to be broader in scope (i.e., include water sampling and sampling of other ambient environmental levels) and more costly than currently envisioned. Even then, residence-specific standards would not account for variability in exposure influenced by child-specific factors (e.g., hand-to-mouth behavior, hygiene, nutrition). Community-specific data would require new resource-intensive data collection efforts (e.g, patterns of soil contamination, water lead levels). In contrast, national data on lead in paint, dust, and soil are currently available.

Second, uniform national standards are easier to implement. National standards provide a fixed basis of comparison for all homes. National standards can also be used to compare

properties and establish priorities. In contrast, with residence-specific standards, there would be millions of standards. Such a regulation would be largely unworkable. Property owners and other decision-makers would not know what standard would apply until a hazard evaluation was conducted. Rental property owners who own multiple properties would be working with a different standard for each property. In addition, residence-specific standards would not help establish priorities because it would be extremely difficult to compare the relative needs of different properties.

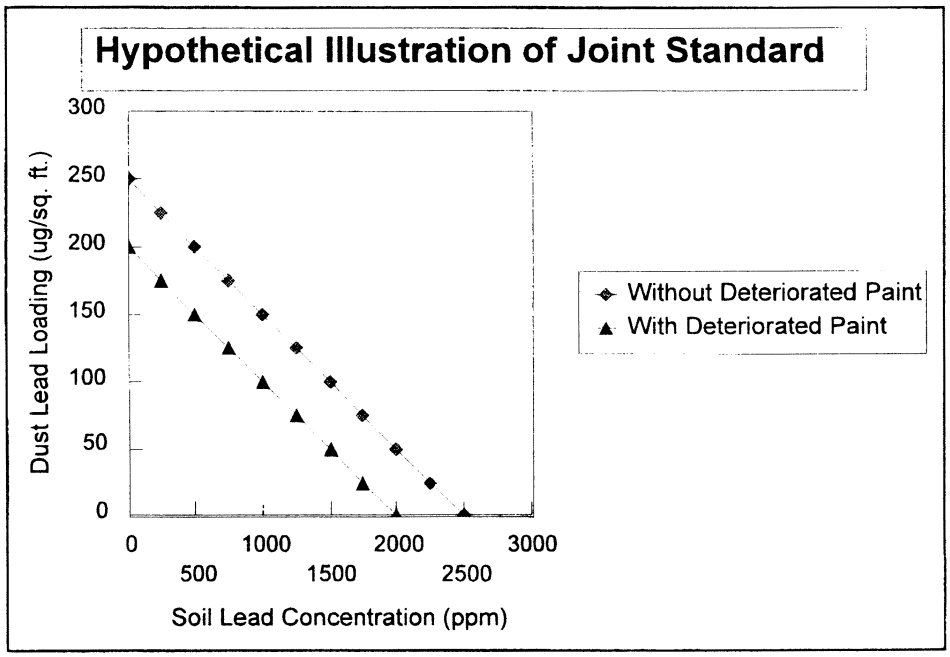
In making this decision, the Agency was also mindful that certain segments of the population have a higher incidence of elevated blood-lead levels (e.g., some minority children in inner-city neighborhoods) and a case could be made for proposing more stringent standards for particular neighborhoods. However, estimates of the relationship between environmental lead levels and children's health effects are not sufficiently refined to distinguish relationships for particular subsets of the general population of children.

In light of the recently released NHANES III, Phase 2 data, EPA considered an alternative option under which uniform standards would only be effective in higher risk communities. EPA, however, rejected this option because there is insufficient data to definitively identify these higher risk communities. In addition, the development of standards for higher risk communities would introduce significant complexities. First, EPA would have to establish criteria for identifying these communities. Second, the Agency would have to develop a set of standards for each category of community. Third, EPA would have to develop an approach for addressing neighborhoods that border on higher risk communities. As an alternative, the Agency believes that an effective and simpler approach to address vulnerable communities is through program implementation (e.g., training, education, and environmental justice grants).

EPA also wishes to note that Congress envisioned that important elements of the Title X program would be delegated to the States. Accordingly, the Agency preferred to establish a simple, minimal set of standards that could easily be adopted by States and allow them to tailor the standards (i.e., by considering more site-specific factors), should they so choose. Consequently, States will have greater flexibility in establishing and implementing their programs while a national, baseline level of protection to children is maintained.

Because the decision to set uniform national standards has a significant impact on the standard-setting process, EPA is interested in obtaining comment on this issue. The Agency would like specific input on how EPA should set standards that will ensure national resources are targeted commensurate with risk.

2. *Joint, media-specific standards vs. joint standards.* The second issue that shaped EPA's standard-setting approach involves the fact that a child's total lead exposure is the sum of contributions from numerous sources, including paint, dust, soil, and others. Specifically, EPA had to decide whether to set separate, independent standards for paint, dust, and soil or to integrate the standards. Under the first option, EPA would establish the standard for each medium without considering the conditions in the other media. For example, the standard for soil would not be affected by the level of lead in dust. The soil standard would remain constant, regardless of whether dust lead levels were high or low. The chief advantage of this option is that the standards are simple to understand and use. The main disadvantage is that the standard for each medium may not correspond to total exposure and risk.



Under the second option, EPA would set standards to account for total lead exposure from all media. Under a joint standard, the standard for each medium would vary, depending on the conditions in the other media. For example, the Agency could graphically represent combinations of hazardous levels of lead in dust and soil with a downward sloping line. In this graph, shown in Figure 1, the horizontal axis could depict the level of lead in soil.

The vertical axis could depict the level of lead in dust. Any point on this chart, therefore, would illustrate a combination of lead dust and lead soil levels. The downward sloping line would intersect the horizontal axis at the point representing the highest acceptable level of lead in soil if there is no lead in dust. The line would intersect the vertical axis at the point representing the highest acceptable level of lead in dust if there were no lead in soil. All points above the line would be defined as hazardous. To incorporate the condition of paint into the joint dust and soil standards, the Agency, in theory, could establish two downward sloping lines: one for homes with no deteriorated lead-based paint and another for homes with deteriorated lead-based paint. The major advantage of the joint standards is that they better reflect the total exposure and risk. On the other hand, joint standards are more difficult to explain, understand, and use.

Normally, EPA would tend to favor the approach that better reflects risk to human health. Certainly the joint standard approach described above would be the approach of choice in evaluating the environmental risks to a child in a specific house. In the context of this proposed rule, however, EPA has concluded that single, medium-specific standards would be far more workable than joint standards for many of the same reasons that national standards are more workable than targeted standards. First, media-specific standards provide a fixed basis of comparison for all homes and can be used to compare properties and establish priorities. Second, EPA believes that fixed numerical standards are more easily understood than standards that require an understanding of mathematical relationships. In addition, the Agency does not currently possess the analytical techniques necessary to relate dust loadings to soil concentrations, the measurement basis for the dust and soil standards. Consequently, EPA lacks a technical method to establish joint standards.

III. Section-by-Section Review of the Proposed Rule

This unit of the preamble provides a section-by-section explanation of the proposed regulations. The proposed regulations consist of five components: the proposed section 403 standards for lead-based paint hazards; amendments to the final section 402 regulations; amendments to the final section 404 regulations; and definitions for specific terms. The unit focuses on the proposed section 403 standards, the proposed amendments to the final section 402 regulations, and the amendments to the final section 404 regulation. The definitions are discussed in relation to the relevant proposed regulatory provisions. Furthermore, the definitions in proposed § 745.63 that already exist in 40 CFR 745.223 are not subject to public comment.

A. Proposed Section 403 Standards

The TSCA section 403 standards consist of three parts: scope and applicability; the standards for lead-based paint hazards; and provisions for implementing the standards.

1. *Scope and applicability*. The scope and applicability part of the standards, which is stated in proposed § 745.61, would establish that the proposed standards would apply to target housing (i.e., most pre-1978 housing) and child-occupied facilities.

This part of the proposed rule also makes it clear that the TSCA section 403 standards do not require the owner of properties covered by this proposed rule to evaluate his/her properties for the presence of lead-based paint hazards, or to take any action to control these conditions if one or more of them is identified.

2. *Standards for lead-based paint hazards*. The proposed standards for lead-based paint hazards are codified in proposed § 745.65. Proposed § 745.65(a) states that hazardous lead-based paint includes lead-based paint in poor condition. Proposed § 745.63 defines paint in poor condition as more than 10 square feet of deteriorated paint on exterior components with large surface areas, more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors), or deteriorated paint on more than 10 percent of the total surface area of interior or exterior components with small surface areas (e.g., trim, baseboards). EPA is not proposing hazardous lead-based paint standards for accessible surfaces and friction and impact surfaces. The Agency, instead, has presented a range of options for these standards, which are discussed in Unit IV.D.2 and IV.D.3. of this preamble. EPA is seeking public comment on these options and will promulgate standards as part of the final rule based on these options and consideration of public input.

Proposed § 745.65(b) identifies dust-lead hazards in terms of lead loading and location. Lead loading is the quantity of lead present per unit of surface area (e.g., micrograms per square foot). The proposed dust-lead hazard standard is 50 $\mu g/ft^2$ for uncarpeted floors and 250 $\mu g/ft^2$ for interior window sills. The proposed rule does not include a dust-lead hazard standard for carpeted floors or for window troughs.

Proposed § 745.65(c) identifies soil-lead hazards in terms of lead concentration. Lead concentration is the relative content of lead within the soil measured in parts per million by weight. The proposed standard for soil-lead hazard is 2,000 ppm.

3. *Proposed requirements for implementing the standards*. This part of the proposal describes the requirements for how a certified risk assessor would compare on-site observations and sampling results to the standards to determine whether lead-based paint hazards are present. The general requirements are in § 745.69. EPA has incorporated the specific requirements, which are summarized in Table 1 below, into the work practice standards for lead-based paint activities found at 40 CFR 745.227.

Proposed § 745.69 would establish that the determination requirements are applicable to the standards for lead-based paint hazards. It also states that the determination would have to be made by a certified risk assessor performing a risk assessment according to the risk assessment work practice standards. Third, the proposed regulations state that, for purposes of determining the presence of a dust-lead hazard, the risk assessor must compare the weighted arithmetic means of the samples to the applicable standard. For purposes of determining the presence of soil-lead hazards, the risk assessor must compare the arithmetic means of the samples to the applicable standard.

Table 1.—Summary of Regulations for Determining the Presence of Lead-Based Paint Hazards

Type and Location of Hazard/Contamination	Method
Hazardous lead-based paint: lead-based paint in poor condition	Visual assessment for condition of paint; test paint; assume all like surfaces that have similar painting history contain lead-based paint if tested component has lead-based paint

Table 1.—Summary of Regulations for Determining the Presence of Lead-Based Paint Hazards—Continued

Type and Location of Hazard/Contamination	Method
Dust-lead hazard: uncarpeted floors (single-family and sampled units and common areas in multi-family)	Compare weighted arithmetic mean lead loading of all samples for uncarpeted floors to the hazard standard for floors
Dust-lead hazard: interior window sills (single-family and sampled units and common areas in multi-family)	Compare weighted arithmetic mean lead loading of all samples for interior window sills to the hazard standard for sills
Dust-lead hazard: uncarpeted floors (unsampled units and common areas in multi-family)	Assumed to be hazard if hazard is present in any sampled unit or common area of the same type
Dust-lead hazard: interior window sills (unsampled units and common areas in multi-family)	Assumed to be hazard if hazard is present in any sampled unit or common area of the same type
Soil-lead hazard	Compare arithmetic mean of dripline and mid-yard samples to hazard standard

Proposed § 745.227(h) would establish the specific requirements for how to determine whether lead-based paint hazards are present. To determine whether hazardous lead-based paint is present, the risk assessor must test paint that is in poor condition. The paint on all surfaces with paint in poor condition need not be tested. The risk assessor, however, must assume that untested surfaces contain lead-based paint if tested surfaces that have a similar painting history contain lead-based paint.

To determine whether a dust-lead hazard is present, the risk assessor must compare the weighted mean (i.e., weighted average) of all single surface samples or all composite samples to the appropriate dust-lead hazard standard (i.e., uncarpeted floors, interior window sills).

In multi-family housing, where risk assessors have the option not to collect dust samples in every residential unit or common area, the approach described in the previous paragraph applies to all sampled residential units and common areas where samples were collected. For residential units or common areas where samples are not collected, the risk assessor would have to make assumptions based on the results of sampled residential units and common areas. If at least one sampled residential unit or common area exceeds the hazard standard for a specific surface (i.e, floors, sills), then the risk assessor would have to assume that hazards exist on that surface in all unsampled residential units and common areas. It should be noted that risk assessors always have the option to collect samples from all units and common areas at a multi-family property.

Proposed § 745.227(h) also would establish the requirements for how to determine whether a soil-lead hazard is present. Under the proposal, the risk assessor must compare the mean of a composite sample from the dripline and a composite sample from the mid-yard for each residential building to the standards to determine whether a hazard is present. If the risk assessor collects more than one composite in either the dripline or the mid-yard for a building, he or she should compute the average of the composites from each area and use those averages to compute the average concentration for the dripline and the mid-yard.

Proposed § 745.63 defines the dripline and mid-yard. The dripline is the area within 3 feet surrounding the perimeter of a building. The mid-yard is the part of yard that lies halfway between the outermost edge of the dripline and property line or between the outermost edge of the dripline and the outermost edge of the dripline of another residential building on the same property. This approach applies to both properties with a single residential building and to those with more than one residential building.

B. Proposed Amendments to the Final Section 402 Regulations

Today's action includes proposed amendments to the final TSCA section 402 work practice regulations for lead-based paint activities at 40 CFR 745.227. The proposed amendments would establish clearance standards for dust, limit reuse of abated soil, add a requirement for interpreting composite dust clearance samples, and change risk assessment and clearance sampling requirements to ensure compatibility between sampling results and the TSCA section 403 standards and section 402 clearance standards. Unit IX. of this preamble discusses these amendments and the Agency's rationale and supporting analyses for its decisions.

Today's action proposes to amend the abatement work practice standards at 40 CFR 745.227(e) by adding clearance standards for dust. A risk assessor performs clearance testing to evaluate the adequacy of post-abatement dust cleaning. The proposed clearance standards are 50 μg/ft² for uncarpeted floors, 250 μg/ft² for interior window sills, and 800 μg/ft² for window troughs.

Second, today's action includes a proposed amendment to the abatement work practice standards at 40 CFR 745.227(e) to prohibit the reuse of soil removed during an abatement as top soil in another residential yard or child-occupied facility. The current regulations do not provide any management controls for the soil.

Third, today's proposal includes an amendment to the abatement work practice standards at 40 CFR 745.227(e) to add a requirement for interpreting composite dust samples for clearance. The current regulation does not differentiate between single surface samples and composite samples. The proposed amendment would require the risk assessor to compare the composite sample to the clearance standard divided by the number of subsamples in the composite. For example, if the composite contains four subsamples, the risk assessor would compare the composite to the clearance standard divided by four.

Fourth, the Agency is proposing that the risk assessment work practice standards at 40 CFR 745.227 be amended to require that risk assessor collect dust samples from uncarpeted floors and interior window sills because EPA is proposing dust-lead hazard standards for uncarpeted floors and window sills. Today's proposal also includes an amendment to the abatement work practice standards at 40 CFR 745.227(e) to require that a risk assessor collect dust clearance samples from uncarpeted floors, window sills, and window troughs because EPA is proposing clearance standards for all three surfaces. The current risk assessment and abatement work practice standards require risk assessors to collect dust samples from windows without specifying the part of the window. The Agency is also proposing to amend the risk assessment work practice standards to change the

location of soil samples from the dripline and ''play area'' to the dripline and mid-yard.

C. Proposed Amendments to the Final Section 404 Regulations

Today's action includes proposed amendments to the final TSCA section 404 States/Tribal program authorization regulations found at 40 CFR part 745, subpart Q. These proposed amendments would require States/Tribes that are seeking program authorization and States/Tribes that already have applied for authorization and wish to retain it to incorporate lead-based paint hazard standards that are as protective as the Federal standards no later than their first report to EPA after years following the promulgation of the TSCA section 403 standards.

States/Tribes seeking authorization for the first time would include their standards in their program application, the requirements for which are described in 40 CFR 745.320 to 40 CFR 745.325. Proposed amendments to § 745.325, would explicitly clarify that lead-based paint hazard standards and implementation requirements are necessary components of the risk assessment work practice standards in § 745.325(d)(2). States/Tribes seeking to retain program authorization would describe their standards in their regular report to EPA in accordance with 40 CFR 745.324(h).

IV. Development of this Proposed Rule

This unit of the preamble presents EPA's analysis of its legal authority, and describes the Agency's policy basis, technical analyses, and decisions for the proposed section 403 standards. Section A discusses EPA's legal authority and policy basis for the standards. Section B discusses the technical analysis to support the development of the proposed standards for dust and soil. Section C presents EPA's analysis of the options for dust and soil standards and explains the Agency's decisions. Section D presents the analysis of the options for the paint hazard standard and explains the Agency's decisions. The standard for lead-based paint, as further explained below, is defined by statute and EPA is not modifying that standard in this proposed rule.

A. Authority for Today's Action

1. *Statutory mandate and related definitions.* Section 403 of TSCA is the key statutory provision for today's proposed regulation. It requires EPA to identify three terms—lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil. For reasons explained below, EPA needs to first define lead-contaminated dust and soil before it may define lead-based paint hazards. These three terms and other definitions that help define them are found in both TSCA section 401 (15 U.S.C. 2681) and in section 1004 of Title X (42 U.S.C. 4851b). Because the definitions in both of these sections are identical for practical purposes, the remainder of this preamble will cite the TSCA definitions. Below, EPA explains how the definitions affect the Agency's responsibilities in this proposed rule.

TSCA section 401(10) defines ''lead-based paint hazard'' to mean any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that *would result* in adverse human health effects . . . [emphasis added].

Thus, there are three sources that may contribute to the existence of a lead-based paint hazard—lead-contaminated paint, lead-contaminated dust, and lead-contaminated soil.

EPA interprets lead-contaminated paint to mean the same as ''lead-based paint,'' which is defined by TSCA section 401(9) to mean paint or other surface coatings that contain lead in concentrations equaling or exceeding limits established under section 302(c) of the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4822(c)). Currently, this limit is lead content that equals or exceeds 1.0 milligrams per square centimeter (mg/cm^2) or 0.5 percent by weight. EPA is not taking any action in this proposed rule to redefine lead-based paint.

It must be emphasized that lead-based paint is not a risk-based term. It is only a benchmark that identifies material subject to the jurisdiction of various authorities of TSCA and Title X. Instead, the term ''lead-based paint hazard'' will identify those conditions of lead-based paint that would result in adverse health effects. The statutory language makes it clear that not all lead-based paint is to be considered a lead-based paint hazard. In fact, for lead paint to be a hazard it must, at least, be deteriorated or be present on friction or impact surfaces or on surfaces accessible for young children to mouth or chew. Deteriorated paint is defined in TSCA 401(3). Friction, impact, and accessible surfaces are defined in TSCA 401(2), (5) and (6).

Lead-based paint hazards, furthermore, are not limited to the hazards from paint, alone, because they include conditions that cause exposure to residential lead-contaminated dust and soil, regardless of the source of lead. EPA is responsible in this proposed rule for identifying what constitutes lead-contaminated dust and soil. Both terms are limited to dust and soil in residences, in contrast to lead paint, which may be found in public and commercial buildings and in other structures, such as bridges or superstructures (e.g., water towers).

Lead-contaminated dust means surface dust in residential dwellings that contains lead determined by EPA to *pose a threat* of adverse health effects in pregnant women or young children [emphasis added] (TSCA 401(11)). Lead-contaminated soil means *bare* soil on residential property that contains lead that is *determined to be hazardous* to human health by EPA (TSCA 401(12)) [emphasis added].

The lead-based paint hazard definition contains the overarching legal standard applicable to today's proposed regulation. In pertinent part, the definition means any condition that causes exposure to lead-contaminated dust, soil, or paint that would result in adverse human health effects. To determine what constitutes lead-contaminated dust or soil, on the other hand, EPA interprets the statute to require a less rigorous level of certainty regarding the likelihood of adverse effects occurring to establish the standards.

2. *Statutory criteria for lead-contaminated dust and soil, and lead-based paint hazards.* Given the definitions of lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil in TSCA section 401, EPA needs to establish standards for lead-contaminated dust and soil separately from lead-based paint hazards. Put simply, not all lead-contaminated dust or lead-contaminated soil (or lead-based paint) needs to be considered hazardous. In fact, as explained below, the definitions in TSCA section 401 support the Agency's adoption of a weight of evidence approach for setting the varying standards.

To help differentiate between lead-contaminated dust and soil and lead-contaminated dust and soil that are lead-based paint hazards, and to alleviate the confusion created by this terminology, the Agency will generally refer to lead-contaminated dust and soil that meet the lead-based paint hazard criteria as dust-lead hazards and soil-lead hazards. EPA will refer to the paint component of lead-based paint hazards as hazardous lead-based paint.

a. *Contamination standards.* As indicated above, EPA believes that the term ''poses a threat,'' used to define

lead-contaminated dust, connotes a lower level of certainty regarding risk than the term ''would result in adverse effects,'' used to define lead-based paint hazard, and indicates that the standard for lead-contaminated dust requires a lesser weight of evidence of harm. The level of certainty associated with the term ''hazardous to human health,'' which is used to define lead-contaminated soil, is less clear. The overall structure of the definitions in section 401, however, indicates parallel treatment for lead-contaminated dust and soil. EPA is, therefore, interpreting ''poses a threat'' and ''hazardous to human health'' to be associated with the same level of evidence needed to determine risk.

The terms ''lead-contaminated'' dust and soil, therefore, describe the universe of lead in soil and dust about which there may be some level of concern. Within this universe are levels of lead-contaminated dust and soil that result in lead-based paint hazards, which engender greater concern because there is greater certainty of risk of adverse human health effects. Identifying hazardous paint, dust, and soil, therefore, requires a greater weight of evidence of harm.

The terms lead-contaminated dust and lead-contaminated soil, while necessary components of the definition of lead-based paint hazards, do not appear anywhere else in Title X. Thus, they have no direct effect on any activities subject to regulation under Title X. For example, no certification requirements are imposed for persons who remove lead-contaminated soil, only soil associated with soil-lead hazards. EPA concludes from this observation that the purpose for identifying lead-contaminated dust and soil separately from hazardous dust and soil is to identify levels of dust and soil contamination for which there are lower levels of certainty regarding adverse effects and general population concern, but about which owners and occupants of residential property should be aware. Individual owners and occupants may wish to make decisions based on the lesser level of certainty. To convey this message, EPA has decided to call the standards for lead-contaminated dust and soil, dust-lead and soil-lead ''levels of concern.'' EPA has decided that the levels of concern should be based solely on their potential to pose a threat to human health, without regard to whether taking action on these levels could result in significant risk reduction, or whether the resources that persons may choose to expend on dealing with dust and soil at these levels are commensurate with any potential risk reduction.

Because the level of concern does not affect other activities under Title X or TSCA Title IV, EPA has decided not to include the levels of concern in the proposed regulation. Nevertheless, because the level of concern communicates important risk information to property owners and occupants, the Agency believes that it is important to include the levels of concern in the preamble and guidance that will accompany the rule. At this point, the Agency is only proposing to adopt in guidance a separate level of concern for lead in soil, which is discussed in detail in Unit IV of this preamble. The Agency has decided that there should not be a separate dust-lead level of concern, even in guidance, because EPA's analysis shows that dust-lead level of concern should be the same as the dust-lead hazard standard. The Agency believes, therefore, that having a separate dust-lead level of concern would not provide useful additional information to the public.

EPA is interested in public input with respect to the inclusion of the levels of concern, particularly for soil, in the regulatory text of the document. Specifically, EPA is seeking comment on whether the absence of the soil-lead level of concern in the regulation would diminish the visibility of the level and reduce its usefulness as a risk communication tool, or whether the soil-lead level of concern would be treated as the *de facto* hazard standard if it were included in the regulation. EPA does not believe that the public should confuse the soil-lead level of concern in the guidance, with the soil-lead hazard standard in the regulation. As indicated above, the Agency is specifically interested in comments on this issue.

b. *Hazard standards*. The determination of what constitutes lead-based paint hazards--hazardous paint, dust, and soil--will require a more elaborate analysis. Clearly, the statutory criterion for hazard, ''would result in adverse human health effects,'' means that lead-based paint hazards are associated with a higher level of risk than levels of concern. The challenge to the Agency is how to identify the higher level of risk.

Based on the language of section 403, the purposes of Title X and its legislative history, and basic policy discussions explained below, EPA determined that it should identify this higher level of risk based on consideration of the potential for risk reduction of any action taken (considering uncertainties in the scientific evidence describing the risks) and whether such risk reductions are commensurate with the costs of those actions. This is commonly referred to as cost-benefit balancing.

The use of the term ''would result'' in the statutory criteria --''would result in adverse human health effects''--implies certainty of adverse outcome. This interpretation is supported the by legislative history discussed in the Senate Committee Report (*National Affordable Housing Act Amendments of 1992*, Report of the Committee on Banking, Housing and Urban Affairs, S. Rep. 102-332, 102d Cong., 2nd Sess., at 112 (hereinafter ''Senate Report'')). The Senate Report states that Title X ''limits the definition of hazard, and thus the scope of the bill to *actual* hazards--conditions that cause [ ] exposure to lead . . . that would result in adverse human effects'' [emphasis added] (Senate report, page 112).

Dealing with what would constitute an ''actual'' effect is the dilemma posed by the statutory language. EPA's interpretation of the broader Title X framework suggests that lead-based paint hazard standards should not be based on absolute certainty. If the EPA were to follow Congress' literal wording, available evidence would only allow the Agency to set unreasonably high dust, soil, or paint hazard standards. EPA does not believe that this is an appropriate formulation of Congressional intent. As stated in section 1103(3), one purpose of Title X is ''to encourage effective action to *prevent* childhood lead poisoning'' (emphasis added). To follow this directive, EPA needs to establish hazard standards that predict adverse health outcomes based on their environmental observations and measurements. Due to the large amount of variability in the relationship between environmental lead levels and blood-lead concentrations, it is not possible to state with certainty that a given set of environmental conditions would result in an actual adverse outcome. EPA, therefore, has not used an absolute certainty criterion but rather interprets the statute to require a level of certainty regarding risk that is higher than that used for the contamination standard—the ''level of concern.''

It is possible, however, to state that there is a relatively high likelihood that an adverse outcome will occur. The dilemma the Agency faces in this case would be that hazards would be identified only at the very highest levels. Thus, for example, EPA could say that adverse effects ''would result'' only when an individual child has a 100 percent probability of having a blood-

lead concentration equal to or exceeding 10 µg/dl. Using this 100 percent probability criterion as the basis for setting hazard standards, however, would contribute little, if anything, to the statutory intent of preventing adverse effects. Moreover, the environmental lead levels associated with this probability level would be so high that they would likely apply to only a very small number of situations--for example, soil levels well over 5,000 ppm or dust lead levels well over 500 µg/ft^2. Children exposed to significantly lower levels could be subject to substantial risk that would be ignored in the national lead program. Therefore, EPA has elected not to use such a formulation.

Accordingly, EPA examined the statute and its legislative history for guidance on how to select appropriate parameters for identifying lead-based paint hazards. Based on this analysis, the Agency concluded, for the following reasons, that the hazard standards should be based on a set of parameters identified by balancing the costs of reducing exposures to lead-based paint hazards with the benefits of avoiding adverse human health effects.

First, the identification of lead-based paint hazards is linked with hazard reduction in many provisions of Title X, including sections 1011(e)(8) and (9), 1012(a) and (e), and TSCA section 401(8) and (13). This linkage suggests that measures taken to reduce hazards should be consistent with the risks presented. The Senate Report, recognizing that many property owners would implement interim controls to respond to lead-based paint hazards, states that ''interim measures should be commensurate with the degrees of risk reported by the risk assessment'' (p. 115). The Report is most explicit in its discussion of lead-based paint hazard reduction in Federally assisted and insured housing, where it states that ''the response would correspond to the degree of danger and the benefit to be achieved'' (p. 117). Cost-benefit balancing is a reasonable method that can be used to assist EPA in setting hazard standards that would promote control activities that are commensurate with risk.

Second, cost-benefit balancing is a useful method to examine the potential for adverse effects, the resource allocation that should be associated with reducing that potential, and methods of public protection when the available scientific evidence shows there is a wide range of uncertainty in the risks that may be associated with any particular levels. The Senate Report recognized that there is a wide range of responses applicable to lead-based paint and paint hazards depending on the degree of risk and the likelihood of risk reduction that could occur from any particular action. In particular, property owners can choose to reduce hazards through ''abatement'' (permanent elimination of hazards) or ''interim measures'' (temporary exposure reduction). See TSCA sections 401(1), (8), and (13). The Senate Report at 113-115 specifically refers to this wide range of applicable responses and the need to consider measures commensurate with the risk. The Senate Report at 113 states that housing owners

> will choose to abate or partially abate when they determine that it is cost effective for them to permanently eliminate the source of hazards.

Further, the Senate Report at 115 states that interim measures

> should be commensurate with the degree of risk reported by the risk assessment. Thus, where moderately elevated dust levels exist but there is little deterioration in the paint, an appropriate interim response might be limited to supercleaning leaded surfaces. Where children are present and paint is peeling, interim controls might require a more substantial effort and expense to prevent exposure from paint chips and dust.

Given these standards, EPA believes that it is a reasonable interpretation of TSCA section 403 to identify the conditions that constitute lead-based paint hazards by considering the weight of evidence on the range of environmental lead levels that would result in particular blood lead levels, the adverse effects associated with those blood-lead concentrations, and potential ranges of risk reduction (reductions in blood-lead concentration) that would result from eliminating or controlling the levels.

Several purposes of Title X also support the use of cost-benefit balancing for establishing the hazard standards. According to section 1003(2) of Title X, one purpose of the statute is ''to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock.'' The concept of priority-setting inherently recognizes that resources are scarce, and that scarce resources are most effectively employed when decision-makers apply them to the worst problems first. To develop standards that are consistent with the need to set priorities, EPA factored in the resources needed to reduce risks, the benefits of controlling lead-based paint hazards, and data on the presence of lead in residential paint, dust, and soil when selecting the proposed standards. Cost-benefit analysis is a principal analytical tool available to the Agency to measure the effectiveness of using resources to reduce human health risks.

Section 1003(3) of Title X also states that a purpose of the statute is ''to encourage effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction. . . .'' In developing today's proposal, EPA interprets the term ''workable'' to mean practical, usable, and realistic. First, a workable framework must be practical; that is, it should promote priority-setting, focusing resources on the most significant risks. Overly stringent standards that result in the identification of lead-based paint hazards in large segments of the housing stock would not be practical because they would not provide guidance to decision-makers on where to focus resources.

Second, the standards must be usable by the intended audience. Risk assessors must be able to use the standards as a tool to evaluate properties quickly at a modest cost. The standards should not require extensive and costly environmental measurement. The meaning of the standards must be sufficiently simple for risk assessors to explain and property owners, residents, and other decision-makers to understand the significance of the findings of a risk assessment.

Third, for a framework to be workable, it needs to be based on realistic goals, goals that are achievable with available resources and feasible with available technology. The standards for identifying lead-based paint hazards, therefore, need to recognize resource and technological constraints. These standards, the primary function of which is to provide guidance and advice, risk being ignored by their intended audience and having no value if they are not practical, usable, and realistic.

Section 1003(3) also refers to the Title X purpose of ''. . . ending the current confusion over reasonable standards of care.'' EPA interprets a ''reasonable'' standard to be one that requires exercise of judgment to balance the probability that harm will occur, and the magnitude and severity of that harm, against the adverse social and economic impacts on society of the action taken to reduce the harm. The reasonableness standard becomes more judgmental in the case of health risks of lead where, as a practical matter, all the scientific evidence is uncertain to some degree and EPA is forced to deal in probabilities that can vary over extreme ranges. Therefore, in evaluating a reasonable standard of care

under Title X, EPA will consider the various relationships among such factors as toxicity, exposure, the effectiveness of interventions, and the cost of interventions.

EPA, further, believes that consideration of cost is consistent with the establishment of these lead standards. The purpose of the lead hazard standards is to protect the public health. To do this within the framework of Title X, however, requires the expenditure of scarce public and private resources. Ensuring that these resources are used in a manner that maximizes health protection means that EPA should establish lead hazard standards that direct resources to where the threats to public health are the greatest. EPA recognizes there are different ways in which the TSCA section 403 standards may be interpreted and, specifically, requests comment on whether it is appropriate for the Agency to use the cost-benefit analysis to develop the hazard standards for this rule.

3. *Policy basis for the standards*—a. *Dust-lead and soil-lead levels of concern*. To implement its decision to treat the dust-lead and soil-lead levels of concern as risk communication tools, EPA is proposing that the soil and dust levels of concern should be associated with a blood-lead concentration of concern and a child's probability of exceeding that blood-lead concentration (exceedance probability). As noted previously, EPA is proposing to establish a soil-lead level of concern for use in guidance and not to include it in the proposed regulation.

EPA used blood-lead concentration as the measure of human health risk, because it is the most widely used index of human lead exposure and risk. By exceedance probability, EPA means an individual child's risk or probability of having a blood-lead concentration that equals or exceeds a specified concentration. For example, if the blood-lead concentration of concern is 10 µg/dl, an exceedance probability of one percent means that a child has a one percent chance of having a blood-lead concentration that equals or exceeds 10 µg/dl.

An exceedance probability is needed because the relationship between lead in the environment and blood-lead concentration is characterized by a great deal of variability due to several factors, including differences among children in behavior and nutrition. The measurement of lead in the environment and in blood is also subject to a significant degree of variation. It is not possible, therefore, to link a specific level of lead in the environment (e.g., soil) to a specific blood-lead concentration with absolute certainty. Rather, a specific level of lead in the environment is associated with a distribution of blood-lead concentrations.

The distribution, which can be thought of as a curve drawn on a graph, represents the range of blood-lead concentrations and the relative probability that each blood-lead concentration would actually occur. A distribution is described by three parameters: the form (i.e., shape) of the distribution (e.g., normal distribution or ''bell'' curve, log normal distribution); a measure of central tendency (e.g., mean or average); and a measure of variability or spread (e.g., standard deviation) around the measure of central tendency. With these three parameters, the probability of exceeding any blood-lead concentration can be calculated. For further discussion of standard deviation, please see Matlack, *Statistics for Public Policy and Management* (Ref. 18).

b. *Dust-lead and soil-lead hazard standards*. Having presented its rationale, above, for using cost-benefit balancing to help develop the proposed dust and soil-lead hazard standards, EPA now explains its intent to use cost-benefit balancing in the hazard standard-setting process.

It is important to note that the Agency's analyses for dust and soil began with an examination of quantitative estimates based on various modeling techniques. These techniques allow the Agency to arrive at a range of options on which the Agency exercises its administrative judgment. Thus, the quantitative modeling is used as a tool to derive the boundaries of the Agency's inquiry, not as the sole basis for decisions.

Furthermore, the Agency wishes to note that it employed a normative analysis to support the selection of the dust-lead and soil-lead hazard standards. A normative analysis estimates costs and benefits based on the assumption that individuals will make perfectly rationale decisions in response to the standards. That is, all individuals who should conduct risk assessments will do so, and all individuals will undertake appropriate interventions in response to hazards identified by the risk assessment. This normative analysis also assumes that no action is being taken in the absence of the standards. In reality, hazards will not be identified in many homes because risk assessments will not be performed. Even if hazards are identified, interventions may not be performed or interventions different from those assumed in the analysis may be performed. In addition, risk assessments and hazard control interventions are currently being conducted.

EPA used a normative analysis for two reasons. First, as a practical matter, it is difficult, if not impossible, to estimate expected costs and benefits associated with the standards. Such estimates would require data on the current level of risk assessment and abatement, which is not available, and the Agency to predict how property owners and other decision-makers will respond to the standards. Second, the objective of the analysis is to provide estimates that allow Agency decision-makers to compare costs and benefits. Although the normative analysis is likely to overestimate actual costs and benefits, EPA believes that the relative balance of costs and benefits estimated by the analysis is unlikely to be very different from the relative balance of actual costs and benefits. Therefore, the Agency can use these estimates to evaluate various options for the dust and soil standards.

With respect to the paint component of the proposed regulation, data limitations prevented EPA from quantifying the costs and benefits of the options considered in this proposal. Data that definitively relate deteriorated paint to blood-lead concentration are not available, preventing the Agency from estimating the benefits of these options. EPA could not estimate the costs of these options because the Agency's decision regarding deteriorated lead-based paint focused on the area of deterioration on individual components whereas the available data provide information on the amount of deteriorated paint in an entire residence. Consequently, EPA's decisions with respect to the options for the paint component involve a more qualitative judgment on the part of the Agency.

As part of its economic analysis of the proposed rule, EPA developed estimates of the costs and benefits of repairing or abating deteriorated lead-based paint. The preamble presents these estimates in Unit X. The data limitations identified above as well as other analytical constraints described in Unit X, however, restrict the usefulness and call into question the reliability of these estimates in characterizing the proposed regulatory standards for paint.

While Title X provides no guidance on how to undertake cost-benefit balancing, the legislative history of TSCA provides a useful and pertinent explanation of the concept. The House Report on TSCA (H. Rep. 1341, 94th Cong., 2nd Sess. at 13-15, 32)

acknowledges that cost-benefit balancing for regulation is not precise but, instead, requires the exercise of judgment by the decision-maker. It involves the balancing of the probability that harm will occur, and the magnitude and severity of that harm, against the cost of the proposed action to reduce that harm. In other words, cost-benefit balancing involves a weighing of the risks to be reduced by response actions and the costs of these actions.

The TSCA House Report emphasizes that cost-benefit balancing does not require a formal quantitative analysis under which a monetary value is assigned to risks that may be reduced by regulation or the costs to society. This is because precise values often cannot be assigned to such risks and costs. Accordingly, cost-benefit balancing is appropriately used to establish a range of options for the hazard standards. Using this approach, the Agency then selects its preferred options based on consideration of relevant factors, including the weight of the evidence of harm, assumptions and tools that underlie EPA's analysis, as well as other factors, including health protectiveness and total costs.

Cost-benefit balancing involves a two-step process: evaluation of risk and risk-reduction (i.e., benefit), followed by consideration of the resources needed to achieve varying degrees of risk reduction. Below, EPA explains first the concept of evaluating risk and risk reduction, then the concept of evaluating how to balance risk reduction (benefit) with costs.

With respect to risk, the TSCA House Report states that: ''. . .risk is measured not solely by the probability of harm, but instead includes elements both of probability of harm and severity of harm and *those elements may vary in relation to each other*'' [emphasis added]. Determining risk becomes more judgmental in the case of health and environmental risks covered by EPA in cases where the scientific evidence on hazard and exposure contains a high degree of uncertainty and variability encompassing numerous relationships among elements of risk, including consideration of the severity and probability of harm resulting from the different types of exposure that may occur. Because of the uncertainty in all of these estimates, there are generally no definitive answers as to what the risk may be. Therefore, in evaluating risk, EPA considers various factors, including the strength of the evidence on toxicity (for example, actual cases of harm from epidemiology studies or results of high-dose animal tests), the type and magnitude of effects that are predicted to occur (for example, severe effects or more subtle ones), and estimates of the numbers of individuals exposed and the levels of exposure based on mechanistic and statistical models.

Once the risk is evaluated, with the attendant uncertainties in hazard evaluation and the variations in exposure probability, the next step is to consider the costs of the regulatory action. The probability and severity of harm (in this case, a range of children's health effects) are weighed against the impact of any action EPA proposes to take to evaluate whether the costs are commensurate with risk reduction. There is, however, no set way to apply EPA's chosen approach for this rulemaking to balancing costs and risk reduction. To illustrate this point, the Agency provides the following examples. Where standards would require the high expenditure of resources, the level of risk reduction (considering both the toxicity of lead and the probabilities of exposure) and the strength of evidence should be correspondingly high. On the other hand, if the costs of standards are relatively low, the level of risk reduction and the strength of the evidence could be less compelling.

Today's proposed rule takes this balancing into account in proposing both soil and dust hazard standards. The determination on soil standards considers the fact that relatively high costs would be incurred to abate residential soils. Consequently, under a cost-benefit balancing concept, before selecting an option associated with high costs, EPA would want a greater measure of confidence that the standard would result in a higher level of risk reduction. Because the cost of reducing risk from residential dust is relatively low, EPA could select a dust-lead hazard standard that would not result in as much risk reduction.

Finally, EPA believes that this type of analysis is an appropriate way to deal with the problems caused by lead in paint and residential dust and soil. Lead is a substance for which there is no clear evidence that there is a level of exposure below which there is no risk. It is clear, however, that there is some level of lead where the use of scarce resources to reduce exposure to lead is warranted. EPA recognizes that resources needed to address risks from lead-based paint hazards are limited and would like to set standards to target responses to these hazards so that the highest risks will be addressed first. In contrast, spending valuable resources engaging in cleanup activities to achieve little or no reduction in risk would not be a reasonable approach.

B. Technical Analyses

To support the development of dust and soil lead levels of concern, as well as for the hazard standards, EPA requires a tool to relate lead in the environment to blood-lead concentration. As will be further explained below, EPA has chosen two types of models to be used for this purpose: a mechanistic model and a statistical model based on empirical data. A mechanistic model simulates the human body's response to lead that is ingested or inhaled. Because biological processes that mechanistic models are designed to simulate are not completely understood, these models are typically limited in their predictive capability. The components of the processes that are understood have to be simplified and digested into a series of mathematical equations resulting in another source of error. The data that are used as inputs into these models may not be truly representative and may contain gaps.

Alternatively, EPA could use observational data to estimate the relationship between environmental lead and blood lead. Two national data sets are available to the Agency. EPA has national blood-lead data from Phase 2 of the third National Health and Nutrition Examination Survey (NHANES III) (Ref. 6) and national data on levels of lead in dust and soil and condition of paint from the National Survey of Lead-Based Paint in Housing, conducted from 1989-1990 by the U.S. Department of Housing and Urban Development (Ref. 19). These data sets, however, are not linked. That is, there is no direct observation between blood-lead in NHANES and the environmental levels in the HUD survey. Therefore, these data sets cannot be used in combination to estimate the relationship between lead in dust and soil and blood-lead concentration.

In light of limited data and imperfect models, the Agency cannot rely on any single approach to specify the true relationship between lead in dust and soil and blood lead. EPA, therefore, used several tools to derive differing estimates of the relationship. The mechanistic model used for the various analyses in this proposed rule is the Agency's Integrated Environmental Uptake and Biokinetic (IEUBK) model. EPA also conducted several analyses for this rule using data from the Rochester Lead-in-Dust study, which contains data for children's blood-lead concentrations and dust and soil-lead levels in their environment (Ref. 20). These tools will be discussed further below in the sections where they are used.

The Agency wishes to note that the differing estimates of the relationship between environmental lead and blood-lead concentration do not bound the range of options available to EPA for the proposed rule. The true relationship between blood-lead and dust and soil-lead could be stronger or weaker than the estimates used in this proposed rule.

1. *Dust-lead and soil-lead levels of concern*. This section of the preamble presents the Agency's rationale for its choice of 10 µg/dl as the blood-lead concentration of concern, and for its choice of the appropriate exceedance probability of one to five percent. EPA then explains how it identified the dust and soil-lead levels at which the Agency reasonably expects an individual child would have a probability of approximately one to five percent of having a blood-lead concentration equal to or exceeding 10 µg/dl.

a. *Blood-lead concentration of concern*. EPA has determined that the weight of scientific evidence, as discussed below, shows that 10 µg/dl is a reasonable level of concern for childhood blood lead under the applicable statutory standard of ''poses a threat.'' EPA disagrees that the term ''poses a threat'' suggests that the lead levels of concern should be based on any non-zero risk (zero-risk basis). Zero risk equates to a blood-lead concentration of zero because there is no known health effects threshold for lead. EPA, however, proposes to reject the zero risk basis for dust and soil-lead levels of concern for several reasons. First, although some data suggest that adverse health effects occur at the lowest observed levels, only a small number of children with such low blood-lead concentrations have been examined. Furthermore, the health effects at the lowest levels of exposure are small and subtle, making it difficult to associate effects with any single factor. Therefore, there is insufficient evidence at these lowest levels to state that there is a level of risk that warrants national public concern. Second, standards based on zero risk would not serve as a useful communication tool because lead is ubiquitous in the environment and there is no practical way to eliminate exposure. Third, EPA believes that zero risk-based standards were not the intent of Congress. If any level of lead in dust and soil constitutes contamination or a hazard, there would be no need for EPA to identify these conditions.

Having rejected zero as the blood-lead concentration basis for dust and soil-lead levels of concern, EPA had to identify an alternative blood-lead concentration. Numerous human epidemiological and clinical studies, as well as animal toxicological and *in vitro* studies indicate clear signs of toxicity across a wide range of exposures. While the results of human studies are not uniform, and there is inevitably uncertainty regarding the precise nature and persistence of effects at low levels, these studies are predominately similar in their overall findings. Furthermore, there is consensus within the expert medical community that even low levels of lead exposure warrant public health concern.

As listed below, numerous health effects, many of them neurological, have been related to blood-lead concentrations down to levels of at least 10-15 µg/dl:

1. Altered synthesis of heme as indicated by inhibitions in the enzymes delta-aminolevulinate dehydrase, pyrimidine-5-nucleotidase, and red blood cell ATPase, and accumulations of the heme precursor, erythrocyte protoporphyrin in red blood cells. (e.g., Refs. 21-29).
2. Reduction in vitamin D hormone synthesis in children (e.g., Ref. 30).
3. Alterations of brain electrical activity in children (e.g, Refs. 31-37).
4. Altered nerve conduction in auditory pathway and decreased hearing acuity in children (e.g., Refs. 34 and 38).
5. Delays in cognitive development and slower sensory-motor development during infancy (e.g., Refs. 39-41).
6. Other neurobehavioral impacts (e.g., IQ deficits) in children (e.g., Refs. 42-48).
7. Decreased stature or growth in young children (e.g., Refs. 49-51).
8. Decreased ability to maintain steady posture in children (e.g., Ref. 52).
9. Reduced gestational age and reduced weight at birth, associated with maternal and cord blood-lead concentrations (e.g., Refs. 53 and 54).
10. Increased blood pressure in adults (e.g., Refs. 5 and 55).

While it is possible that some of these effects are reversible (e.g., altered heme synthesis), or have unclear medical or functional implications (e.g., altered brain electrical activity), the Agency believes that the collective impact of these effects on diverse physiological functions and organ systems of young children with blood-lead concentrations as low as 10 µg/dl are clearly adverse. This conclusion is consistent with the findings of other EPA reports, EPA's Clean Air Scientific Advisory Committee (CASAC), the Centers for Disease Control and Prevention in their 1991 statement *Preventing Lead Poisoning in Young Children*, and the National Academy of Sciences in their 1993 report *Measuring Lead Exposure in Infants, Children, and Other Sensitive Populations*.

U.S. EPA's 1986 Air Quality Criteria Document for Lead (Ref. 56) concluded that for children: (1) The collective impact of the effects at blood-lead concentrations above 15 µg/dl represents a clear pattern of adverse effects worthy of avoidance; (2) at levels of 10-15 µg/dl there appears to be a convergence of evidence of lead-induced interference with a diverse set of physiological functions and processes, particularly evident in several independent studies showing impaired neurobehavioral function and development; and (3) the available data do not indicate a clear threshold at 10-15 µg/dl, but rather suggest a continuum of health risks approaching the lowest levels measured. The health effects below this range are less well substantiated.

In reviewing the information presented in the 1986 Air Quality Criteria Document and Addendum, EPA's CASAC concluded various effects starting at blood-lead concentrations around 10-15 µg/dl or even lower in young children ''may be argued as becoming biomedically adverse'' (Ref. 57). After reviewing the 1990 Supplement to the Addendum (Ref. 58), as well as a staff position paper of EPA's Office of Air Quality Planning and Standards (Ref. 59), CASAC concluded that blood-lead concentrations above 10 µg/dl clearly warrant avoidance, especially for the development of adverse human health effects in sensitive populations. The Committee concluded ''that EPA should seek to establish an air standard which minimizes the number of children with blood-lead concentrations above a target value of 10 µg/dl. In reaching this conclusion, the Committee recognizes that there is no discernible threshold for several lead effects and that biological changes can occur at lower levels'' (p. 1, Ref. 57).

In their 1991 Statement, CDC revised the action level for the lead screening and intervention program from 25 µg/dl set in 1985 to 10 µg/dl and stated that ''the scientific evidence showing that some adverse effects occur at blood-lead concentrations at least as low as 10 µg/dl in children has become so overwhelming and compelling that it must be a major force in determining how we approach childhood lead exposure'' (p. 1, Ref. 2). While CDC does not specify which of the many effects associated with low-level lead exposure are individually considered adverse, the following discussion indicates that the collective impact of the different effects

poses risks that should be avoided (pp. 9-10, Ref. 2):

Blood-lead concentrations as low as 10 µg/dl, which do not cause distinctive symptoms, are associated with decreased intelligence and impaired neurobehavioral development (Refs. 60-61). Many other effects begin at these low blood-lead concentrations, including decreased stature or growth (Refs. 49, 50, and 51), decreased hearing acuity (Ref. 38), and decreased ability to maintain a steady posture (Ref. 52). Lead's impairment of the synthesis of the active metabolite 1,25-$(OH)_2$ vitamin D is detectable at blood-lead concentrations of 10-15 µg/dl. Maternal and cord blood-lead concentrations of 10-15 µg/dl appear to be associated with reduced gestational age and reduced weight at birth (Ref. 62). Although researchers have not yet completely defined the impact of blood-lead concentrations <10 µg/dl on central nervous system function, it may be that even these levels are associated with adverse effects that will be clearer with more refined research.

CDC recommends that community-wide interventions (e.g., outreach and education, surveillance) should be considered by appropriate agencies if many children have blood-lead concentrations that equal or exceed 10 µg/dl (Ref. 2).

The National Academy of Sciences agreed with the CDC assessment of the existing studies and data, noting that blood-lead concentrations around 10 µg/dl are associated with disturbances in early physical and mental growth and in later intellectual functioning and academic achievement (Ref. 63).

For purposes of this proposed rule, EPA is establishing 10 µg/dl as the blood-lead concentration of concern. This decision is based on EPA's review of the scientific evidence and earlier Agency findings that a number of health effects begin to manifest themselves at blood levels of 10-15 µg/dl and that the collective impact of these effects poses risks that should be avoided. EPA chose the level at the lower end of this range to provide an adequate margin of safety. EPA decided not to establish a level lower than 10 µg/dl because the evidence indicates that health effects at lower levels of exposure are less well substantiated, based on a limited number of studies, a limited number of children, and observation of subtle molecular changes that are not currently thought to be sufficiently significant to warrant national concern.

b. *Exceedance probability*. Unlike EPA's choice of the blood-lead concentration, where there is a body of scientific literature to guide the decision-making process, there is no scientific evidence to assist the Agency in selecting the appropriate exceedance probability. EPA's decision for this value is, instead, guided by judgment about levels of risk that are achievable and consistent with the statutory criteria.

EPA looked at several options for an appropriate exceedance probability. The Agency rejected the lowest possible probability, which is zero, because it is unachievable. The Agency's risk analysis demonstrated that a very small percentage of children would have blood-lead concentrations equaling or exceeding 10 µg/dl even if there were no lead-based paint and lead-contaminated soil and dust, because other sources of exposure (e.g., air, water, diet, and background levels of lead) remain (Ref. 1).

At the other end of the range considered by EPA was an exceedance probability of 10 percent. With this distribution of risk, a child would have a 1.6 percent chance of having a blood-lead concentration exceeding 15 µg/dl and a less than one percent chance of having a blood-lead concentration exceeding 20 µg/dl, the level at which CDC recommends medical intervention. The Agency rejected this probability as presenting risks above the threshold that the dust and soil-lead levels of concern are supposed to communicate.

Consequently, the Agency determined that the range of probabilities between one and five percent would be consistent with the statutory criterion for level of concern, ''pose a threat.'' Given the data and analytical tools available to EPA, the Agency determined that, as a practical matter, one percent is not distinguishable from five percent. This overlap is due to the uncertainty and variability related to any effort to associate levels of lead in the environment to blood-lead concentrations and limited data.

As a result of exposure to levels of lead in dust and soil associated with these probabilities, a child would have a relatively small chance of having a blood-lead concentration equal to or exceeding 10 µg/dl. The Agency considers this small chance of exceeding the blood-lead concentration of concern to be consistent with ''pose a threat.'' Consequently, EPA is proposing to include in guidance a level of concern where the levels of lead in dust and soil are associated with a one to five percent probability that a child would have a blood-lead concentration equal to or exceeding 10 µg/dl.

In seeking comment on this decision, EPA is interested in obtaining any information that would provide additional support for its decision or support the selection of another option.

c. *Characterizing individual risk*. EPA identified several alternative tools to support the development of the dust and soil-lead levels of concern: (1) The Agency's IEUBK model; (2) a ''multimedia'' model based on the data from the Rochester Lead-in-Dust study; and (3) a performance characteristics analysis of the Rochester data. The IEUBK model was not used to examine dust lead levels because the model uses dust-lead concentration and, as explained in Unit V. of this preamble, EPA has decided to propose a loading standard for dust. Conversely, the multimedia model based on the Rochester data was used only for dust. It uses dripline soil lead measurements rather than yard-wide average and, therefore, EPA chose not to use it to examine the levels of concern for lead in soil in this proposal. EPA used the performance characteristic analysis of the Rochester data for both the dust and soil-lead levels of concern.

d. *Dust analyses*. EPA conducted two analyses to support development of the dust-lead level of concern: an analysis that used the multimedia model based on the Rochester data and a performance characteristics analysis of the Rochester data. The multimedia model was developed specifically to support the development of options for this proposed rule. It is a regression model that relates environmental lead levels in dust and soil observed at a residence to the blood-lead concentration measured for a child living at the residence. Regression analysis is a statistical technique used to estimate the dependence of one variable upon others, in this case the dependence of a child's blood lead level on the environmental lead levels measured in and around his or her home. For a detailed discussion of regression analysis please see Matlack, *Statistics for Public Policy and Management* (Ref. 18).

EPA decided to use the data from the Rochester Lead-in-Dust Study as the basis for the multimedia model for the following reasons: (1) Dust on all surfaces that are being considered for the TSCA section 403 standards were measured for lead in the Rochester Study; (2) the Rochester Study includes dust-lead loadings from wipe sampling and the TSCA section 403 dust standard is expected to be based on dust-lead loading from wipe sampling; and, (3) the selection of homes and children in the Rochester Study, although targeted, was more random and more representative of a general population

than is the case with other recent epidemiological studies of lead exposure in urban environments where lead-based paint is a significant source of lead in dust and soil.

The multimedia model can be used to predict an average blood-lead concentration for an individual child who is exposed to a given set of environmental-lead levels. A constant empirical estimate of variability is applied to this average to estimate a distribution of blood-lead concentrations. In statistical terminology, this estimate of variability is referred to as the geometric standard deviation (GSD), a type of ''standard deviation'' that is used for log normal distributions. The GSD in this case characterizes biological and behavioral variability in blood lead for a given set of environmental exposures. The predicted distribution can then be used to estimate the probability of a child exceeding a specified blood-lead concentration for a given level of environmental exposure.

Because, in this case, EPA was interested in determining the environmental-lead levels that would result in a one to five percent probability of an individual having a blood-lead concentration equal to or exceeding 10 μg/dl, the Agency started with the specified range of probabilities of a child having a blood-lead concentration equal to or exceeding 10 μg/dl and calculated the level of lead in dust needed to predict this distribution.

The Agency selected a GSD of 1.6 for use in the multimedia model, consistent with the default value used in the IEUBK model. This value was based upon the GSDs calculated for various sites after differences in site-specific dust and soil-lead measurements were removed. In this way, the GSD reflects the behavioral and biological variability in children as well as repeat sampling variability, sample location variability, and analytical error. Because EPA is using the multimedia model to predict a blood lead distribution for a fixed level of lead in the environment, it is appropriate to use a GSD that accounts for these sources of variability but not differences in environmental lead levels. Median GSDs, weighted by sample size within subgroups defined by age, dust-lead concentration, and soil-lead concentration were estimated as 1.69 for Midvale, Utah, 1.53 for the Baltimore data from the Urban Soil Lead Demonstration Project, and 1.60 for Butte, Montana (see section 4.2.2, Guidance Manual for the Integrated Exposure Uptake Biokinetic Model for Lead in Children). Given these results, the Agency believes that 1.6 is a reasonable value for the GSD in this application.

EPA presents a more detailed description of the multimedia model in the Risk Analysis to Support Standards for Lead in Paint, Dust, and Soil, which can be found in the public record for this proposal (Ref. 1).

The multimedia model yielded the following results. The levels of lead in dust on uncarpeted floors associated with an individual child having from a one to five percent chance of having a blood-lead concentration equal to or exceeding 10 μg/dl range from near zero to 6.7 μg/ft^2, depending on the dust-lead loadings on window sills and the concentration of lead in soil. The range for dust loadings on window sills is from near zero to 74 μg/ft^2 depending on dust-lead loadings on floors and the concentration of lead in soil. The results of this analysis are presented in Chapter 5 of the Agency's risk analysis document (Ref. 1).

These values are far below current clearance standards in both EPA guidance and HUD Guidelines and some are near or below background levels. These results depend on the model that has been fitted to the Rochester data. If the model changes by including different variables or selecting a different shape or form, the results could be higher or lower. Therefore, an alternative approach that does not depend on a model was also employed to estimate the levels of lead in dust associated with a one to five percent probability of a child having a blood-lead concentration equal to or exceeding 10 μg/dl.

The non-modeling approach or performance characteristics analysis of the Rochester data utilizes the concept of negative predictive value (NPV), which, in this case, is defined as the probability of a child having a blood-lead concentration below a specified level given that the observed environmental lead level is below a hypothetical standard. EPA used the performance characteristics analysis to estimate the dust loading on uncarpeted floors and interior window sills that would yield an NPV from 95 percent to 99 percent with a blood-lead concentration equal to or exceeding 10 μg/dl. This range of NPVs is equivalent to a one to five percent chance of having a blood-lead concentration equal to or exceeding 10 μg/dl.

Table 2 below illustrates how NPV is computed. Homes in the Rochester study are classified into four categories according to two factors: (1) whether or not environmental-lead levels measured at the home were below or above the example standard, and (2) whether or not the home had a child with a blood-lead concentration above or below 10 μg/dl. Using the notation presented in Table 2, the sum a + c is the number of homes with environmental-lead levels below an example option for the standards. The NPV is the ratio c/(a + c) and is the portion of these homes that do not contain a child with a blood-lead concentration at or above 10 μg/dl. An NPV close to one suggests that almost all of the children living in homes with environmental-lead levels below the example standards have blood-lead concentrations less than 10 μg/dl. An NPV close to zero suggests that very few of the children living in homes with environmental-lead levels below the example standards have blood-lead concentrations less than 10 μg/dl.

The performance characteristics analysis yielded the following results. For uncarpeted floors, dust-lead loadings ranged from 50 μg/ft^2 to 400 μg/ft^2 depending on the dust-lead loading on interior window sills and the soil-lead concentration. For interior window sills, dust-lead loadings ranged from 100 μg/ft^2 to 800 μg/ft^2 depending on the dust-lead loading on uncarpeted floors and the soil-lead concentration. These ranges are significantly higher than the ranges yielded by the multimedia approach (Ref. 64).

Table 2.—Definition of Negative Predictive Value Based on Empirical Data from Lead Exposure Studies*

Blood-Lead Concentration Target Level	Media Standard	
	Below Media Standard	Above Media Standard
At/Above 10 μg/dl	a	b
Below 10 μg/dl	c	d

*In the table above, the letter ''a'' represents the number of children who have a blood-lead concentration above a given blood-lead standard and who live in a residence with an environmental lead level below a standard for that environmental medium. Letters ''b,'' ''c,'' and ''d'' represent similar counts. From these counts the negative predictive value (the probability of a resident child having a low blood-lead concentration given that the observed levels of lead in the environmental media are below the standard at the residence) is calculated as c/(a + c).

There are also limitations in the use of the performance characteristics model. Like the multimedia model, this approach is based on data collected from a single city which may not be representative of the nation and has not been subjected to rigorous review. In addition, the NPVs associated with some options are based on small sample sizes, which reduces the reliability of the estimate. It is also important to note

that the NPV is purely descriptive and not based on any assumptions about the true distribution of children's blood-lead concentrations. It merely describes the characteristics of a given data set.

e. *Soil analyses.* EPA also used two analyses to support development of the soil-lead level of concern: an analysis that used the IEUBK model and one that used the performance characteristics analysis of the Rochester data. The IEUBK model is a simulation model that estimates the uptake pathways of environmental lead and the body's biological response to environmental lead levels to predict a child's body burden of lead. The model considers exposure (i.e., levels of lead in dust, soil, air, water, and diet), intake (i.e., rates of ingestion and inhalation), uptake (i.e., absorption in the lung and gut), and biokinetics (i.e., movement through the blood and tissues and elimination). The model predicts a geometric mean (i.e., a type of average) blood-lead concentration for children exposed at the specified environmental lead levels. An assumed geometric standard deviation (GSD) is then applied to estimate the distribution of blood-lead concentrations from which a probability of exceeding a specified blood-lead concentration can be derived. As was the case with the multimedia model analysis for dust, a GSD of 1.6 was assumed for this analysis.

EPA chose to use the IEUBK model to support this rule because it is the Agency's most rigorously developed and thoroughly reviewed model for childhood lead exposure. This model has historically been used in other Agency programs and is the currently recommended tool for site-specific evaluations in the CERCLA (Superfund) and RCRA corrective action programs. Also, an earlier version of the model was peer-reviewed and found acceptable as a tool for setting air lead standards by EPA's Clean Air Science Advisory Committee of the Science Advisory Board (Ref. 57). The IEUBK model was calibrated using environmental-lead and blood-lead data from two western communities: Midvale, UT, a suburb of Salt Lake City (Ref. 65), and East Helena, MT, a small town outside of the State capitol at Helena (Ref. 66). Subsequent evaluations have shown that the IEUBK model provides reasonable descriptions of other sites, including urban sites (Ref. 67). The most current version, Version 0.99d, of the IEUBK model was used in the TSCA section 403 risk assessment.

The IEUBK model yielded the following results. Soil-lead concentrations generally at or below 500 parts per million (ppm) will result in a one to five percent probability that a child will have a blood-lead concentration that equals or exceeds 10 µg/dl depending on the level of lead in dust. The results of this analysis are presented in Chapter 5 of the Agency's risk analysis document (Ref. 1).

Of course, there are inherent uncertainties in any model that simulates extremely complex relationships such as that between environmental lead and blood lead. Not all of the relevant physiological factors are thoroughly understood and others are necessarily simplified. Also, there is child-to-child variability in factors related to both exposure and biokinetic response (e.g., hand-to-mouth activity, nutritional status). While the IEUBK model application attempts to address these through selection of the GSD, it is expected that deviations from the predicted blood-lead distributions would most likely manifest themselves at the extremes, or ''tails,'' of the distribution.

Recognizing that such uncertainties exist, the Agency choose to also make use of a non-modeling approach with data from the Rochester study. A performance characteristics analysis was conducted, as was described earlier for dust. The analysis yielded the following results. Soil-lead concentrations ranged from 200 ppm to 1,500 ppm depending on dust-lead loadings on uncarpeted floors and interior window sills and the exceedance probability. The wide range of soil-lead levels is largely the result of a small number of data points.

2. *Dust-lead and soil-lead hazard standards.* As discussed in section A of this unit, EPA believes it is reasonable to use cost-benefit balancing to develop a range of viable options for the dust and soil hazard standards. The risk reduction achieved as a result of interventions designed to control or eliminate hazards constitutes the benefits of the hazard standard. Dust interventions reduce risk by reducing dust-lead levels. Soil interventions reduce risk both by reducing soil-lead levels and by reducing lead contamination of household dust.

To estimate benefits, the Agency built on the analysis used to support development of the dust and soil-lead levels of concern. EPA used the models that relate environmental lead to blood lead to estimate the current or baseline distribution of blood-lead concentrations for young children and the predicted blood-lead distribution following hazard control interventions implemented in response to the standards. Risk reduction, quantified in terms of avoided health effects, is measured by looking at the change in blood-lead distributions. EPA's normative economic analysis calculated benefits by assigning a dollar value to the avoided adverse health effects and compared these benefits to the costs of hazard control interventions.

Before presenting the detailed description of the analysis, EPA wishes to highlight two issues that the public should consider when reviewing this proposed regulation. First, the Agency's analysis estimates the benefits of primary prevention. Primary prevention is the term used to characterize actions taken to protect people that have not yet been exposed to a hazard. In this analysis, baseline risk is the level of risk that the Agency would expect children to experience in the absence of lead hazard control (i.e., risk associated with exposure to current conditions). The post-intervention risk is the level of risk that children, who have had no previous exposure to lead-based paint hazards, are expected to experience with these controls in place. In essence, the analysis estimates the level of risk prevented rather than the level reduced. Where hazards are controlled, the exposure to lead-based paint hazards never occurs.

The analysis does not estimate the benefits of secondary prevention, the term used to characterize actions taken to protect people already exposed to a hazard. Primary prevention is thought to be more effective than secondary prevention because, with primary prevention, children's risk remains at the pre-exposure level. With secondary prevention, risk does not drop to pre-exposure levels because lead that is stored in bone tissue continues to be released into blood for some period of time even after environmental levels decline.

Many of the available exposure studies focus on the impacts of secondary prevention, relating environmental lead to blood lead prior to and after hazard control interventions. Because the subjects in these studies have had prior exposure, the magnitude of the risk reduction is smaller than estimated in EPA's analysis, which focuses on children who have not had previous exposure.

Second, the majority of the benefits estimated by EPA are derived from avoided IQ point loss resulting from prevented exposure to lead. The dollar value placed on these benefits is a tool to assist EPA in comparing costs and benefits for purposes of this proposed rule. It is not in any sense a real value of the risk reduction or an Agency standard for other actions. There are

plainly many benefits that are not measured in the analysis because EPA lacks the tools and or data or because some benefits are subjective in nature. On the other hand, EPA assigns risk reduction value to fractional losses of an IQ point--tenths and even hundredths of a point, and it is unclear the extent to which such small changes affect quality of life of a single individual. By this combination of underestimating and overestimating dollar values of potential risk reduction benefits, EPA hopes to arrive at some reasonable range of values that can be used to inform decision-making.

a. *Estimating risk reduction*. EPA's risk analysis that was conducted to support this proposed rule provides a methodology for measuring risk reduction (i.e., declines in blood-lead concentrations). Under this methodology, EPA estimates the current national distribution of blood-lead concentrations for the population of children ages one to two. The Agency then uses this methodology to predict future changes in the blood-lead distribution resulting from the implementation of hazard interventions and expected changes in the nation's housing stock.

EPA used two models to estimate blood-lead concentrations: the IEUBK model and an empirical model based on the Rochester data. The empirical model is based on the multimedia model, which was described earlier in this unit. In order for the multimedia model to be used for national estimates, it was necessary to modify it to employ environmental measures from the HUD National Survey (Refs. 8-9 and 19). The resulting modified model is termed the empirical model. For a full explanation of the differences between the multimedia model and the empirical model, please see Chapter 5 of the Agency's risk analysis document (Ref. 1). As noted above, the multimedia model could not be used to support the development of the soil-lead of concern. The Agency is requesting comment on the use of the empirical model to support development of the soil-lead hazard standard.

To estimate the national distribution of blood-lead concentrations, EPA had to run the empirical model with nationally representative data on lead in dust and soil. The Agency used the HUD National Survey, which is recognized as the leading source of data on environmental lead levels in residential environments. The design and findings of the HUD National Survey have been peer-reviewed and published in several government reports.

For each house in the National Survey, EPA estimated the average blood-lead concentration by using the HUD data on dust lead and soil lead as inputs into the empirical and IEUBK models. EPA then applied the GSD of 1.6 to estimate a geometric mean blood-lead concentration for each home to derive a distribution of blood-lead concentrations for each home. An estimate of the baseline national distribution of blood-lead concentrations was constructed by aggregating the distributions from each home using population weights based on the 1993 American Housing Survey (Ref. 68), adjusted to the 1997 population of children (aged 1 to 2 years). EPA then scaled the estimated national baseline distribution using the blood-lead data from NHANES.

EPA used the following process to estimate the national blood-lead distribution associated with each option for dust and soil hazard standards. The soil and dust levels for each home in the survey were compared to a set of hazard standard options for dust and soil. For each set of options, the dust-lead level was adjusted down to reflect implementation of a dust control intervention if the dust-lead level exceeded the option for dust. If the soil-lead level exceeded the option for soil, both the soil and dust lead levels were adjusted down to reflect implementation of a soil control intervention. If a level did not exceed an option, no adjustments to the data were made. Once this comparison was made, the adjusted data were run through both models to obtain an estimated blood-lead concentration predicted by the model. The GSD of 1.6 was then applied to generate the blood-lead distribution for each HUD survey home. The blood-lead distributions for all homes in the survey were then aggregated using the same weights as in the baseline analysis described previously.

The use of the IEUBK model to estimate the risk reduction associated with various options for the dust-lead hazard standard merits additional explanation. As noted earlier, the IEUBK model could not be used to develop options for the dust-lead level of concern because the dust standards are in terms of loading and the IEUBK model uses dust concentration as its input. How, then, can the IEUBK model be used to analyze options for the dust-lead hazard standard? In contrast to the dust-lead level of concern, where a model that directly relates a dust-loading value to a distribution of blood-lead concentrations is needed, analysis of the options for the dust-lead hazard standard requires a model to estimate changes in the blood-lead distribution for the population of young children. EPA is able to do this with the IEUBK model by using the model with the HUD National Survey data.

The HUD National Survey data contain both dust-lead loading and concentration data for each home. To establish the baseline distribution of blood-lead concentrations, EPA used the dust-lead concentration value for each home as input for the IEUBK model. To estimate the blood-lead distribution associated with a set of hazard standard options for dust and soil, EPA identified the homes that would exceed the paint, dust (loading), and/or soil standards. For these homes, the analysis assigned a post-intervention dust-lead concentration based upon the post-intervention soil concentration and the presence or absence of deteriorated paint. The analysis then used these assigned dust-lead concentrations as input to the IEUBK model to generate post-intervention blood-lead distributions for each of the homes. For the homes where no standard was exceeded, the measured dust-lead concentration from the HUD survey was used. The details of the procedure used to assign post-intervention dust-lead concentrations are fully explained in Chapter 6 of the Agency's risk analysis document (Ref. 1). The Agency is requesting comment on the use of this application of the IEUBK model to support development of a dust-lead *loading* hazard standard.

While all young children could be affected by exposure to lead, the population of interest for this analysis was U.S. children aged 1 to 2 years. The selection of this age range as the population of interest derived from the following general observations: the central nervous system is rapidly developing in this age range, making it highly susceptible to the effects of lead; synaptic density of the frontal lobe of the brain peaks in a child's second year, and synaptic development can be disrupted or delayed as a result of lead exposure; the existence of a relationship between blood-lead concentration measured at 1 to 2 years of age and IQ scores measured later in life; blood-lead concentration tends to peak in this age range, due to an increased ability to absorb lead; and, hand-to-mouth activity is high in this age range, thereby increasing the potential for ingesting lead-contaminated dust, soil, and paint.

b. *Estimating costs and benefits*. The normative economic impact analysis estimates the benefits and costs associated with a broad range of options for hazard standards. Benefits and costs are estimated over a 50–year time frame.

Net benefits are computed by subtracting the costs from the benefits for each option and discounting each to the present using a three percent rate.

The benefits include a value for each of three health outcomes associated with declines in blood-lead concentration: avoided IQ points lost; avoided incidence of IQ below 70; and avoided incidence of blood-lead concentrations exceeding 20 μg/dl. The costs include the expenditures on the hazard control interventions implemented by property owners and other decision-makers in response to the standards. Interventions include dust cleaning, interior and exterior paint repair and abatement, and soil abatement.

The underlying engine of the normative economic analysis is the ''birth trigger'' model. The chief feature of this model is the assumption that property owners do not undertake hazard control actions until a young child who could be harmed by the hazard is present. The timing of testing and intervention, therefore, is governed by the birth rate. In the first year of a model run, the model randomly assigns the arrival of a child to some of the 284 homes in the HUD National Survey data set. In homes where a child's arrival is predicted to occur, the model uses the risk analysis methodology to estimate a post-intervention blood-lead distribution for that home. In the other homes, interventions are not undertaken, regardless of the environmental conditions, and there is no change from the baseline blood-lead distribution. Using the risk analysis methodology, the blood-lead distributions for each home in the survey are aggregated to develop a new national blood-lead distribution after the first year. The Agency compares the post-intervention blood-lead distribution in each year to the baseline blood-lead distribution to compute the reduction in blood-lead concentrations associated with the option being evaluated. The analysis is then repeated for each of the following years through year 50.

The operation of the model in each of the subsequent years differs from the initial year in two respects. First, the analysis determines whether interventions need to be repeated. For example, paint repairs are assumed to last 4 years, and therefore need to be repeated to maintain their effectiveness. Second, the weights assigned to each home in the survey, which reflect the proportion of the national housing stock represented by that sample home, change to reflect ongoing changes in the housing stock. With each passing year, new homes are built and old homes are destroyed. In fact, the modernization of the housing stock results in ''natural'' interventions as older homes that have lead-based paint are replaced by new homes that do not.

The analysis then converts the change in blood-lead concentrations into the three health endpoints: avoided lost IQ points, avoided incidence of IQ below 70, and avoided incidence of blood-lead concentrations above 20 μg/dl. The term ''avoided'' is the difference in health measures between the baseline scenario which assumes no intervention activity and post-intervention scenarios, each of which assumes a different combination of lead hazard standard options and hence intervention activities.

To estimate the economic value of avoiding lost IQ points, the analysis must first convert changes in blood-lead concentration to changes in IQ. The analysis then assigns a monetary value to the IQ point loss by using an estimate of the foregone lifetime income due to IQ point loss. The computation of IQ point loss is based on an average decrease of 0.257 IQ points per increase of one μg/dl in blood-lead concentration (Ref. 48).

IQ affects income through ability, education, and labor force participation. The estimation procedure, therefore, has two major steps. First the present value of the earnings stream of an average newborn is estimated. Second, available economic literature was used to estimate the percentage increase in lifetime earnings one would expect from a one point increase in IQ. Based on this procedure, the analysis assigns a value of $8,346 per IQ point lost (1995 dollars) (Refs. 48, 69-71).

EPA's estimate of the incidence of IQ score less than 70 is based on results in a paper by Wallsten and Whitfield (1986) on the relationship between reduced IQ scores and blood-lead concentration (Ref. 72). The economic value of avoiding cases of IQ less than 70 is approximated by using avoided special education costs. As defined, these education costs are incurred from age 7 through age 18.

Avoided cases of blood-lead concentration exceeding 20 μg/dl is obtained directly by comparing the distribution of post-intervention blood-lead concentrations with the baseline distribution of blood-lead concentrations. The monetary value was approximated by using avoided compensatory education costs. In this case, the education costs are assumed to be incurred from age 7 through age 9. In addition, there are medical monitoring and intervention costs associated with children who have blood-lead concentrations that exceed 20 μg/dl (Refs. 2, 73, and 74).

Benefits accrue over time as hazard control interventions are conducted, reducing children's exposure to lead in paint, dust, and soil. All benefit estimates are discounted to the present using an annual rate of three percent. Total benefits are the sum of benefits calculated for each year or cohort of children protected and represent the present value of the stream of benefits from the hazard controls.

The costs in this normative analysis are principally the costs of conducting interventions designed to control lead-based paint hazards. Interventions assumed to be are conducted only in those media (i.e., paint, dust, soil) where hazards are identified. For example, if lead levels in the soil exceed the hazard standards, then the soil will be removed and replaced with ''clean'' soil, but there will not be an interior paint intervention in response to elevated levels of lead in soil. Some interventions, however, include dust cleaning even if no dust hazard has been identified initially because the intervention may increase levels of lead in dust.

For purposes of this normative analysis, EPA identified six hazard control interventions. These interventions include paint repair or abatement of interior paint and exterior paint and a single intervention each for soil and dust. It was assumed that abatement of interior and exterior paint hazards occur when deteriorated lead-based paint is extensive. Paint repair occurs when deteriorated lead-based paint is present but not extensive. Soil intervention activities occur when the soil-lead concentration exceeds the soil standard. Dust hazard control occurs when the floor dust-lead loading exceeds the floor dust-lead standard, the window sill-lead loading exceeds the window sill dust-lead standard, or when it is required to accompany another intervention type, such as abatement of interior paint or soil removal. Some of the intervention actions result in permanent control of lead hazards; others need to be repeated periodically to maintain their effectiveness. According to the methodology, non-permanent interventions are repeated as necessary in a home until the child is 6 years of age.

Drawing on a variety of sources, EPA obtained unit cost estimates, that is cost per intervention per home, for the six hazard control interventions identified for the analysis (Refs. 75-79). EPA also obtained cost estimates for hazard evaluation activities (Refs. 80-83). The Agency developed separate cost

estimates for single- and multi-family housing units, by adjusting the single-family unit cost estimates to reflect the smaller size of multi-family units and the smaller yards (per unit) of multi-family units. Table 3 below summarizes these costs for single-family and multi-family housing.

Table 3.—Hazard Evaluation and Control Costs

(Per activity in 1995 dollars)

Activity	Single-Family	Multi-family (per unit)
Risk assessment	456	235
Interior paint repair	437	437
Interior paint abatement	6,587	4,687
Exterior paint repair	807	182
Exterior paint abatement	45,706	12,275
Dust cleaning	391	262
Soil removal (dripline; nonhazardous waste)	2,046	399
Soil removal (mid-yard; nonhazardous waste)	7,878	777
Soil removal (both areas; nonhazardous waste)	9,008	901
Soil removal (dripline; hazardous waste)	3,443	541
Soil removal (mid-yard; hazardous waste)	16,486	1,351
Soil removal (both areas; hazardous waste)	19,013	1,617

The costs of intervention for a specific residence are a function of when a residence is evaluated, the environmental lead conditions in the residence, and the length of time that an intervention is effective (duration). The arrival of a child determines when a hazard evaluation will be conducted. The choice of intervention activities depends on the environmental lead conditions in each medium. The frequency with which interventions need to be repeated depends on the duration of the intervention. Costs for a residence accrue over time as interventions are repeated.

For example, paint abatement is assumed to have a duration of 20 years. Therefore, if post-intervention conditions are to be maintained because a child under age 6 is present, paint abatement is assumed to be repeated 20 years after the initial intervention, and again 40 years after the initial paint abatement. Costs incurred after the first year are discounted back to the present using an annual discount rate of three percent. The total cost estimate is the sum of the discounted cost of hazard controls conducted each year.

In estimating costs of each hazard standard option, the model assumes that either a lead hazard screen (for single-family units without deteriorated lead-based paint) or a risk assessment (all other units) is performed. Testing is done at the time the arrival of a child is expected and testing is not repeated for a unit.

The analysis' computation of net benefits is the difference between the total benefits estimate and the total cost estimate. Net benefits are an indicator of the societal gains from hazard controls.

When interpreting the results of EPA's analysis, it is important to consider a number of limitations, qualifications, and uncertainties which affect both the estimates of benefits and costs.

With respect to benefits, issues are associated with the methodology used to estimate baseline and post-intervention blood-lead concentrations and with efforts to place a monetary value on IQ points lost. There are important concerns with respect to the cost analysis as well.

There are four areas of concern with respect to the methodology used to estimate blood-lead distributions. The first area is associated with the HUD National Survey data. These include limited numbers of environmental samples taken at each housing unit, the sampling of only 284 houses to represent the nation's pre-1978 housing stock, the age of the study, and use of a dust collection device other than the wipe collection method being adopted by the TSCA section 403 proposal.

The limited number of environmental samples can result in the mischaracterization of dust and soil-lead levels at a home in the survey. Combined with the small number of homes sampled, mischaracterization of dust and soil-lead levels can result in large errors in EPA's estimates. The age of the study can also introduce error because environmental-lead levels have most likely changed since the data were collected in 1989-1990. The use of a dust collection device other than wipe samples required the development of an equation to convert these values to wipe-equivalent values which introduces additional error into the estimates. The introduction of error into the estimates contributes to overall uncertainty in the analytical results.

A second and significant source of uncertainty is the paucity of data with respect to the effectiveness of hazard control activities at reducing exposures to lead in paint, dust, and soil. For example, EPA's estimate of the effectiveness of interventions on dust-lead loading is based on a limited number of studies. The Agency's estimate of effectiveness of interventions on dust-lead concentrations is, in part, based on limited data and, in part, based on the best judgment of Agency scientists. Due to the lack of data about the effectiveness of interim controls to reduce exposure to lead in soil, the Agency did not include these interventions in its analysis. The Agency would, however, be interested in any data the public may have concerning the effectiveness of interim controls that address exposure to lead in soil.

Third, uncertainty is introduced by using NHANES III, Phase 2 data to calibrate the national distribution of baseline blood-lead concentrations. While the national representation of NHANES III results is widely accepted, some possible limitations in using these data include ignoring any seasonality effects on blood-lead concentrations and any further decline in concentrations that may have occurred since 1994.

Fourth, the two models are sources of uncertainty. The limitations of the IEUBK model were discussed previously in this preamble. The empirical model shares the limitations of the multimedia model discussed previously.

Questions regarding the value of IQ points fall into two categories: the relationship between blood-lead changes and IQ point changes and the monetary value assigned to IQ point losses.

There are two significant limitations involved in assigning a monetary value to IQ point losses. The first concerns the

ability to assign value to fractional losses of an IQ point. The analysis assigns value to tenths and even hundredths of an IQ point which may not be of much significance at the individual level. The second concerns the value of IQ points across the range. The analysis assigns equal value to any IQ point change; the value of an IQ dropping from 140 to 135 is treated the same as an IQ dropping from 80 to 75. In contrast, it is possible that the value of a point may vary depending where in the range the point is lost.

On the other hand, the Agency notes that there are a range of other health effects (e.g., neurological, developmental, and others) that are not considered in its economic analysis (see Appendix B of the Risk Analysis to Support Standards for Lead in Paint, Dust, and Soil) (Ref. 1). Declines in children's lead exposures will also reduce the incidence of these effects. In addition, the economic analysis does not include the benefits of secondary prevention (benefits obtained by reducing environmental and blood-lead levels in a child already living in a contaminated environment). Consequently, the value associated with avoided IQ losses in the economic analysis can reasonably be considered to serve as a surrogate for benefits associated with these other effects. Therefore, to the extent that IQ-related benefits may be overestimated due to the two limitations discussed above, the non-valued benefits associated with these other effects would tend to mitigate such overestimates.

With respect to the estimate of costs, there are several sources of uncertainty. EPA's analysis identifies only a few of the dozens of responses that property owners and other decision-makers could undertake. The costs for these activities are based on current data and could change as competition among providers increases or new technologies are developed. The frequency with which temporary measures need to be repeated, which also affects costs, depends on assumptions the Agency made about the duration of the measures' effectiveness. These assumptions, in turn, are based upon judgments and extrapolations from limited data.

c. *Results.* This section of the preamble discusses the results of EPA's normative economic analysis of the options for dust and soil-lead hazard standards. Before presenting the results, however, the Agency believes that it is important to consider two issues when interpreting these results.

First, undue emphasis should not be placed on the estimates for total costs and benefits. As noted earlier, the costs and benefits estimated by the normative analysis are likely to overstate the actual costs and benefits associated with the standards. The Agency's analysis also assumes that technologies and costs will remain unchanged over the 50–year modeling horizon. Over time, as new technologies develop, costs may decline. In addition, many health benefits were not included in the analysis because either the relationship between exposure and the magnitude of health effects is unknown or because the benefits cannot be monetized.

Estimates of costs and benefits associated with the standards are also heavily influenced by the number of homes estimated to exceed any standard option. The estimated number of homes is based on the HUD National Survey. Although this Survey is the best nationally representative data on residential lead, it is characterized by several shortcomings that were described earlier. Among the most significant of these is the small sample size, which, as was noted, can introduce errors into EPA's estimates. For example, only seven homes in the Survey have soil that exceeds 2,000 ppm. Based on the age, location, and other characteristics of these homes, EPA estimates that these seven homes represent 2.5 million homes nationally which yields $9 billion in soil intervention costs over the 50–year model period. If HUD conducted another survey, it is possible that only three homes in the survey, representing 1 million homes nationally, exceed 2,000 ppm, reducing costs by 60 percent. Benefits would also be lower because fewer children would be protected. It is also possible that 10 homes in the survey, representing 3 million homes nationally, exceed 2,000 ppm, resulting in higher costs and benefits.

By providing these explanations, EPA does not intend to dismiss the costs associated with this proposed rule. Although the expected costs associated with the standards are likely to be significantly less than costs estimated by the normative analysis, these costs would probably still be substantial. That is why the Agency considered costs in evaluating options for the hazard standards and in selecting a preferred option. It should be remembered, however, that these activities will protect millions of children who will live in abated homes over the next 50 years. As was noted earlier, EPA's analysis did not focus on children already exposed to excessive levels of lead but on children who have not been born. In the absence of the standards and assuming other exposures to lead remain unchanged, approximately 10 million children are estimated to have elevated blood-lead levels over the next 50 years. Of these, one million are estimated to have levels that require medical attention (Chapter 5, Ref. 83).

Second, the results obtained using each model should be evaluated individually to compare performance of the options. Options should not be compared across models. The models represent two fundamentally different approaches to estimating the relationship between dust and soil-lead and blood-lead which are not comparable: one is mechanistic and the other empirical. As explained above, the two models also use different data for input. The IEUBK model uses dust-concentration data from the HUD survey to estimate baseline blood-lead and assumed dust-concentrations to estimate post-intervention blood-lead concentrations. The empirical model uses dust-loading data from the HUD survey to estimate baseline blood-lead and assumed dust-loadings to estimate post-intervention blood-lead. This difference is one reason why the IEUBK model-based analysis estimates greater risk reduction than the empirical model-based analysis.

The objective of the analyses is to provide EPA with a tool to compare options in terms of relative costs and benefits of each option, not to develop precise absolute estimates of costs and benefits. Despite the limitations and uncertainties noted here and in previous sections of this unit, EPA believes that the results for options within each model can be compared. The limitations may affect the estimates of absolute costs and benefits, but these limitations should have similar effects on the estimates for each option. Therefore, the impact of the limitation and uncertainties on the relative performance of each option, in terms of net benefits, estimated by each model should be small, except where noted in the discussion below.

Tables 4 and 5 below present the results of the IEUBK-based analysis for a range of dust and soil hazard standard options. Table 4 presents the costs, benefits, and net benefits for actions taken in response to the specified options for dust standards; it does not include any soil interventions. Because the IEUBK model does not include a parameter for sill dust, it was used only to analyze floor dust options. Table 5 presents figures relating to soil standards; it does not include any dust interventions. Neither table includes any testing or risk assessment costs, nor costs or benefits of paint interventions.

Table 4.—Estimated Costs, Benefits, and Net Benefits for Dust-Lead Hazard Standard Alone (Using the IEUBK Model)*

Floor Dust Options (μg/ft²)	Number of Homes Exceeding Option (Millions)	IEUBK Model Results (50-years; $Billion)		
		Costs	Benefit	Net Benefit
50	21	12	73	61
100	19	10	59	48

*Note: Rows may not add due to rounding. This table does not include estimated costs or benefits of paint and soil interventions, or any risk assessment costs.

Table 5.—Estimated Costs, Benefits, and Net Benefits for Soil-Lead Hazard Standard Alone (Using the IEUBK Model)*

Soil Option (ppm)	Number of Homes Exceeding Soil Option (Millions)	IEUBK Model Results (50-years; $Billion)		
		Costs	Benefit	Net Benefit
500	11.8	42	149	107
1,000	5.8	28	92	65
1,200	4.7	25	82	57
1,500	3.2	16	63	47
2,000	2.5	9	45	36
2,500	1.5	6	30	24
3,000	0.7	4	19	15
3,500	0.7	4	19	15
4,000	0.7	4	19	15
4,500	0.3	1	6	6
5,000	0.2	0.4	4	4

*Note: Rows may not add due to rounding. This table does not include estimated costs or benefits of paint and dust interventions, or any risk assessment costs.

Total benefits increase as options become increasingly stringent, ranging from $59 billion to $73 billion for dust and from $4 billion to $149 billion for soil. Total benefits are a function of the number of children (which is directly related to the number of homes) affected by an option and the amount of risk reduction predicted for each child. Furthermore benefits increase at an increasing rate because, as dust and soil-lead levels decline, the number of homes at given environmental lead levels increases more quickly. For example, moving from a soil standard of 5,000 ppm to 4,500 ppm increases the number of homes exceeding the standard from about 200,000 to about 300,000 (an increase of about 100,000 housing units), while moving from 1,000 ppm to 500 ppm increases the number of homes exceeding the standard from about 5.8 million to 11.8 million (an increase of about 6 million housing units).

The rate also increases because the changes in blood-lead concentration predicted by the IEUBK model are greater for a given change in dust and soil-lead levels at lower dust and soil-lead levels. The increasing strength of this relationship between environmental lead and blood lead is sufficient to overcome the smaller changes between baseline and post-intervention dust and soil-lead levels that occur as the standard options become more stringent. For example, the assumed change in soil-lead level for a home that has a soil-lead concentration of 2,500 ppm is 2,350 ppm (the assumed post-intervention concentration is 150 ppm). The assumed change for a home that has a soil-lead concentration of 500 ppm is only 350 ppm.

Total costs also increase as options become increasingly stringent, ranging from $10 billion to $12 billion for dust and $400 million to $42 billion for soil. Total costs are mainly a function of unit costs (costs for a single intervention) and the number of homes affected. For dust, unit costs ($391 for single-family homes and $262 for multi-family units) are the same regardless of the standard being evaluated. For soil, unit costs vary depending on the part of the yard (e.g., dripline, mid-yard) being addressed by the abatement and on whether the removed soil has to be managed as hazardous waste under regulations found at 40 CFR part 260 to 40 CFR part 270. The unit cost is lower for lower soil-lead levels (below 2,000 ppm) because the removed soil does not have to be managed as hazardous waste. Table 3 above presents the complete range of unit costs for soil removal. As is the case for benefits, total costs increase as the standard options become more stringent because more homes exceed each optional standard.

Unit cost should not be confused with average cost per residence. Unit cost is the cost per intervention per residence. Average cost is the cost per residence over the entire 50–year modeling horizon and takes into account factors such as the need to repeat interventions (dust), averaging a range of unit costs (soil), and discounting (both dust and soil). Because the duration of dust intervention effectiveness is limited if the underlying source of lead is not eliminated, dust cleaning may have to be repeated, raising the average cost per residence. Average cost for soil abatement per residence will reflect a mix of soil intervention costs which vary depending on the area of the yard addressed and the type of disposal required. Interventions performed in the future are discounted back to the present. For example, the present value of a dust cleaning performed in a single-family house 40 years from now would be approximately $120 assuming a three percent discount rate.

Because total benefits increase at a faster rate than total costs, net benefits also increase as options become increasingly stringent, ranging from $41 billion to $61 billion for dust and $4 billion to $107 billion for soil. The increase in net benefits is relatively constant as the dust standards become more stringent. For soil, net benefits increase slowly from 5,000 ppm to 3,000

ppm and increase more quickly from 3,000 ppm to 500 ppm. Net benefits increase because total benefits are increasing at a faster rate than total costs. This result is primarily explained by the relationship between lead in dust and soil and blood-lead which strengthens as dust and soil-lead levels decline under the IEUBK model.

Given the large number of residences at the lower baseline dust and soil-lead levels and the small changes in these levels that would result from interventions, the results of the analysis for the more stringent options are extremely sensitive to the assumed relationship between dust and soil-lead and blood lead. If the true relationship is slightly weaker, total and net benefits could be significantly lower.

Tables 6 and 7 below present the results of the empirical model-based normative analysis for a range of possible dust and soil hazard standard options. Table 6 presents the costs, benefits, and net benefits for actions taken in response to the specified options for dust standards; it does not include any soil interventions. Table 7 presents figures relating to soil standards; it does not include any dust interventions. Neither table includes any testing or risk assessment costs, nor costs or benefits of paint interventions.

Total benefits increase as options become increasingly stringent, ranging from $25 billion to $36 billion for dust and $1 billion to $36 billion for soil. As is the case in the IEUBK model-based analysis, the rate at which benefits increase rises as the stringency of the options increase, because more homes are affected (and more children are protected). The rate at which benefits increase, however, is tempered somewhat because the relationship between dust and soil-lead and blood-lead remains relatively constant across the range of options considered. The increasing number of children protected by more stringent standards is counterbalanced by decreasing risk reduction predicted for children living in homes with low dust and soil-lead levels because the smaller changes between baseline dust and soil-lead levels and post-intervention levels at lower baseline levels equate to smaller changes in blood-lead concentration. Costs are the same as in the IEUBK-based analysis because the models are used only to calculate benefits.

Table 6.—Estimated Costs, Benefits, and Net Benefits for Dust-Lead Hazard Standard Alone (Using the Empirical Model)*

Option (μg/ft²)		Number of Homes Exceeding Option (Millions)	Empirical Model Results (50-years; $Billion)		
Floor Dust	Sill Dust		Costs	Benefit	Net Benefit
50	100	34	19	36	17
50	250	21	12	34	22
100	250	19	10	32	22
50	500	16	9	31	22
100	500	14	8	28	21
100	1,000	11	6	25	19

*Note: Rows may not add due to rounding. This table does not include estimated costs or benefits of paint and soil interventions, or any risk assessment costs.

Table 7.—Estimated Costs, Benefits, and Net Benefits for Soil-Lead Hazard Standard Alone (Using the Empirical Model)*

Soil Option (ppm)	Number of Homes Exceeding Soil Option (Millions)	Empirical Model Results (50-years; $Billion)		
		Costs	Benefit	Net Benefit
500	11.8	42	36	-6
1,000	5.8	28	22	-6
1,200	4.7	25	19	-7
1,500	3.2	16	14	-1
2,000	2.5	9	10	2
2,500	1.5	6	5	-0.2
3,000	0.7	4	3	-1
3,500	0.7	4	3	-1
4,000	0.7	4	3	-1
4,500	0.3	1	1	1
5,000	0.2	0.4	1	0.5

*Note: Rows may not add due to rounding. This table does not include estimated costs or benefits of paint and dust interventions, or any risk assessment costs.

Net benefits for dust range from $17 billion to $22 billion. Of the six combinations of dust standard options evaluated, net benefits are relatively constant for all the combinations except the most and least stringent. For the four other options, benefits and costs increase at approximately the same rate, resulting in little change in net benefits. Net benefits for soil range from $-7 billion to $2 billion, approaching maximum levels near 5,000 ppm and 2,000 ppm. Below 2,000 ppm, net benefits decrease because total benefits increase at a slower rate than total costs. The increased number of children protected at more stringent standards is offset by a smaller predicted reduction in risk at lower environmental levels.

As stated above, the results presented in this section show the estimated costs, benefits, and net benefits associated with a range of dust standards resulting from dust interventions only and with a range of soil standards resulting from soil interventions only. These are the estimates EPA used in its decision-making process when selecting the preferred options for the proposed dust-lead and soil-lead hazard standards. These single-medium estimates enable the Agency to attribute costs, benefits, and net benefits to the interventions in

a specific medium and allowed EPA to compare options when developing the media-specific standards.

The Agency, however, believes that it would be useful for the public to examine the estimates of costs, benefits, and net benefits for dust and soil interventions combined. Table 8 presents the estimates developed by the IEUBK model-based approach for a range of floor dust standards assuming a sill dust standard of 250 μg/ft² and a soil standard of 2,000 ppm. Table 9 presents the estimates developed by the IEUBK model-based approach for a range of soil standards assuming a floor dust standard of 50 μg/ft² and a sill dust standard of 250 μg/ft². Table 10 presents the estimates developed by the empirical model-based approach for a range of floor and window sill dust standards assuming a soil standard of 2,000 ppm. Table 11 presents the estimates developed by the empirical model-based approach for a range of soil standards assuming a floor dust standard of 50 μg/ft² and a sill dust standard of 250 μg/ft². The estimates presented in these tables are based on the Agency's economic analysis.

It is important to note that the costs and benefits for the combined dust and soil standards in tables 8 through 11 are less than the sum of the costs and benefits for the corresponding media-specific dust and soil standards presented in tables 4 through 7. This difference occurs because soil abatements are assumed to include dust cleaning. Therefore, the estimate of benefits derived from addressing soil hazards alone includes some benefit from dust cleaning, which is also included in the estimate of dust benefits alone. When EPA estimates the benefits for the combined dust and soil standards, dust cleaning that would be triggered by either proposed standard is only counted once. The overlapping dust benefit, however, accounts for only a small part of the overall benefit of the proposed dust standard. Many homes that exceed the proposed dust standard do not exceed the proposed soil standard; therefore, only a dust cleaning would be performed in these homes and benefits derived from establishing a dust hazard standard would not be double counted.

EPA wishes to reiterate that the estimates presented in Tables 8 through 11 are presented for informational purposes only and were not used to guide Agency decision-making for this proposal. The Agency requests comments on this alternate approach for presenting benefits, costs, and net benefits.

Table 8.—Estimated Costs, Benefits, and Net Benefits for Dust-Lead Hazard Standard Options (Using the IEUBK Model)*

(assumes a soil-lead hazard standard of 2,000 ppm)

Floor Dust Options (μg/ft²)	Number of Homes Exceeding Dust or Soil Option (Millions)	IEUBK Model Results (50 years; $Billion)		
		Costs	Benefit	Net Benefit
50	18	19	108	89
100	16	18	95	77

*Note: Rows may not add due to rounding. This table does not include estimated costs or benefits of paint interventions, or any risk assessment costs.

Table 9.—Estimated Costs, Benefits, and Net Benefits for Soil-Lead Hazard Standard Options (Using the IEUBK Model)*

(assumes dust-lead hazard standards of 50 μg/ft² for floors and 250 μg/ft² for window sills)

Soil Option (ppm)	Number of Homes Exceeding Dust or Soil Options (Millions)	IEUBK Model Results (50 years; $Billion)		
		Costs	Benefit	Net Benefit
500	22	50	193	143
1,000	19	38	150	112
1,200	19	35	142	106
1,500	18	26	124	98
2,000	18	19	108	89
2,500	18	17	95	78
3,000	18	16	86	70
3,500	18	16	86	70
4,000	18	16	86	70
4,500	17	12	75	62
5,000	17	12	73	61

*Note: Rows may not add due to rounding. This table does not include estimated costs or benefits of paint interventions, or any risk assessment costs.

Table 10.—Estimated Costs, Benefits, and Net Benefits for Dust-Lead Hazard Standard Options (Using the Empirical Model)*

(assumes a soil-lead hazard standard of 2,000 ppm)

Option (μg/ft²)		Number of Homes Exceeding Dust or Soil Options (Millions)	Empirical Model Results (50 years; $Billion)		
Floor Dust	Sill Dust		Costs	Benefit	Net Benefit
50	100	28	27	43	16

Table 10.—Estimated Costs, Benefits, and Net Benefits for Dust-Lead Hazard Standard Options (Using the Empirical Model)*—Continued

(assumes a soil-lead hazard standard of 2,000 ppm)

Option (μg/ft²)		Number of Homes Exceeding Dust or Soil Options (Millions)	Empirical Model Results (50 years; $Billion)		
Floor Dust	Sill Dust		Costs	Benefit	Net Benefit
50	250	18	19	39	19
100	250	16	18	37	19
50	500	14	17	36	19
100	500	12	15	33	18
100	1,000	10	14	30	16

*Note: Rows may not add due to rounding. This table does not include estimated costs or benefits of paint interventions, or any risk assessment costs.

Table 11.—Estimated Costs, Benefits, and Net Benefits for Soil-Lead Hazard Standard Options (Using the Empirical Model)*

(assumes dust-lead hazard standards of 50 μg/ft² for floors and 250 μg/ft² for window sills)

Soil Option (ppm)	Number of Homes Exceeding Dust or Soil Options (Millions)	Empirical Model Results (50 years; $Billion)		
		Costs	Benefit	Net Benefit
500	22	50	55	5
1,000	19	38	47	9
1,200	19	35	45	10
1,500	18	26	42	16
2,000	18	19	39	19
2,500	18	17	36	19
3,000	18	16	35	19
3,500	18	16	35	19
4,000	18	16	35	19
4,500	17	12	33	21
5,000	17	12	33	21

*Note: Rows may not add due to rounding. This table does not include estimated costs or benefits of paint interventions, or any risk assessment costs.

C. Agency Decisions for Dust and Soil Standards

This section of the preamble presents EPA's decisions regarding the dust and soil standards. These decisions are based on the interpretation of, and the conclusions drawn from, the results of the normative analysis presented in the previous section of the preamble. The interpretations and conclusions are discussed in the context of the explanations for the specific decisions made by the Agency. The public should refer back to the previous section for a more complete treatment of the analytical results.

When considering the impacts of the proposed standards for dust and soil, the public should understand that properties will be evaluated by comparing these standards to average dust and soil-lead levels measured by a risk assessor, not worst-case or maximum values. As noted in Unit VI. of this preamble, the use of the average value is the most reasonable approach in the absence of specific detailed information about exposure.

1. *Dust-lead hazard*. EPA has decided to propose 50 μg/ft² as the dust-lead hazard standard for uncarpeted floors and 250 μg/ft² for interior window sills. According to the empirical model-based analysis, the results of which are summarized in Table 6, four of six combinations of options for floor and window sill standards have net benefits in the maximum range (i.e., $21 to $22 billion). One combination (100 μg/ft² for floors, 1,000 μg/ft² for sills) provides significantly less risk reduction relative to cost; and one combination (50 μg/ft² for floors, 100 μg/ft² for sills) provides little additional benefit but costs increase significantly. Incremental benefits are less than one third the incremental costs and an additional 11 million homes would fall under the standard. EPA, therefore, considers that this lower standard for sills is associated with increased costs without commensurate attendant benefits.

Of the four combinations where net benefits are in the maximum range, the proposed option is the most protective in terms of the amount of risk reduction yielded. The other three options, though less costly, also provide less risk reduction. The decrease in both costs and benefits as the combination of floor and sill options become less stringent are roughly the same (between $5 billion and $6 billion), resulting in little change in net benefits.

EPA decided to propose the 50 μg/ft² and 250 μg/ft² standards respectively for floors and sills because the Agency prefers to select the most protective of the four combinations where net benefits are in the maximum range. Selecting the most protective combination of dust-lead hazard standards is especially important when considered in combination with the soil and paint standards being proposed or considered today. It will help protect children who are exposed to lead in soil at concentrations between the level of concern and the hazard level by mitigating exposure in one of the pathways by which children are exposed to lead in soil.

The Agency did not consider a floor standard option less than 50 μg/ft² because, in its risk analysis, EPA's best estimate is that the post intervention-

dust lead loading is the lower of the pre-intervention dust-loading or 40 μg/ft². This is the Agency's best estimate of dust levels that would remain after controlling sources of lead and thoroughly cleaning the residence. It is based on an analysis of data from several abatement studies which is more fully discussed in Chapter 6 of the Agency's risk analysis. In light of this estimate, it would be impractical to set the standard for floors lower than 40 μg/ft² because little or no risk reduction is likely to be achieved for homes that had dust-lead loadings at or below 40 μg/ft². If new data become available before promulgation of the final rule that show that even lower post-intervention dust-lead loadings can be achieved, EPA would consider establishing a more stringent dust-lead hazard standard.

EPA's decision on the floor standard is further supported by the results of the IEUBK model-based normative analysis, summarized in Table 4, which show that the net benefits for the proposed floor standard are greater than those for a less stringent standard; net benefits estimated by this analysis increase from $48 billion for 100 μg/ft² to $61 billion for the proposed 50 μg/ft² standard. The IEUBK model was not used to analyze sill options because the model does not contain a sill parameter.

EPA reiterates that this normative cost-benefit analysis has been undertaken for comparative purposes only and does not mean to imply that billions of dollars will be spent on lead dust cleanup. These costs are put into better perspective when it is understood that the cost per residence of dust cleaning is less than $600 per affected residence over a 50–year period in 1995 dollars. In making this decision, EPA recognizes that the proposed standard could result in dust hazard interventions in perhaps as many as 20 million homes. Although this is a very large number of homes, the cost of intensive dust cleaning is relatively low for individual residences.

2. *Dust-lead level of concern*. As noted earlier, EPA has decided not to include a level of concern in the proposed regulations. The Agency has further decided not to include a dust-lead level of concern that is distinct from the dust-lead hazard standard in accompanying guidance. This decision is based on the fact that there is significant overlap between the results of the analysis for the level of concern and the dust-lead hazard standards. According to the performance characteristics analysis, the range for the level of concern is 50 to 400 μg/ft² for uncarpeted floors and 100 to 800 μg/ft² for interior window sills. The hazard standards of 50 μg/ft² for floors and 250 μg/ft² for sills are within these ranges. Because it would make no sense for the level of concern to be higher than the hazard standard according to the Agency's policy framework, the level of concern for floors could not be higher than 50 μg/ft², the lowest level of concern shown by the Agency's analyses. EPA's analysis therefore suggests that the dust-lead level of concern and the dust-lead hazard level for floors should be the same. In light of this result, the Agency has decided that including a dust-lead level of concern in guidance would serve no practical purpose.

For window sills, it is possible to have a level of concern as low as 100 μg/ft², which is lower than the hazard level. For several reasons, however, EPA has decided not to use this level in guidance. First, the performance characteristics analysis of the Rochester data show that there is no difference in risk between 100 μg/ft² and 250 μg/ft². Due to the high correlation between lead in dust on window sills and lead in dust on floors and a small sample size, risk does not change as sill dust-lead levels vary when accounting for floor dust-lead levels (Ref. 64). Second, there is a high degree of variability in dust-lead loading measurements, varying from day-to-day and from location-to-location on the same surface. In light of the small difference in risk and the high degree of variability in measuring dust levels, having a level of concern for window sills in accompanying guidance would introduce unnecessary complexity into EPA's program.

3. *Soil-lead level of concern*. EPA is proposing not to include a soil-lead level of concern in the regulation. The Agency, instead, is requesting comment on including 400 ppm as the soil-lead level of concern. As discussed above, the IEUBK model indicates that soil-lead concentrations associated with the risk level of concern are generally at or below 500 ppm and the performance characteristics analysis yielded a range of 200 ppm to 1,500 ppm. Thus, the range of soil-lead levels from 200 ppm to 500 ppm is supported by the results of both analyses. Lacking technical criteria to select one level from this range as the proposed soil-lead level of concern in accompanying guidance, the Agency determined that it should choose 400 ppm because it is both within this range and consistent with the soil screening level used by EPA's Superfund and RCRA corrective action programs (Ref. 84) and EPA's current guidance on lead-based paint hazards (60 FR 47248). It is clear from all the evidence that this level ''poses a threat of adverse health effects.'' The analysis, above, shows there is a one to five percent chance that individual children exposed to this soil level could have a blood-lead level equal to or exceeding 10 μg/dl, although the Agency could not say that adverse health effects ''would result'' from these levels.

4. *Soil-lead hazard*. As explained in Unit II. of this preamble, this public health decision requires consideration of the potential risks to children that may occur at levels equal to or lower than the chosen hazard level. At the same time, EPA believes that consideration of costs is necessary to ensure that the hazard standard promotes priority-setting and supports the establishment of a workable national hazard evaluation and control program. To arrive at a proposed soil-lead hazard level, EPA sought a level at which the Agency had sufficient confidence in the likelihood of harm (i.e., greater than the level of concern) and that the cost of abatement seemed warranted to achieve the associated level of risk reduction.

Based on the Agency's analysis and judgment, EPA has decided to propose 2,000 ppm as the soil-lead hazard standard. This decision is based on the following reasons. First, the results of the empirical model-based normative analysis (summarized in Table 7) show that net benefits are positive and near the maximum level at 2,000 ppm. The IEUBK normative model-based analysis (summarized in Table 4b) shows positive and significantly higher net benefits at concentrations up to 2,000 ppm than for soil-lead concentrations above 2,000 ppm. Positive net benefits indicate that the cost of soil abatement at this concentration is less than the benefits associated with risk reduction for the population as a whole. Because both analyses show positive net benefits at 2,000 ppm, EPA is confident that this level represents a reasonable public health policy choice for today's proposal.

As stated previously, EPA conducted the normative cost-benefit analysis for purposes of comparing options. Undue emphasis should not be placed on the total costs and benefits estimated by each analysis. It is probably more useful, therefore, to consider what the Agency's analysis and decision implies for the average property. According to EPA's analysis, the average cost of soil abatement for a residence at 2,000 ppm is about $3,600. The analyses show that cost is commensurate with risk reduction at this concentration because the value of risk reduction in terms of avoided adverse health effects is greater than the cost. It is important to recognize, however, that the benefits

account not only for the child immediately protected when the abatement is performed but also for children who may reside in that residence in the future. The comparison of estimated costs and benefits for an individual property is also an average. For some homes, costs could be higher than benefits. EPA's decision, however, is based on the overall benefit to society which accounts for benefits for future generations of children and for the average child.

Second, outside of its use in the economics model, the IEUBK model predicts significant risk to children at this soil-lead concentration under virtually all exposure scenarios. At 2,000 ppm in soil, the model estimates a mean blood lead level in the range of 11-16 µg/dl, depending upon the assumed concentration of lead in house dust (100-1,400 ppm in this case). This range corresponds to approximately 55 to 80 percent equal to or exceeding 10 µg/dl and 9 to 30 percent exceeding 20 µg/dl.

Third, data from a number of epidemiological studies show that between 40 and 50 percent of the children living in certain communities with soil-lead concentrations at the 2,000 ppm level have blood-lead concentrations equal to or exceeding 10 µg/dl and that 10 percent of children have blood-lead concentrations equal to or exceeding 20 µg/dl (Ref. 85).

In reaching its decision, EPA rejected more stringent options for several reasons. First, although the IEUBK model-based analysis shows higher net benefits for more stringent standards, the results of the IEUBK model-based analysis at relatively low soil-lead concentrations (e.g., 500 ppm) are very sensitive to assumptions in both the analysis and the model. As noted above, a significant proportion of these benefits are associated with changes in dust concentration which are affected by both the HUD National Survey data and EPA's assumptions about post-intervention dust concentrations. The results are also very sensitive to the assumed relationship between soil-lead and blood-lead concentrations in the IEUBK model. Because of the larger number of homes at lower soil-lead concentrations (e.g., 11.8 million ≤ 500 ppm versus 2.5 million ≤ 2,000 ppm) and the smaller reductions in environmental lead levels that can be achieved at the lower concentrations, a slight change in the relationship between soil-lead and blood-lead concentrations can produce significantly different net benefits. Consequently, it is questionable whether risk reduction would be commensurate with costs and lower soil-lead concentrations.

Second, the Agency's analysis did not consider the role that interim controls can play in reducing risks at lower soil-lead concentrations. Interim controls were not considered because EPA lacks data to estimate the effectiveness of these controls. The Agency believes that at lower soil-lead concentrations, interim measures can interfere with exposure pathways and reduce risk and that these measures may be more cost effective than abatement at lower concentrations.

Third, EPA is concerned that more stringent standards would not meet the priority-setting goals the Agency believes are appropriate for the Title X program. Based on the soil-lead data in the HUD National Survey, EPA estimates that 4.7 million homes would exceed 1,200 ppm and nearly 12 million homes would exceed 500 ppm, two options considered by the Agency. Scarce resources potentially would have to be allocated across more communities and would be diverted away from interventions needed to respond to both deteriorated interior and exterior lead-based paint. The proposed 2,000 ppm standard will help focus resources for soil abatement on significantly fewer properties (i.e., 2.5 million).

In proposing 2,000 ppm as the soil-lead hazard standard, EPA does not wish to communicate a lack of concern about risks that exists below this soil-lead concentration. In fact, the Agency recognizes that there could be substantial risk below 2,000 ppm. The IEUBK model predicts risk to children under a variety of exposure scenarios. At 1,200 ppm in soil, the model estimates a mean blood lead level in the range of 8 to 11 µg/dl, depending upon the assumed concentration of lead in house dust (100 to 850 ppm in this case). This range of mean blood-lead concentrations corresponds to a range of approximately 30 to 60 percent exceeding 10 µg/dl and 2 to 10 percent exceeding 20 µg/dl. As noted above, however, the Agency believes that it is not appropriate to set a more stringent uniform national soil-lead hazard standard because costs may not be commensurate with risk reduction and resources would not be adequately focused. The Agency further thinks that measures undertaken in response to the proposed soil-lead level of concern in the accompanying guidance and dust hazard standards will help protect children exposed to soil-lead concentrations between 400 ppm and 2,000 ppm. It should be noted that abatement at levels below 2,000 ppm may be appropriate on a case-by-case basis depending on local conditions.

EPA also considered a less stringent standard of 5,000 ppm. This option has several advantages. First, consistent with the priority-setting concept of Title X and the need to apply scarce resources effectively, as noted in Unit IV.A.2.b, this option would focus on properties that present the greatest risk to young children. Second, it would affect relatively few homes (i.e., an estimated 200,000 units based on data from the HUD National Survey). Because fewer homes would be affected, the estimated cost associated with this option, as shown in Tables 5 and 7, is significantly lower than the cost of the preferred option ($0.4 billion for 5,000 ppm vs. $9 billion for 2,000 ppm), thus reducing the impact of the rule on properties and communities. In fact, according to the empirical model-based approach, the net benefits are about the same for 5,000 ppm and 2,000 ppm. Third, this level would be consistent with EPA's interim guidance document on lead-based paint hazards (60 FR 47248). Some argue that the adoption of a more stringent soil hazard standard — given the substantial costs of soil abatement — may influence the decisions or actions of owners of target housing in unintended ways. The Agency is interested in receiving comments on how the hazard standard may influence owners, the number of clean-ups or interventions, and whether the hazard standard would influence housing availability. In discussions at EPA's dialogue process, many interested parties stated that the guidance was a workable approach that should be adopted in the regulation.

This option, however, is characterized by several important disadvantages. First, the IEUBK model predicts, and the epidemiological data show, that a substantial number of children who are exposed to soil with lead levels between 2,000 ppm and 5,000 ppm have moderately to highly elevated blood lead levels. Furthermore, interim controls would be relied upon to address risks from soil-lead concentrations up to 5,000 ppm under this option. It is important to consider that interim controls, which may successfully mitigate risks at lower soil lead concentrations, do not eliminate the lead source. Rather, they serve to reduce exposure by limiting the accessibility of the soil and the consequent inadvertent ingestion or tracking of the soil into a home (where it can contribute lead to interior dust). As the soil lead concentration increases, however, it is more likely that even if accessibility of the soil were reduced,

significant risk would remain. In the case of track-in, the Agency is concerned that even a relatively small amount of high-lead-concentration soil can re-contaminate interior dust and reintroduce a dust-lead hazard. Second, although, as stated above, costs may be lower at 5,000 ppm, the IEUBK model-based approach shows that net benefits also decrease by $32 billion when increasing the standard from 2,000 ppm to 5,000 ppm. Furthermore, the empirical model-based approach shows that, while net benefits are about the same for both options, benefits decline by $9 billion when the standard increases from 2,000 ppm to 5,000 ppm.

In light of the results of EPA's formal cost-benefit analysis, the risk predictions of the IEUBK model, and the risk to young children documented by the epidemiological data, EPA decided that 2,000 ppm was a more appropriate option for today's proposal. In reaching this decision, EPA was mindful of the impacts that the costs of soil abatement could have on individual properties and communities. Consideration of costs and their impacts was the primary reason why EPA selected 2,000 ppm rather than a more stringent option (e.g., 1,200 ppm). Moreover, EPA would have selected 2,000 ppm as its preferred option even if the Agency had relied only on the empirical model and epidemiological data as some stakeholders have suggested. The results of the empirical model-based analysis show that both the 2,000 ppm option and the 5,000 ppm option are equivalent in terms of net benefits. The benefits at 2,000 ppm, however, are substantially higher because, as the epidemiological data shows, there is substantial risk to children exposed to lead in soil at concentrations between 2,000 ppm and 5,000 ppm.

EPA notes that it does not anticipate that setting the soil-lead hazard standard at 2,000 ppm would adversely impact individuals who previously relied voluntarily on the guidance. First, EPA has no information to suggest that many property owners have performed soil abatements. Second, it is very likely that properties where soil abatements were performed would now have soil-lead concentrations well below 2,000 ppm and even below 400 ppm, the soil-lead level of concern. This conclusion is based on the fact that when soil is removed, it is replaced by ''clean'' soil--soil that has a very low lead concentration.

D. Hazardous Lead-Based Paint

This section of the preamble presents EPA's proposed standard for deteriorated lead-based paint. It also presents options for addressing lead-based paint on friction and impact surfaces and lead-based paint on surfaces accessible for chewing and mouthing by young children. The Agency, however, is not proposing standards for lead-based paint on friction, impact, and accessible surfaces, but is, instead, asking for public comments on the options presented below.

For any type of hazardous lead-based paint, the paint must be lead-based according to the statutory definition (i.e., ≥1 mg/cm^2 or 0.5 percent by weight). Determination of whether the paint is lead-based is made by a certified inspector or risk assessor based on testing results. EPA is developing a separate guidance document that will address paint sampling.

1. *Deteriorated lead-based paint.* To meet the statutory requirement to identify hazardous lead-based paint, EPA must determine those conditions of deteriorated lead-based paint which would result in adverse human health effects.

Exposure to deteriorated lead-based paint can result in adverse human health effects, based on the fact that children can be exposed to lead through several pathways when lead-based paint is deteriorated and that studies document an association between children's blood-lead concentrations and the presence of deteriorated lead-based paint. EPA, however, is unaware of any data that would allow the Agency to more specifically relate conditions of deterioration (e.g., levels of lead in paint, minimum area of deteriorated lead-based paint) to blood-lead concentration. The Agency, therefore, has chosen to propose a standard for deteriorated paint using the criteria for paint condition in Table 5.3 of the HUD Guidelines (Ref. 11) for the reasons discussed below.

Exposure to lead from deteriorated lead-based paint can occur in three ways. First, children who exhibit pica, a hunger for substances not fit for food, may eat paint chips (Ref. 86). Second, deteriorated interior lead-based paint can contaminate household dust which may be inadvertently ingested by children through normal hand-to-mouth behavior. Third, deteriorated exterior lead-based paint can contaminate residential soil which can also be inadvertently ingested by children. Soil, in turn, can be tracked into a residence, contaminating the household dust.

These three scenarios have been demonstrated in various studies that used stable isotopes of lead as tracers (see, e.g., Refs. 87 and 89). Basically, this technique relies upon the fact that the isotope ratios of lead ores vary by deposit. Consequently, lead-containing products, such as lead-based paints and leaded gasolines, can have unique ratios of the stable isotopes in the lead. Comparison of the isotope ratios in these products to those of environmental media and blood can in some cases identify categories of products as the source of lead in the environmental media and/or lead in the blood.

Rabinowitz (1987) reports use of this technique to investigate the specific sources and pathways of lead exposure in three cases of chronic, high-level lead poisoning (blood-lead concentrations of 120, 83, and 66 μg/dl) (Ref. 90). In each case, blood, feces, and the child's home environment (paint, dust, and soil) were sampled and analyzed. All of the children had deteriorated paint present in their homes. Additionally, a series of environmental samples were collected and analyzed to characterize background lead throughout the city.

In the first two cases, the isotopic composition of the blood (indicative of chronic exposure) and the feces (indicative of exposure during the preceding day) were nearly identical. In the first case, they resembled the paint sample from the child's bedroom wall (which was similar to the exterior soil). In the second case, they closely matched the lead in window sill paint, but not the kitchen wall or garden soil. In the third case, the blood lead was close to that of the paint in the child's bedroom, which was believed to be the source of his chronic exposure, whereas the fecal lead appeared to be similar to fallout from current automobile emissions in the area. While such data do present some ambiguities, they are consistent with paint being the proximate or remote source of the child's lead exposure and the author's conclusion that, in cases of severe lead poisoning, the lead in the child's blood and feces closely resembles lead in paint on an accessible surface. Additionally, based upon isotopic comparisons between household dust and urban soils, the study also concluded that: (1) In the absence of lead-based paint, the leads in urban soils and household dust have nearly the same isotopic composition, and (2) lead-based paint, when present, can be responsible for 20 to 70 percent of lead in household dust and much of the lead in yard soil.

Yaffe, et al. presented two cases which also included measurement of the isotopic ratios of lead in blood, paint, dust, and soil (Ref. 89) . In both cases, it was unlikely that direct ingestion of paint chips was the cause of the elevated blood-lead

concentrations. This was based on the facts that: (1) There was no indication that the children were pica-prone based upon interviews with the children and their parents, and (2) higher than exhibited blood-lead concentrations would be expected if paint chips were being ingested, given the very high lead levels in the paint.

The first case involved 10 children with blood-lead concentrations from 28 to 43 μg/dl. The isotopic ratios of the children's blood lead were similar, suggesting a common set of lead exposures. These ratios were quite similar to those of soil samples collected around the house and interior dust samples. The close agreement between the average isotopic ratios of exterior paint samples and the soils near the house suggested that the soil was contaminated by the exterior paint, which was badly deteriorated.

The second case involved twin 2–year old males with blood-lead concentrations of 37 and 43 μg/dl. The isotopic ratios of the twins' blood lead were similar to the soil in their side yard and in the back yard of a nearby house where they often played. These soils had similar ratios to adjacent exterior walls. This suggests that the lead in the soils was primarily derived from the weathering of nearby painted surfaces and that the contaminated soil was a significant source of the twins' exposure. The interior dust sample lead was not similar to the exterior soil or the twins' blood lead. Such cases, where soil or dust becomes contaminated by deteriorating paint, demonstrate the need for a paint standard as well as soil and dust standards. Lacking a paint standard, the paint can continue to re-contaminate soil and dust, rendering abatement and control measures directed at those two media ineffective.

The scientific literature also includes several studies that have identified a statistically significant relationship between deteriorated paint and children's blood-lead concentrations. One study suggests that infant blood-lead concentrations are a function of paint deterioration and lack of maintenance of the residence (Ref. 91). In this study, housing was classified as deteriorated if the exterior was not well maintained or had peeling paint, as observed from the street. For infants at 12 to 18 months old, geometric mean blood-lead concentrations were twice as high in deteriorated housing (33 μg/dl) than in housing graded as satisfactory (15 μg/dl).

Another study identified statistically significant correlations between the presence of both deteriorated interior and exterior lead-based paint and children's blood-lead concentrations (Ref. 92). Presence of peeling exterior paint was among the most influential factors explaining the blood-lead concentrations of 2-year olds. It should be noted, however, that lead levels in paint were not reported in the paper. Therefore, it is not certain that the results of this study actually represent deteriorated lead-based paint.

Analysis of data from the Rochester Lead-in-Dust Study performed to support this rule's comprehensive risk analysis also shows a relationship between deteriorated lead-based paint and children's blood-lead concentrations. The empirical model, which explicitly incorporated pica behavior, yielded a significant positive relationship between deteriorated paint and children's blood-lead concentrations (Ref. 1).

Analysis of the HUD National Survey data suggests that deteriorated lead-based paint is indirectly linked to elevated blood-lead concentrations in young children through lead in household dust and residential soil (Refs. 8-9, and 19). Of those homes with interior lead-based paint, 34 percent with non-intact paint had elevated dust lead levels (i.e., elevated in comparison to HUD's dust clearance levels at the time the survey was conducted) compared to 18 percent of homes with intact paint. Of those homes with exterior lead-based paint, 53 percent of homes with non-intact paint had elevated dust lead levels compared to 12 percent with intact paint. Although correlation analysis cannot be used to prove causation, EPA believes that it is reasonable to conclude that the lead in the deteriorating paint is a significant source of the lead in the dust and soil.

Based on its analysis of existing studies and data, EPA believes that deteriorated paint is a significant source of lead exposure for young children through direct ingestion and through contamination of dust and soil. To promote priority setting and the establishment of a workable program, EPA thinks that the standard for deteriorated lead-based paint should exclude small amounts of deterioration. From a common sense perspective, it seems that there should be lower exposure and risk from lead-based paint where there are lesser amounts of deteriorated lead-based paint. There would be fewer paint chips to contribute lead to dust and fewer paint chips available for direct ingestion.

Because there are no data to directly relate the degree of deterioration to blood-lead, EPA was unable to perform an analysis to specify a minimal area of deterioration that would be considered a hazard. The Agency therefore has decided to propose the conditions of deterioration used currently in the 1995 HUD Guidelines. The HUD Guidelines define lead-based paint in poor condition as more than 2 square feet of deteriorated lead-based paint on any large interior architectural component (e.g., floors, walls, ceilings, doors, etc.), more than 10 square feet of deteriorated lead-based paint on any large exterior architectural component (e.g., siding), or deteriorated lead-based paint on more than 10 percent of the surface area of any small architectural component constitutes hazardous lead-based paint.

The Agency decided to use the criteria in the HUD Guidelines for two reasons. First, these criteria are becoming the *de facto* industry standard. They are being considered for incorporation into model housing and building codes and by State officials for adoption as State standards. Second, EPA decided that relatively small thresholds are needed to be protective, because the area of deterioration has the potential to increase over time and because the presence of even small amounts of deterioration can present a significant risk to children who exhibit pica for paint. The Agency wishes to emphasize that while areas of deteriorated paint that fall below the threshold would not be considered a hazard, property owners should try to keep paint intact, especially paint known to be lead-based, because of the risk to some children.

EPA cannot quantify the cost savings of including a minimum area of deteriorated lead-based paint. The Agency presumes, however, based on the available data, the minimum area threshold would reduce the number of paint interventions that may be undertaken while still providing protection to populations of concern. For example, according to the HUD National Survey, of the estimated 15 million homes currently in the housing stock that have deteriorated lead-based paint, 11 percent have less than 5 square feet of deteriorated paint and 36 percent have less than 10 square feet of deterioration (Ref. 93). With a *de minimis* level in place, millions of homes would not be identified as having hazardous deteriorated paint. It is important to note, however, that the presentation of these data is only intended to provide a frame of reference. They are not comparable to the criteria in the HUD Guidelines because these criteria are component-based and the data in the HUD National Survey apply to the aggregate area of deteriorated paint in the entire residence.

EPA considered two other options for identifying the conditions where deteriorated lead-based paint would be defined as a hazard. One alternative involved combining surface area with the levels of lead in paint. This approach is based on the assumption that the hazard presented by an area of highly concentrated deteriorated lead-based paint is greater than the hazard presented by an equal area of deteriorated paint with a lower concentration of lead. Although this assumption is technically appealing, EPA has no basis for establishing the appropriate combinations of area and lead loadings. Furthermore, the Agency believes that this approach would be overly complex and costly to implement because it would require significantly more paint testing.

The second alternative involved measuring the aggregate amount of deteriorated lead-based paint at an entire residence, as was measured in the HUD National Survey, rather than on individual architectural components, as is provided for in the HUD Guidelines. The advantage of this approach would be that the aggregate amount of deteriorated lead-based paint at an entire residence may be a better indicator of risk than the amount of deteriorated paint on individual components. EPA, however, has no data to support this assumption or to select a minimum area. In addition, this approach may be more expensive to implement because it could require the risk assessor to test all deteriorated paint on all individual components to determine whether the aggregate area of deteriorated lead-based paint exceeds the threshold. In contrast, the component-based approach would be less expensive because it would require the risk assessor to test deteriorated paint on only those components where the deterioration exceeds the area threshold. Furthermore, the component-based approach is consistent with paint abatement activities, which addresses hazards on individual components.

In light of the uncertainty associated with EPA's decision, the Agency is seeking comment on several issues related to the deteriorated lead-based paint hazard standard. First, EPA is interested in any data the public may have that would enable the Agency to better characterize the relationship between the amount of deteriorated lead-based paint and health risk. Second, EPA requests comments on the surface area hazard thresholds included in the proposed standard. Third, the Agency is seeking comment on whether the proposed component-based area threshold is better than an aggregate residence-based threshold.

2. *Friction and impact surfaces.* Title IV of TSCA specifically identifies lead-based paint on friction and impact surfaces as a potential type of hazardous lead-based paint because the repeated rubbing and impacts may generate fine particles of lead-containing paint that can contaminate household dust. TSCA section 401 defines friction surfaces as surfaces that are subject to abrasion or friction including certain window, floor, and stair surfaces. Impact surfaces are surfaces subject to damage by repeated impacts such as certain parts of a door frame.

The data linking lead-based paint on friction and impact surfaces with lead in dust, however, are limited and inconclusive. Analysis of the HUD grantee data shows that there are many instances where lead-based paint on friction and impact surfaces and low dust-lead levels may be found in the same residence (Ref. 94). These data were collected from homes undergoing hazard evaluation and control under lead hazard control grants awarded by HUD under authority of section 1011 of Title X. In fact, of the windows with lead-based paint in good condition, 65 percent had dust-lead levels below the HUD clearance level. These data suggest, contrary to the conventional wisdom, that lead-based paint on friction and impact surfaces does not necessarily result in elevated levels of lead in household dust. Even if elevated levels of lead in dust are identified, it is not clear that lead-based paint on friction and impact surfaces is the source of the lead. In light of the uncertainties and contradictory evidence, EPA considered several alternatives for addressing these surfaces.

When reviewing these alternatives, the public should be mindful that the options for lead-based paint on friction and impact surfaces are designed to address exposure through ingestion of dust contaminated with lead. Lead-based paint is always a hazard when it is in poor condition, regardless of its location in a residence. The paint in poor condition critierion is designed to address exposure through direct ingestion of paint chips.

Option 1. Under this alternative, EPA considered identifying any lead-based paint on a friction or impact surfaces as a lead-based paint hazard. The Agency considered this option because it is the approach taken in EPA's July 1994 guidance. The major advantage of this option is that it is designed to address a source of dust contamination.

On the other hand, the data show that surfaces that have lead-based paint in good condition do not necessarily generate elevated levels of lead in dust (Ref. 94). This option is also inconsistent with several of the statutory precepts (i.e., priority-setting, establishing a workable framework) because it would result in widespread paint testing and/or costly responses even where dust-lead hazards are not present.

Option 2. Under the second option, EPA considered identifying abraded lead-based paint on friction and impact surfaces as hazardous lead-based paint. The point of this option is that it identifies a condition, abrasion, associated with the generation of leaded dust, thus overcoming the chief deficiency of the first option. It shares the advantage of option one in that it is designed to address a source of dust contamination.

On the other hand, this option is characterized by several disadvantages. It would identify friction or impact surfaces as a hazard regardless of the dust-lead levels present in the residence. Without a dust-lead hazard, there appears to be no pathway of exposure. Even if a dust-lead hazard is present, there is no certainty that the friction and impact surfaces are the source of the lead. As with option one, this option would result in paint testing and/or costly responses in many older homes because of the high prevalence of abraded paint, even if there is no evidence that these surfaces are contributing to elevated levels of lead in dust.

Option 3. Under the third option, EPA would not identify lead-based paint on friction and impact surface as hazardous lead-based paint. A risk assessor should evaluate the levels of lead in dust and determine whether a dust-lead hazard is present in the residence. If so, the property owner or other decision-maker has the option to clean dust, which may provide only short-term control of the hazard, or to address the sources of lead in the dust, including friction and impact surfaces, which would provide long-term control. The purpose of this option is to address the immediate exposure source for children, which is lead in the dust, and to provide flexibility to property owners regarding how to control hazards.

This option has several disadvantages. First, this option is not designed to address the source of lead but rather the exposure pathway. A second disadvantage is that this option depends on dust-lead measurements, which are highly variable, to determine whether there is a problem. If a risk assessor

obtains an atypically low dust measurement, he/she might not identify friction and impact surfaces as a potential source of contamination. Third, it fails to address directly a component that was specifically identified in the statute.

For today's proposal, EPA has decided not to include a standard for friction and impact surfaces. None of the three options is clearly preferable. The first two options are designed to address sources of lead. The primary pathway of exposure, however, is lead dust, and, it makes little sense to burden a system with potential replacement of components if there is no serious dust exposure.

The third option overcomes these disadvantages, providing an incremental and flexible approach that indicates response actions where there is an exposure pathway (i.e., presence of dust) and allows decision-makers to choose the most cost-effective response (i.e, repeated dust cleaning or component replacement). On the other hand, this option fails to set a separate standard for surfaces of concern that were specifically identified in the statute. Because this option relies exclusively on dust loading measurements, which are highly variable, it may fail to identify sources of hazards and may not be adequately protective.

In light of the concern about friction and impact surfaces and the uncertainties and contradictory data, EPA requests comment on the three options presented above. EPA would also be interested in other approaches for addressing lead-based paint on friction and impact surfaces.

3. *Surfaces accessible for chewing or mouthing.* TSCA section 403 also requires EPA to identify the conditions under which exposure to intact lead-based paint on surfaces accessible for chewing or mouthing by young children would result in adverse human health effects. Chewing on surfaces covered by lead-based paint can result in the ingestion of a relatively large amount of lead, leading to an acutely high exposure. Unlike pica, which is not considered normal behavior and occurs in a relatively small percentage of the population, the chewing or mouthing of hard surfaces is a normal part of a child's teething process.

The available data with respect to prevalence of mouthing or chewing of accessible surfaces are mixed. Radiological examinations of the children with high blood-lead concentrations (mean blood-lead concentration was 56 μg/dl) showed that 13 of 90 children (14 percent) had evidence of paint chip ingestion (Ref. 95). The study notes, however, that the transit time of ingested material through a child's digestive system ranges from several hours to several days. Because the half-life of lead in blood is 30 days, radiographs will reveal only a small percentage of children who have elevated blood-lead concentrations due to the ingestion of a single paint chip.

On the other hand, data from HUD's lead hazard control grant recipients show that the prevalence of chewing accessible surfaces is extremely low. In the nearly 1,900 homes assessed, evidence of chewing on accessible surfaces was found in 21 residences (1.1 percent). The number of homes with accessible surfaces, however, was not determined. Window sills were the most frequently chewed component. The data show, however, that tooth marks were found on window sills in only 18 residences (one percent) (Ref. 96).

In developing today's proposal, EPA considered several options for addressing intact lead-based paint on accessible surfaces.

Option 1. Under the first option, EPA considered identifying characteristics of a component's accessibility. These characteristics would include the dimensions of a component as well as its orientation (e.g., horizontal components such as sills, vertical components such as rail spindles) and location (e.g., height of component). This approach would limit the number of surfaces which might be considered hazards to those which could potentially be chewed or mouthed. This approach, however, would significantly change the scope of risk assessments as currently defined at 40 CFR 745.227(d). In addition, the Agency lacks data to support the choice of specific criteria. Therefore, the Agency does not consider this an appropriate option.

Option 2. Under the second option, EPA considered not adopting a separate standard for surfaces accessible for chewing or mouthing. Hazardous lead-based paint would exist only if lead-based paint on the component were determined to be in poor condition. This approach would avoid requiring property owners to expend resources to address accessible surfaces when, in the vast majority of situations, these surfaces are not likely to be chewed or mouthed. This approach, however, would do nothing to address the infrequent, but often serious problem of children chewing or mouthing accessible surfaces, unless and until that actively resulted in significant deterioration of the surface.

Option 3. Under the third option, EPA would identify lead-based paint on accessible interior window sills because these are the surfaces most likely to be chewed according to the available data. EPA would propose to define accessible interior window sills as interior window sills that are no higher than 5 feet from the floor, a height that can be reached by a child when standing on the floor or on a chair or sofa. By targeting these surfaces, hazard intervention (e.g., covering or replacing the component) would be more cost-effective than an approach that identified lead-based paint on any accessible surface as a hazard. This option also has the advantage of being easy to implement, because specific surfaces (e.g., window sills) are easy to identify. On the other hand, it would result in interventions where, in the vast majority of cases, children do not need to be protected.

EPA's decision requires the Agency to balance an event (i.e., chewing of interior window sills) that has a low probability of occurring with the high probability of serious harm when the event does occur. By not establishing a hazard standard for accessible surfaces, option two gives greater weight to the event's low probability. In contrast, option three is more focused on the adverse outcome associated with chewing of paint on these surfaces. Because neither of these two options is clearly preferable, EPA is not selecting a preferred option for today's proposal. Instead the Agency is seeking comment on options two and three. In particular, the Agency would be interested in input on three issues: (1) How to balance the low probability of chewing with the high probability of serious harm if chewing occurs; (2) low cost alternatives to sill replacement (e.g., paint removal); and (3) the effectiveness of guidance to property owners to temporarily cover sills when a child who demonstrates a propensity to chew resides in the unit. EPA also invites the public to submit data on the prevalence of chewing on accessible surfaces.

V. Other Issues Affecting Standards Development and Selection

During the regulatory development process, EPA encountered a range of issues that affect the scope and structure of today's proposal and the implementation of the standards.

A. Applicability of the Standards

Two factors affect the applicability of the proposed standards for lead-based paint hazards: the statutory language and the scope of the Agency's supporting analyses. With respect to the statutory language, the term ''lead-based paint hazards'' refers to target housing in most sections of Title X and TSCA

Title IV. TSCA section 402 also uses the term in reference to public and commercial buildings and structures (e.g, water towers, bridges). The statutory definitions of lead-contaminated dust and soil, however, refer only to residential property, showing that the applicability of the dust and soil standards differs from the applicability of the paint standards. The Agency's analyses are based on data for residential exposure, thereby raising questions regarding whether the standards being proposed today would be appropriate for non-residential environments. This section of the preamble explores the applicability issue and the Agency's decision, first, with respect to the paint component of the standards and second, with respect to the dust and soil standards.

1. *Paint*. The definitions in TSCA section 401 do not explicitly identify the applicability of hazardous lead-based paint. The definition of lead-based paint hazard refers to deteriorated lead-based paint and lead-based paint on friction, impact, and accessible surfaces. The reference to deteriorated lead-based paint does not identify specific types of properties, nor do the definitions of friction, impact, and chewable surfaces. As noted above, however, the term ''lead-based paint hazard'' is used in context of target housing. The definition of deleading in TSCA refers to lead-based paint and lead-based paint hazards and, in doing so, extends the scope of lead-based paint hazards to non-residential properties as well. The statutory language, therefore, shows that the paint standard should be applicable to target housing, public and commercial buildings, and structures.

EPA, however, has no data on children's exposure to lead in paint in non-residential environments. The Agency, therefore, believes that the paint standards being proposed today should apply to target housing. The Agency has also decided to propose that the paint standards apply to child-occupied facilities. Although EPA lacks data on exposure in child-occupied facilities, the Agency believes that children face potentially equivalent risks from lead-based paint hazards in schools and day-care centers as they do at home. EPA based its decision to apply the same training, certification and work practice standards to both target housing and child-occupied facilities in the final TSCA section 402 regulation on the same argument.

In the absence of environmental and exposure data for other types of properties, the Agency has decided not to propose paint standards that are applicable to other types of public buildings, commercial buildings, and structures at this time. EPA believes, however, that this limitation should not have any meaningful impact on the regulation and its ability to protect human health. Lead-based paint encompasses lead-based paint hazards and lead-based paint is defined. Because the applicability of the proposed standard for hazardous lead-based paint is more limited than that required in the statutory language, the Agency is specifically requesting comment on this decision.

2. *Dust and soil*. In contrast to paint, the statutory language is more limited in defining the applicability of the dust and soil standards. In TSCA section 401, the statute specifically identifies lead-contaminated dust and soil in terms of ''dust in residential dwellings'' and ''bare soil on residential real property.'' TSCA section 403 states that EPA should identify lead-based paint hazards for purposes of Title X and TSCA Title IV which focus on a specific subset of residential property, namely target housing which includes most pre-1978 housing. The statutory language shows that the dust and soil standards should apply to target housing.

EPA has decided, however, to interpret residential more broadly and to propose that the dust and soil standards should apply to child-occupied facilities as well as to target housing. This decision is based on the same rationale for applying the paint standards to child-occupied facilities. As argued in the preamble to the final TSCA section 402 regulation, the Agency believes that children face potentially equivalent risks from lead-based paint hazards in schools and day-care centers as they do at home. In fact, some children spend more time in a particular classroom, day-care room, or outdoor ''play area'' then they might spend in a single room or yard at home.

Failure to apply the dust and soil standards to child-occupied facilities would leave a significant gap in the work practice standards for risk assessments and abatements at child-occupied facilities. Without dust and soil standards for child-occupied facilities, risk assessors would not be able to determine whether dust-lead and soil-lead hazards are present at these facilities. Because abatements are defined as actions designed to permanently eliminate lead-based paint hazards, owners of these facilities would be unable to determine what activities constitute abatement and when certified firms and individuals are required to perform these activities.

In light of EPA's decision to propose applying the dust and soil standards more broadly than a literal reading of the statute would suggest, the Agency is seeking comment on this aspect of the regulation. Specifically, EPA would be interested in any disadvantages associated with this decision and in alternative approaches that would provide as much protection to children.

3. *Child-occupied facilities*. Because child-occupied facilities are often located within larger facilities where children would have limited or no access, the applicability of the hazard standards to these facilities requires further explanation. The definition of child-occupied facilities found at 40 CFR 745.227 helps clarify the applicability of the hazard standards to child-occupied facilities. First, a child-occupied facility must have been constructed prior to 1978. Second, a child-occupied facility is a building or portion of a building visited regularly by children age 6 and under. The definition provides several examples including day care centers, pre-schools, and kindergarten classrooms. By limiting the meaning of a child-occupied facility to the portion of a building where a child regularly visits, the definition limits the applicability of the paint, dust, and soil-lead hazard standards to the same portion of a building. For example, the soil standard would apply only to that portion of the area outside the building designated for use by children age 6 and under.

Several examples may help illustrate how the hazard standards apply to child-occupied facilities. The first example is a day care center at a manufacturing facility. There is a separate entrance to the center and a fenced playground area adjoining the center. In this case, the center (interior rooms and outside area making up the center), not the entire plant is the child-occupied facility. Paint and dust samples would be taken from the rooms in the day care center, and soil samples would be taken from within the fenced playground. Hazard interventions should be limited to those areas. The second example is a stand-alone pre-school (i.e., the pre-school occupies the entire structure). In this case, the standards would apply to the entire property. The third example is a kindergarten at a public or private school which has a yard for recess designated for use by children age 6 and under. In this case, the paint and dust standards would apply to the kindergarten classrooms and the soil standard would apply to the school yard designated for use by the kindergarten children (i.e., except for the portions of

the property such as the front lawn of the school that are not designated for use by children age 6 and under). As a final example, a day care center is located within a public or private high school. The school has several outside recreational areas, none of which are designated for regular use by children who attend the day care center. The day care consists of a class room, which is now divided into two main rooms. In this scenario, the hazard standards only apply to the interior area because the outside areas would not be defined as part of the child-occupied facility.

B. Dust Issues

1. *Loading vs. concentration*. Title X provides the legal basis for selecting the levels of lead that constitute dust-lead hazards. The statute, however, does not stipulate the measurement basis for the dust standards. Two different measures are commonly used to characterize the lead level in dust: loading and concentration. Lead concentration (or mass concentration) is a measure of how much lead is present in a given amount of dust and can be expressed in either micrograms of lead per gram of dust (μg/g) or, equivalently, in parts per million (ppm) by weight. Lead loading or area concentration, a measure of how much lead is present on a surface of given area, is expressed in mass of lead per area of surface sampled (typically, $\mu g/ft^2$ or $\mu g/m^2$).

The two measures also differ in the way environmental sampling is conducted. Dust-lead loading data can be obtained through either wipe sampling or vacuum sampling. Concentration data are usually obtained through vacuum sampling. In wipe sampling, a wet wipe (e.g., baby wipe) is used to collect dust from a surface with known area. Through laboratory analysis, the total lead picked up by the wipe is measured and compared to the surface area to calculate the dust-lead loading. Because the wipe sampling only measures the mass of the lead and not the total mass of the dust, the concentration of lead in the dust cannot be determined. In a wipe test, the mass of the dust is combined with the mass of the wipe which is typically unknown. Therefore, it is not possible to isolate the mass of the dust and compute the concentration.

In vacuum sampling, a specialized vacuum cleaner is used to collect dust from a surface with known area. Through laboratory analysis, the amount of lead picked up by the vacuum can be measured and compared to the surface area to calculate loading. Laboratory analysis also can yield the concentration measure because the only material in the sample is the dust (including the lead). It is, therefore, possible to obtain both the total mass of the dust (including the lead), and the mass of the lead alone. Concentration is calculated by dividing the mass of the lead by the total mass of the dust.

Ideally, EPA would favor the use of both loading and concentration data to characterize hazards and to identify appropriate response actions. Two examples help illustrate the value of using two measures. In the first example, a risk assessor finds high dust-lead loadings both in house A and in house B. Dust-lead concentration is high in house A, but low in house B. Without the concentration data, the risk assessor would treat both houses the same. With the concentration data, the risk assessor would be able to conclude that house A, with the high dust-lead concentration, has an on-going source of lead that needs to be identified and controlled. In house B, high loading combined with low concentration may indicate the presence of excessive dust that could be addressed through routine housecleaning. This example shows how the additional information provided by the concentration data allows the risk assessor to differentiate between two residences that have similar dust-lead loadings.

In the second example, a risk assessor finds high dust concentrations in both house X and house Y; the dust-lead loadings are high in X and low in Y. The concentration data suggest the presence of an on-going source of lead that should be identified and addressed. The loading data, however, indicate that only house X currently has a dust-lead hazard. Cleaning, the recommended control measure for dust-lead hazards, would likely be an effective risk reduction intervention in house X but probably would not be necessary at present in house Y. This example shows how the additional information provided by dust-lead loading data allows the risk assessor to differentiate between two houses that have similar dust-lead concentrations.

Although EPA acknowledges that both loading and concentration data would be valuable to a risk assessor, the Agency recognizes that setting standards based on both measures might impede implementation of hazard evaluation on a large scale (i.e., in the nation's housing). Currently, wipe sampling is the method that most risk assessors use. In contrast, few risk assessors are skilled in vacuum sampling (the method required for obtaining concentration data). Furthermore, vacuum samples require significantly more time to collect because the equipment needs to be cleaned between samples, resulting in higher costs for risk assessments. EPA, therefore, believes that a standard based on loading alone is more workable than a standard that uses both measures. For those risk assessors that use vacuum sampling or other methods of dust sampling, the Agency is planning to provide guidance on the use and interpretation of concentration data.

2. *Surfaces*. To date, Federal, State, and local agencies have traditionally tested for the presence of lead in dust on three horizontal surfaces: uncarpeted floors, interior window sills, and window troughs. The HUD Guidelines provide clearance levels for these three surfaces to evaluate post-abatement cleanup. EPA included these clearance levels in its 1994 guidance on lead-based paint hazards. In addition, 25 States currently have, are revising, or are promulgating standards for floors, sills, and troughs. The State standards are largely based on the HUD Guidelines and EPA's guidance (Ref. 97).

Although Title IV does not explicitly require it as part of the TSCA section 403 rule, EPA had to determine for which surfaces it would propose dust-lead hazard standards. EPA considered several factors in its decision. First, the Agency wanted to include surfaces that would enable risk assessors to adequately characterize risk. Second, it wanted to minimize the amount and complexity of sampling required in order to reduce the cost of risk assessments. Third, EPA did not want to deviate significantly from current approaches unless there was adequate justification.

Analyses performed by the Agency show that the dust on floors, sills, and troughs are highly correlated (Refs. 98 and 99). Of the three surfaces, however, the scientific literature suggests that floor dust-lead loadings are the dust-lead measure most relevant to childhood lead exposure. The child plays on the floor, thereby coming in contact with any settled dust containing lead. Lead dust loadings on sills and troughs are also significant measures but explain less of the variation in blood-lead concentrations (Ref. 100). For some data sets, lead dust loadings on sills are a better predictor of blood-lead concentrations than lead-dust loadings in troughs, while the opposite is true for other data sets (Ref. 101). In addition, sills and troughs are themselves highly correlated (Ref. 102).

Based on these data and analyses, the Agency has determined that standards should be proposed for floors and either sills or troughs. Proposing standards both for sills and troughs does not improve a risk assessor's ability to

characterize risk sufficiently to justify the additional expense for sampling and analysis of both surfaces. EPA has decided to propose dust standards for sills but not troughs for two reasons. First, sills are easier to sample than troughs. Second, lead in troughs may be caused by direct deposits from exterior sources and therefore be less representative of typical interior levels than lead on sills. The Agency wishes to note that this approach is not intended to imply indifference to dust-lead levels in troughs. In fact, EPA is including a dust-lead clearance standard for troughs (discussed in Unit VIII. of this preamble) to ensure that troughs are adequately cleaned as part of a dust cleaning intervention.

EPA recognizes that its proposal not to establish dust levels for window troughs represents a departure from the interim guidance. That guidance, however, did not attempt to identify risk-based dust-lead levels. Rather, it adopted the HUD clearance levels for floors, window sills, and window troughs and suggested that they be used to identify ''hazards'' until the Agency was able to assess the risks from dust-lead on the various surfaces. Today's proposal is based upon these new analyses and presents standards for those surfaces that appear to adequately characterize a child's exposure to dust, namely floors and interior window sills.

The EPA requests comment on this difference. In particular, EPA requests comments on the impact of not having window trough dust levels on the accuracy, complexity, and cost of risk assessments. EPA also requests any new data or analysis concerning the relationships between dust on floors, sills, and troughs and childhood blood-lead concentrations that could help the Agency in setting hazard standards for window troughs.

3. *Carpeted floors*. Today's proposal does not include dust standards (contamination, hazard, or clearance) for carpeted floors. EPA made this decision because the Agency is unaware of adequate data that could be used to establish a statistical relationship between dust lead on carpeted floors and children's blood-lead concentrations. In the absence of a statistical relationship between children's blood-lead concentrations and dust lead on carpeted floors, EPA cannot estimate the level of risk and risk reduction that would be associated with various levels of dust-lead in carpeted floors. The Agency, therefore, is unable to select hazard standards that meet the statutory and policy criteria. Furthermore, EPA does not have adequate data on the effectiveness of carpet cleaning that would be needed to establish a dust clearance level for carpeted floors. When the data necessary to establish dust standards on carpeted floors become available, EPA plans to analyze them expeditiously and amend the regulations being proposed today to add standards for carpeted floors.

Because many residences built prior to 1978 have carpeted floors, EPA recognizes that the lack of standard for carpeted floors is a significant limitation on today's proposal. The Agency is therefore requesting comment on the impact of not including standards for carpeted floors. EPA would also be interested in any information or data that would help it establish such standards.

4. *Emergency dust level*. During the regulatory development process, several interested parties urged EPA to establish an emergency dust level as part of the TSCA section 403 rule (Ref. 13). Two purposes for an emergency level have been articulated. First, this level could be used to help property owners and other decision-makers set priorities for implementing hazard control interventions. Second, an emergency dust level could be used by local public health authorities to recommend or require specific drastic and immediate actions, such as removal of a child or immediate environmental intervention where dust levels exceeded the emergency threshold.

EPA believes that, while these goals are worthwhile, an emergency dust level is not needed either for priority-setting or for mandating specific actions. Priorities for intervention should be based on the ''worst-first'' approach where residences with the highest levels of lead are targeted for earliest response action. Furthermore, because response actions should be taken in all houses with hazards, EPA does not believe that its national program should establish a further priority for action. Such priorities should vary by location, occupants, housing availability, and other local factors.

With respect to mandating specific drastic and immediate actions, EPA believes that such a response to a lead-based paint hazard would be appropriate if exposure to very high levels of lead in dust presents an acute health risk, and drastic and immediate action is the only way to prevent further harm to the health of resident children. Although EPA is concerned about continuous exposure to very high levels of lead in dust, health threats in the United States today usually occur due to chronic rather than acute exposure to dust. In addition, drastic action should be taken in response to other important findings, such as an elevated child blood-lead concentration. The dust hazard standard should be sufficient for inducing prompt action by property owners or other decision-makers and providing adequate protection to child occupants.

In the event that EPA obtains information justifying the need for an emergency standard, the Agency has explored several approaches for setting an emergency dust standard. Under one approach, EPA would derive an emergency standard by applying a multiplier (e.g., 10) to the dust-lead hazard level. Although this approach is easy to understand, there is no direct link to severe human health risk. The second approach bases the emergency standard on dust levels found in the homes of children who have received medical treatment for lead poisoning. EPA believes that the second approach would be preferable because the level would be associated with exposure and risk. It has, however, several disadvantages. Many cases of severe lead poisoning result from ingestion of paint chips and not necessarily from dust ingestion (Ref. 95). In addition, dust measurements may have been obtained weeks or months after the blood-lead concentration was measured and may not reflect dust-lead levels that were present when the exposure occurred. For these reasons, the Agency's attempts to develop emergency dust levels using the second approach have not been successful. Thus, EPA lacks sufficient data to associate levels of lead in dust with specific cases of medically-managed lead poisoning. Nevertheless, EPA believes that this approach is the best currently available for setting an emergency dust-lead level.

The Agency is seeking comment on the issue of an emergency dust standard. The Agency is interested in comments concerning the need for an emergency dust standard, given the ready availability of blood-lead data. The Agency also seeks comments on whether and how an emergency standard would be used, including whether immediate responses are needed because lead from dust usually causes harm through chronic rather than acute exposures. In addition, EPA requests any data, analysis, or approach that would help the Agency set an appropriate emergency standard if the need for such a standard could be justified.

C. Soil Issues

1. *Dual standards for soil-lead level of concern*. During the Dialogue Process,

several interested parties suggested that EPA should establish two standards for soil-lead level of concern: a more stringent standard for ''play areas'' and a less stringent standard for other areas in a residential yard (Ref. 15). This suggestion was based on the hypothesis that there is less contact between children and the soil in ''non-play areas,'' resulting in lower exposure and risk. Proponents of this suggestion also cited EPA's July 14, 1994 guidance which established a separate advisory level for soils on non-residential property and where use by children is less likely. EPA wishes to note that the separate advisory level (2,000 ppm) presented in the 1994 guidance is intended for use at non-residential property and that the more stringent level (400 ppm) applies to all residential property, including ''non-play areas.''

The parties that proposed this option expressed two concerns about a single, more stringent standard for soil-lead level of concern applying to the whole yard. First, response costs would increase because interim controls (i.e., soil cover), the recommended response for the lower tier soil level in the guidance, would have to be applied to larger areas. Second, because it may not be feasible to install and maintain soil cover, property owners would have to perform full soil abatement, the response recommended for soil-lead hazards in order to provide adequate protection.

EPA rejected proposing separate soil-lead levels of concern for ''play areas'' and ''non-play areas'' on residential property for two reasons. First, the cost concern is based on this option because it is based on an incorrect interpretation of soil-lead level of concern. As noted in Unit II. of this preamble, the presence of a soil-lead level of concern does not trigger any regulatory requirements or legal obligation. The soil-lead level of concern is a risk communication tool. It is, therefore, appropriate that owners and occupants be aware of any soil on property where the lead concentration exceeds this level regardless of its location. If owners and occupants are aware of the presence of soil-lead level of concern, they can take actions to reduce exposure to children. Such actions can include applying soil cover and preventing children from playing in areas of a yard where lead levels equal or exceed the level of concern.

Second, EPA believes that it is infeasible to distinguish between ''play areas'' and ''non-play areas'' in many yards. Indicators of where children play, such as playground equipment, are not always present. In the Rochester study, ''play areas'' could not be identified at more than half the residences in the data set (Ref. 20). Even when such equipment is present, children's outdoor activity is not necessarily limited to that location. In addition, play patterns may change when a new family assumes occupancy following turnover of a residence. Nevertheless, the Agency recognizes that, at some residences, direct exposure to soil occurs mainly around play equipment. EPA believes, however, that it is more appropriate to address this issue in its sampling guidance by providing advice to risk assessors on where to collect soil samples. This issue is discussed further in Unit VII. of this preamble.

In light of the interest expressed by some stakeholders in a separate level of concern for ''play areas,'' EPA is seeking public comment on this issue. In particular, the Agency would like input on (1) a workable approach for identifying ''play areas'' that addresses the problems discussed above and (2) the technical basis for establishing a separate soil-lead level of concern. The available data and analytical tools enable the Agency to assess risk from soil on residential property but not in specific parts of a yard. EPA would also like the public to comment on whether a separate level of concern for ''play areas'' would be necessary if the soil-lead level of concern appears only in guidance and not in the regulation.

Another interested party suggested that the standard for soil-lead level of concern should apply to all ''play areas'' and to ''non-play areas'' only where lead levels in household dust continuously exceed the dust hazard standard (Ref. 17). This option is predicated on the assumption that the exposure pathway for ''non-play areas'' is track-in lead which would be measured through interior dust sampling. If there is no dust hazard, this party reasoned, then the lead in the ''non-play area'' soil does not present a health threat.

EPA rejected proposing this option for three reasons. First, EPA is not aware of any data that link exposure pathways to location of soil. Therefore, the Agency cannot assume that track-in contamination of household dust is the only pathway associated with ''non-play area'' soil. Second, as noted above, EPA believes that it is infeasible to distinguish between ''play areas'' and ''non-play areas'' in many yards. Third, the proposed dust standards are lead loading standards, which reflect a combination of the amount of dust present and the concentration of lead in that dust. The amount of dust on an interior surface at any particular time can be extremely variable and can depend upon cleaning procedures used in a residence and the length of time between cleaning and the collection of the dust sample. Also, the rate of soil entry into the home can vary depending upon such factors as the use of doormats and residents' preferences regarding leaving windows open. Given these variables, the Agency does not believe that a low interior dust-lead loading measurement at the time of a risk assessment could reasonably ensure that soil in any specific area of a yard (including ''non-play areas'') does not present a risk of concern to children.

2. *De minimis area of bare soil.* The definition of lead-contaminated soil in section 401 refers to bare soil which is not defined by the statute. Bare soil, as defined by HUD in its proposed regulations under sections 1012/1013 of Title X (61 FR 29206, June 7, 1996) is ''soil not covered by grass, sod, or other live ground covers, or by wood chips, gravel, artificial turf, or similar covering. Bare soil includes sand.'' EPA considered whether this definition is sufficient for the TSCA section 403 rule. Specifically, the Agency considered whether the rule should include a minimum (i.e., *de minimis*) area of bare soil as part of the lead hazard criteria.

The inclusion of a *de minimis* area of bare soil is based on two assumptions. First, there is a relationship between the amount of soil cover and exposure to lead in the soil. In yards with very small amounts of bare soil, it is presumed that exposure would be low. Second, a *de minimis* value would help target resources by eliminating the need to evaluate soil or respond to contamination or hazards for properties where there is only a small amount of bare soil. For example, the HUD Guidelines instruct risk assessors to sample yards that have at least 9 square feet of bare soil, with no *de minimis* in the ''play area'' (Ref. 11).

EPA considered three options for a bare soil *de minimis* area. Under the first option, EPA would adopt the *de minimis* area from the HUD Guidelines. Although, this approach is consistent with existing guidance, it would require risk assessors to measure the size of individual patches of bare soil. It also does not account for differences in lot size. Under the second approach, EPA would define the *de minimis* in terms of bare soil as a percent of the whole yard. The risk assessor would measure the percentage of bare soil using a specified technique (e.g., the line transect method used by soil conservationists to assess the erosion potential of cropland soil) (Ref. 103). This option was designed to simplify the process of measuring the area of bareness and to account for differences in yard size. Under the third

option, EPA would not include a *de minimis* area of bare soil in the proposed regulations.

EPA decided not to include a *de minimis* area for bare soil because the disadvantages of each of the two approaches for establishing a *de minimis* outweighed the advantages. The *de minimis* used in the HUD Guidelines does not account for differences in yard size; 9 ft^2 outside of the ''play area'' may be insignificant in a suburban yard but large for the back yard of an urban row house. Although a percentage-based *de minimis* would account for different yard sizes, EPA has no analysis or data that relate the amount of bare soil to risk and, therefore, no basis upon which to select the *de minimis*. Furthermore, there is no existing government or consensus percentage-based standard that EPA could adopt.

EPA also believes that a *de minimis* area of bare soil provides little benefit. First, information provided by an experienced risk assessor suggests that very few properties would be excluded using the *de minimis* in the HUD Guidelines (Ref. 104). Second, the incremental cost of including soil testing in a risk assessment is small. Third, if a soil-lead hazard is present, the property owner or other decision-maker should take action to control the hazard and this action should address all soil where lead levels exceed the hazard standard whether or not it is bare.

3. *Covered soil*. Although Title IV of TSCA restricts the standard for soil-lead hazards to bare soil, EPA is concerned that the presence of soil cover, such as grass, may not reduce exposure to lead sufficiently. Consequently, it may be prudent to test covered soil to determine whether a soil-lead hazard exists.

The Agency, therefore, recommends that covered soil be tested in cases where the risk assessor has reason to believe that the level of lead in soil may constitute a soil-lead hazard. Factors that the risk assessor should consider include high soil-lead levels in bare sections of the yard where soil sampling was conducted, the presence of high dust-lead levels in a home that has no lead-based paint, the presence of children with elevated blood-lead levels in the community, high soil-lead levels in neighboring yards, the presence of nearby industrial sources, the presence of a nearby steel structure such as a bridge or highway overpass, and the past use of the property. It is important to note that testing of covered soil is only a recommendation. The standards being proposed under TSCA section 403 do not apply to covered soil, and the testing of covered soil is not required by the regulations promulgated under authority of TSCA section 402 at 40 CFR 745.227(d) as amended by today's proposal.

4. *Soil-lead level of concern standard becoming de facto hazard standard*. Interested parties expressed concern about the potential confusion over the two standards for soil. Specifically, some parties feared that the standard for soil-lead level of concern could become the *de facto* hazard standard for soil, leading to soil abatement at millions of homes.

EPA believes, however, that there is no basis for this concern. First, as proposed in today's action, the level of concern will appear only in guidance, not in the rule.

Second, the Agency will clearly explain the differences between the two levels in its public outreach documents and education efforts. The two standards are based on different criteria and have different purposes. The level of concern is a tool to communicate risk and is based on an individual child having a one to five percent probability of equaling or exceeding a blood-lead concentration of 10 µg/dl. Thus, EPA believes that soils with lead levels that exceed the level of concern present a level of risk to children of sufficient concern that a variety of actions should be considered to reduce exposure (e.g., soil cover, door mats, hand and toy washing). The standard for a soil-lead hazard, in contrast, is based on greater certainty regarding probability of harm. The presence of a hazard indicates that the cost of intensive controls (e.g., soil removal) is commensurate with the level of risk reduction that could be achieved.

Third, EPA's 1994 guidance on lead-based paint hazards contains multiple levels for soil, and yet there is no evidence that the public thinks that abatement is the recommended action at 400 ppm, the lower level in the guidance.

D. Sample Collection and Analysis

Numerical standards for lead in paint, dust, and soil have little significance in the absence of information about how the samples were collected and analyzed. In order for the sampling results to be useful, they must be reliable. Several conditions have to be met to consider sampling results reliable. First, assurances are needed that the individual who collected the samples has the appropriate training and expertise. These individuals must be familiar with specific requirements regarding sample collection and handling. They also must be skilled in sampling techniques and able to make critical subjective judgments about the number and location of samples to collect. For example, if a risk assessor fails to measure the area of a dust wipe sample accurately, the results will be invalid. Sample handling is also important because contamination of samples can invalidate results.

Second, reliability of sampling results is dependent upon the quality of laboratory analysis. Laboratories must adhere to strict quality assurance and quality control procedures to ensure that samples are analyzed properly. These procedures address, among other things, contamination of samples and the calibration of laboratory instruments. Contamination of samples can have a significant effect on sampling results and invalidate them. Similarly, laboratory instruments that are out of calibration can yield erroneous results.

EPA has several options for ensuring that the sampling results are reliable and are comparable to standards. Under the first option, the Agency could tie the standards to specific methods. This approach has the advantage that it uses methods known to EPA to be reliable and effective. The major disadvantage is that it references specific technologies. As technologies change, the Agency would have to amend the rule to reflect these changes. Referencing specific technologies in a regulation could also stifle technological innovation.

Alternatively, under a second option, EPA could adopt an approach that relies on the performance of its training and certification program for workers and contractors and its accreditation program for laboratories and only specify the type of samples to be collected and analyzed. Under this approach, EPA would assume that compliance with applicable (i.e., Federal, State, Tribal) certification standards for workers and contractors and laboratory accreditation through the National Lead Laboratory Accreditation Program (NLLAP) ensures that samples are being collected, handled, and analyzed in a manner that the results can be reliably compared to the TSCA section 403 standards.

EPA has decided to propose tying the TSCA section 403 standards to risk assessments conducted according to the risk assessment work practice standards found at 40 CFR 745.227. This approach assures that samples can be reliably compared to the TSCA section 403 standards while more easily accommodating technological change than an approach that references specific technologies.

Accordingly, EPA is proposing that the determination of whether *in-situ*

paint on a specific component is lead-based shall be made by a certified risk assessor. If confirmatory laboratory analysis is necessary, paint chip samples must be analyzed by a laboratory recognized by EPA as proficient for paint analysis. A certified risk assessor shall determine whether the paint is in poor condition based on visual observation. Dust-lead loadings shall be determined from wipe samples collected from uncarpeted floors, interior window sills, and window troughs by a certified risk assessor and analyzed by a recognized laboratory. Soil-lead concentrations shall be determined from samples collected by a certified risk assessor and analyzed by a recognized laboratory.

VI. Requirements for Interpreting Sampling Results

Under this proposal, to determine whether lead-based paint hazards are present at a residence, a risk assessor would have to compare his/her measurements and observations to the hazard and level of concern standards in this proposed rule. Unit IV. of this preamble presented the proposed lead-based paint hazard standards. Regulations promulgated by EPA as part of the TSCA section 402 training and certification rule, at 40 CFR 745.227, establish work practice standards for risk assessments. Neither the proposed lead-based paint hazard standards nor the work practice standards, however, prescribe how a risk assessor should compare his/her measurements and observations with the proposed standards. Therefore, under authority of TSCA section 403, EPA is proposing implementation requirements that will prescribe how a risk assessor should compare his/her measurements and observations to the proposed standards. This unit of the preamble presents these proposed requirements and the Agency's rationale for its decisions.

A. Paint

According to the regulations at 40 CFR 745.227(d), the risk assessor identifies and tests all painted surfaces that are in poor condition (i.e., where deteriorated paint exceeds the proposed minimum surface area requirements) and are determined to have a distinct painting history to determine whether the paint is lead-based. EPA is proposing that results of this sampling be interpreted in the following manner. If the testing confirms that the paint is lead-based, then lead-based paint in poor condition on that component and other like components with a similar painting history is considered hazardous lead-based paint. This approach for interpreting the paint sampling is based on inductive logic; if the tested component is covered with lead-based paint, then other like components with similar painting histories are covered with lead-based paint. This approach is consistent with the HUD Guidelines (Ref. 11).

Risk assessors have the option of using composite samples rather than single surface samples. Because composite samples provide an average level of lead, low values on some surfaces may mask the presence of lead-based paint on other surfaces. EPA is, therefore, proposing to adopt the approach recommended in the HUD Guidelines that the standard for lead-based paint (1 mg/cm^2 or 0.5 percent by weight) be divided by the number of subsamples in the composite (Ref. 11). For example, if a composite sample contains five subsamples, the risk assessor would compare the results to a standard of 0.2 mg/cm^2 or 0.1 percent by weight. Using this approach, it is mathematically impossible for the composite to pass when any single subsample exceeds the 1 mg/cm^2 or 0.5 percent by weight standard for lead-based paint.

It is important to note the composite paint sampling is essentially a negative screen. It can be used to demonstrate that lead-based paint is not present, but cannot be used to identify which component has lead-based paint if the results indicate that lead-based paint is present. If a composite sample shows that lead-based paint is present, the risk assessor would need to take single surface samples to identify the specific component(s) that contains lead-based paint.

B. Dust

1. *Single-family housing.* Risk assessors can take two kinds of dust samples: single surface samples which yield a result for the specific surface that was sampled; or composite samples which yield an average result that applies to all the surfaces that were sampled. The interpretation of the composite sample is straightforward. The risk assessor compares the result of the composite sample to the standard for dust-lead hazards. For single surface samples and multiple composite samples, EPA is proposing that the risk assessor should compare the average, weighted by the number of subsamples in each sample, to the standard for dust-lead hazard. Under this approach each single surface sample would have a weight of one.

The Agency is proposing this approach because, in the absence of information on the amount of exposure that occurs in each location, the average of single surface samples reasonably reflects a child's typical exposure to lead in dust. This same rationale was used to design the methodology for the Agency's risk analysis. Because average exposure was used to estimate risk and choose the standard, it is appropriate to adopt a consistent approach for interpretation of dust samples. Using a weighted average gives the subsamples in a composite the same weight as single surface samples and better reflects average exposure to lead in dust.

EPA recognizes that averaging single surface samples yields the same numerical result as a composite sample, and that this might serve as a disincentive to conduct single surface sampling. The Agency believes, however, that single surface sampling can yield valuable information that can help a risk assessor identify sources of contamination and/or recommend hazard control strategies that target particular parts of a home. For example, single surface sampling may show that dust-lead levels are well above the hazard standard in the entry hall of a home but below the standard elsewhere. Using the averaging approach, if the entry hall levels are sufficiently high, the risk assessor would determine that there is a dust-lead hazard. By interpreting the results of the single surface samples, however, the risk assessor may be able to determine the source of the dust contamination is exterior soil or dust tracked-into the entry hall and not interior paint. In addition, the risk assessor may recommend that dust cleaning be focused on the entry hall, rather than the whole house. Whether the information provided by single surface samples justifies the cost will be a site-specific decision.

2. *Multi-family housing*—a. *Dwelling units.* In multi-family housing, a risk assessor would use the approach for single-family homes to interpret the results of sampling in each unit where samples were collected. There is an additional issue that must be addressed in multi-family housing because the sampling guidance, which is based on the HUD Guidelines, will provide several approaches to the risk assessor for collecting dust samples from a limited number of units. Because no dust samples would be collected from many units under these approaches, the risk assessor would have to make assumptions about dust levels in units that are not sampled. This issue does not apply to buildings that contain from two to four units because the risk assessor would have to collect samples in all units.

EPA considered three alternatives for identifying dust-lead hazards in units that are not sampled in multi-family housing.

Option 1. Under option one, the risk assessor would assume that dust-lead hazards are present in all unsampled units if dust-lead hazards are identified in at least one sampled unit. The risk assessor would assume that unsampled units do not contain lead-based paint hazards only if no dust-lead hazards are identified in the sampled units. In other words, a sampled unit where dust-lead hazards is present would represent all unsampled units.

Option 2. Under this option, the risk assessor could refine assumptions about unsampled units if he/she could establish a pattern for units that have dust-lead hazards. For example, testing results may show that only first floor units have dust-lead hazards and soil-lead exceeds the level of concern on the property. The risk assessor could conclude from this information that the dust is being contaminated by the soil and that this pathway of contamination applies only to first floor units. Therefore, only unsampled first floor units should be assumed to have dust-lead hazards.

Option 3. This option applies only to risk assessors who use random sampling to select units for testing. The random sampling protocol is based on the specification that the number of sampled units provides 95 percent confidence that fewer than 5 percent of all units in the building(s) (or 50 units, whichever is less) contain dust-lead hazards if no sampled units have hazards. Under this option, the risk assessor could randomly test a sufficient number of additional units to achieve the same specification when some units originally tested have hazards.

The Agency selected the first option for the proposed rule. Although EPA recognizes that some unsampled units would be identified as having dust-lead hazards even if dust levels in those units are below the proposed standards, it is not possible to determine which unsampled units would have hazards in the absence of additional data. The only protective approach, therefore, is to assume that all unsampled units have hazards.

Because this approach may identify some units that do not have dust-lead hazards as having hazards, EPA would encourage property owners, who are faced with this situation, to test the dust in units that were not initially sampled. This additional information would allow the risk assessor to determine whether dust hazards are actually present in these units. In light of the cost of testing and possible cleaning in a large number of units, the property owner may consider focusing attention first on units where young children are present. Dust testing and cleaning at other units could wait until unit turnover.

EPA is not proposing the two other options because they are unlikely to be practical or useful. Option 2 would not be beneficial because, given the variability of dust loading levels, risk assessors would probably not be able to identify patterns of hazard. Option 3 offers little value because there is a high probability that an additional unit would fail requiring the risk assessor to conduct dust testing in even more units. In the end, the risk assessor would likely test dust in nearly all the units.

Because the proposed approach for interpreting the results of dust testing in multi-family housing is not optimal (i.e., it may falsely identify some units as having dust-lead hazards), the Agency is seeking comment on this issue. Specifically, EPA would be interested in an alternative approach and the data and rationale used to support an alternative. The Agency is also interested in comment on the two options it considered but rejected.

b. *Common areas.* The same approach for interpreting dust samples would apply to common areas. For common areas that can be grouped together such as hallways, the risk assessor could test dust from a random, targeted, or worst-case sample if there are a sufficient number of areas. The risk assessor would assume that dust-lead hazards are present in the unsampled common areas if a dust-lead hazard is present in at least one of the sampled common areas. For common areas that cannot be grouped together (e.g., entry lobbies, basement laundry rooms), the risk assessors would treat each area as a separate dwelling unit and collect dust samples from all such areas. The risk assessor would interpret the dust sample results for each area according to the requirements for single-family homes described above.

C. Soil

EPA is proposing that the interpretation of soil samples would use techniques similar to those employed for the interpretation of dust samples. The risk assessor would compare the average concentration of the dripline and mid-yard composites to the soil-lead hazard standard. If the risk assessor collects more than one dripline or mid-yard composite sample, he/she would first compute the average concentration in the dripline and/or in the mid-yard and then compute the average of the dripline and mid-yard concentrations. The approach of using the average concentration is based on the rationale stated above for the interpretation of dust samples. Risk assessors would use the above approach for each building in a multi-family housing development and compare the average for all buildings to the soil-lead hazard standard.

The use of sampling data, however, should not be limited to determining whether a hazard exists. Soil samples can provide valuable information to the risk assessor about the location and extent of soil contamination, which can help the assessor design a targeted control strategy. For example, a risk assessor may determine, based on the average of the dripline composite sample and mid-yard composite sample, that a yard exceeds the soil-lead hazard standard. The individual composite samples may show, however, that the soil in the dripline is above the hazard standard but the mid-yard soil is not. This information enables the risk assessor to design a strategy that focuses controls for soil solely in the dripline. Examining the results of individual composite samples would be especially valuable in a multi-family housing development where focusing soil intervention on relatively small areas can reduce the costs of intervention significantly.

In addition, as EPA will detail in the guidance document on using the hazard standards, the Agency recommends that when the remediation strategy is developed, that areas with highest lead levels be addressed first. For example, if dripline soil is 3,500 ppm and mid-yard soil is 500 ppm (i.e., yard-wide average of 2,000 ppm), the strategy to reduce average levels below 2,000 ppm should rely first on removing the highly contaminated soil at the dripline rather than on covering the moderately contaminated soil at the mid-yard.

VII. Amendments to TSCA Section 402 Regulations

This unit of the preamble presents proposed amendments to the work practice standards for risk assessments and abatements promulgated under the authority of TSCA section 402 at 40 CFR 745.227 along with EPA's rationale for its decisions. These amendments would include the establishment of dust clearance standards, management controls for soil removed during an abatement, and changes to existing dust and soil sampling provisions. EPA did not include clearance standards as part of the original TSCA section 402 rule because the Agency thought that it was more appropriate to establish these

standards together with the TSCA section 403 hazard standards. Amendments to the sampling provisions are necessary because the work practice standards were developed prior to the TSCA section 403 regulations. Therefore several previously developed sampling provisions are not compatible with the hazard standards proposed in this rule. EPA is proposing management controls for soil removed during an abatement because of concern that soil removed from one yard could be disposed of in the yard of another residential property or child-occupied facility.

When EPA finalizes the regulations being proposed today, the Agency will also issue conforming amendments to the section 402 regulations to ensure consistency in terminology between the regulations. These conforming amendments will most likely focus on references to the terms lead-contaminated dust and lead-contaminated soil which are not included in today's proposal.

A. Clearance Standards

Under the authority of section 402 of TSCA, EPA is proposing clearance standards for dust in today's proposed rule. Clearance standards are used by certified individuals to evaluate the adequacy of the cleanup performed in residences at the completion of abatement. According to the practices prescribed at 40 CFR 745.227, a certified risk assessor or inspector must collect dust samples and have them analyzed by an accredited laboratory following the cleanup to assure that the cleanup reduced dust-lead levels to the levels prescribed in today's proposal. If the clearance levels are not met, the cleanup and testing process must be repeated until the clearance standards are met. Although clearance testing is not required following implementation of interim controls (e.g., paint repair), the Agency strongly recommends such testing to ensure that the residence has been adequately cleaned.

TSCA section 402 establishes three criteria for performing lead-based paint activities: reliability, effectiveness, and safety. EPA is reluctant to propose an approach that mandates a specific technology. In fact, the Agency wants to promote technological innovation that could result in less costly products and practices that are equally or more effective.

Consequently, EPA is proposing that these criteria should apply to numerical dust lead clearance levels. Under this approach, the Agency would be establishing standards that are achievable using products and methods known to be reliable and effective. Specifically, EPA has decided to base the clearance standards on the performance of the cleanup method recommended in the HUD Guidelines which is currently considered state of the art. This method involves a combination of a wet wash with an all-purpose or lead-specific cleaner and HEPA vacuuming. Although clearance standards are based on dust-lead levels achievable using this method, the standard does not require this method. Any cleanup method would be satisfactory as long as the clearance standard is met. This approach ensures that the cleanup was reliable and effective while providing an incentive for entrepreneurs to develop less costly technologies that can meet the standard.

EPA considers safety, for purposes of clearance, to be a level of lead in dust that is a associated with the risk level of concern (i.e., a one to five percent probability that a child will have a blood-lead concentration equal to or exceeding 10 μg/dl). As is the case with a clearance standard that is effective and reliable, a safe clearance standard would not prescribe a specific cleaning technology; any technology would be acceptable as long as it is able to reduce dust-lead loadings to ''safe'' levels.

The clearance standards must also be evaluated within the broader context of Title X and its purposes. In particular, EPA must select clearance standards that are compatible with the development of a workable framework for lead-based paint hazard evaluation and reduction.

1. *Clearance standard for floors and sills*. The available field data documenting experience with the cleaning protocol recommended in the HUD Guidelines do not identify obvious candidates for clearance standards (Ref. 105). Instead, use of the protocol yields a range of dust loadings. It should be noted that these data were collected under the controlled conditions associated with field studies. In practice, higher post-cleanup dust-lead levels should be expected.

EPA's analysis of data from HUD demonstration projects and five State and local programs shows that the median dust-lead loading for floors after the first clearance test was 25 μg/ft^2 with a 90th percentile loading of 187 μg/ft^2. The median dust-lead loading for interior window sills was 33 μg/ft^2 and the 90th percentile was 475 μg/ft^2. These data show that there is significant overlap among the dust-lead loadings achievable using the HUD cleaning protocol and the levels of lead in dust associated with the risk level of concern and the dust-lead hazard level.

EPA has decided, therefore, to propose clearance standards that are the same as the dust-lead hazard standard, 50 μg/ft^2 for uncarpeted floors and 250 μg/ft^2 interior window sills. This decision as based primarily on choosing standards that are consistent with the available data and that are as easy as possible to understand and implement. The other option considered was to select a clearance standard that is lower than the hazard standard.

EPA is concerned that separate clearance and hazard standards would be difficult for property owners and other decision-makers to understand. Especially troublesome are post-cleanup dust loadings that exceed clearance standard but not the hazard standard. Recleaning would be required in response to the clearance test, but no action would be indicated if the same loading was measured prior to intervention. Although this situation would be technically justifiable because hazard and clearance standards serve different purposes (indicator of risk vs. indicator of cleaning adequacy), it may seem to be inconsistent to owners and other decision-makers and make the standards difficult to understand. This situation is avoided by having both the hazard and clearance standards set at the same dust-lead loading.

Another argument that has been made to support separate hazard and clearance standards is to provide a margin that allows for reaccumulation of lead in dust following the cleanup. In the absence of this margin, there is a concern that a residence could have a dust-lead hazard soon after hazard control interventions were performed. The field data show, however, that in most circumstances reaccumulation will not result in the immediate reappearance of a dust-lead hazard because the majority of residences would be cleaned to levels well below clearance (Ref. 105).

2. *Clearance standard for window troughs*. The Agency considered two alternatives for window trough clearance standards: 800 μg/ft^2, the standard in the HUD Guidelines; and a ''no-visible'' dust standard. The first option has the advantage that it is consistent with existing practice, ensures that troughs will be adequately cleaned, and meets the statutory criteria. The ''no-visible'' clearance standard does not require follow-up dust testing of the trough. Although, data suggest that troughs have been adequately cleaned if there is no visible dust and debris in the window troughs and the clearance standards for uncarpeted floors and interior window sills are met, these data were collected when there

was a trough clearance standard that had to be met (Ref. 105). In the absence of a clearance standard, there is no assurance that troughs would be cleaned as well. EPA, therefore, has decided to propose adopting the existing HUD clearance level for troughs. Although this option would require trough sampling, it is expected that the incremental cost for clearance sampling would be $5 to $10 depending on the number of composite samples taken.

3. *Interpretation of dust clearance samples.* The work practice standards at 40 CFR 745.227 already include a provision for interpreting dust clearance samples, which states that if a clearance sample fails, all components represented by the failed sample shall be recleaned. This provision, however, does not differentiate between single surface samples and composite samples. Because composite samples provide an average level of lead, low values on some surfaces may mask the presence of lead levels that exceed clearance standards on other surfaces. In fact, EPA's analysis of empirical clearance testing data shows that there is a 57 percent chance that a composite sample would pass clearance even if any individual subsample would have failed the clearance test using the clearance standard (i.e., false passing) (Ref. 105). False passing introduces the possibility that a post-abatement cleanup would be judged to be adequate when, in fact, it was not. There are no ''false failures'' for composite samples under this approach (Ref. 105). Consequently, EPA developed and analyzed two options for amending the requirements at 40 CFR 745.227(e)(8) to include separate provisions for interpreting the results of composite dust clearance samples.

Option 1. The first option is the most stringent. Under this option, the risk assessor would divide the clearance standard by the number of subsamples in the composite. For example, if a composite floor sample contained four subsamples, the risk assessor would compare the loading from the composite sample to 12.5 $\mu g/ft^2$ (i.e., the floor clearance standard divided by four). This approach is analogous to that being proposed above for interpretation of composite paint samples. Using this approach, it is mathematically impossible for the composite to pass when any single subsample exceeds the 1 mg/cm^2 or 0.5 percent by weight standard for lead-based paint. It would, however, introduce the possibility of a composite sample failing clearance even if all the subsamples would have passed clearance individually (i.e., false failure), leading to additional clean up activities that may not be necessary. EPA's analysis of the empirical data shows that there is an 18 percent chance of having a false failure (Ref. 105).

Option 2. The second option is a middle ground approach between using the clearance standard for single surfaces samples and option one. Under this option, the risk assessor would compare the result of composite dust clearance samples to twice the value of the clearance level calculated in option one. That is, the risk assessor would compare the composite sample lead loading to $2CS/n$, where CS is the clearance standard for single surface samples and n is the number of sub-samples in the composite. EPA's analysis of the empirical data shows that under this option there is a 5 percent chance of failing clearance when all subsamples pass individually and a 22 percent chance of passing clearance when at least one of the subsamples would have failed clearance.

EPA selected option one for the proposed amendment because it provides the best balance of safety, effectiveness, and reliability. The false failure error probability for option one, 18 percent, is lower than the false passing probability (57 percent) using single surface clearance standards. Moving from option one to option two, the improvement in false failure probability, which declines from 18 percent to 5 percent, is smaller than the decline in false passing probability, which increases from zero percent under option one to 22 percent under option 2. The Agency specifically asks for comment on this approach.

B. Amendments to Sampling Requirements

1. *Risk assessment and clearance dust sampling.* As stated above, 40 CFR 745.227(d) requires risk assessors to collect dust samples from windows without specifying whether the samples should be collected from window sills, window troughs, or other surfaces. EPA adopted this general approach when promulgating the 402 regulation because the TSCA section 403 standards, which would specify hazard standards for only certain surfaces, were not yet in place. In the absence of standards, the decision on where to collect samples was left to risk assessors, based on their experience and training.

Because EPA is now proposing dust-lead hazard standards for window sills but not for troughs, risk assessors would only need to collect dust samples from window sills; dust samples for windows troughs would not be necessary. EPA, therefore, is proposing to amend 40 CFR 745.227(d)(5) and 40 CFR 745.227(d)(6) to specify that dust samples be collected from window sills for risk assessment.

Because EPA is proposing clearance standards for window sills and troughs, risk assessors would need to collect dust samples from both surfaces. EPA, therefore, is proposing to amend 40 CFR 745.227(e)(8)(v)(A) and 40 CFR 745.227(e)(8)(v)(B) to specify that dust samples be collected from both interior window sills and window troughs for clearance sampling.

2. *Soil sampling.* A third sampling provision that requires amendent is the location of soil sampling. Currently, 40 CFR 745.227(d) requires the risk assessor to collect soil samples from the dripline and the ''play area.'' The rationale for specifying these two locations was that the ''play area'' was most representative of a child's exposure to lead in soil and the dripline represents the worst-case exposure to lead in soil. Additional review of this issue during development of today's proposal, however, suggests that these sampling locations should be changed to the dripline and the middle of the yard.

EPA is proposing this amendment, because the Agency believes that, in the absence of site-specific information about a child's play pattern, a child's exposure to lead in soil is best reflected by the average soil-lead level in a yard. First, it is the Agency's judgment that it is not feasible for risk assessors to improve on this average exposure assumption for many properties. Indicators of where children play, such as playground equipment, are not always present. Even when such equipment is present, children's outdoor activity is not necessarily limited to that location. Additionally, play patterns may change when a new family assumes occupancy following sale of a residence, a time when many risk assessments may occur, due to the opportunity provided to buyers under section 1018 of Title X.

Second, the data show that the average of composite samples taken from the dripline and the mid-yard provides a reasonable estimate of yard-wide soil-lead levels. Lead concentrations are often distributed in predictable patterns, with the largest differences in lead levels found between the soil around the building perimeter (i.e., the dripline) and the mid-yard soil. For example, the median concentration in the dripline in the HUD National Survey is 448 ppm while the mean mid-yard concentration is 204 ppm (Ref. 8).

Two factors explain this pattern. Dripline soil may be contaminated by deteriorating exterior lead-based paint. For properties that do not have exterior

lead-based paint, it has been suggested that exterior wall surfaces capture lead aerosol particles (from the past combustion of leaded gasoline), which in turn wash off and accumulate in the soils around buildings (Ref. 106).

C. Management Controls for Soil

Under the abatement work practice standards, there are no management controls for soil that is removed during an abatement. At the final Dialogue Process meeting, stakeholders expressed concern that this soil could be reused improperly (e.g., as topsoil at another residential property) (Ref. 16). EPA agrees that the lack of management controls for abated soil is a significant gap in the regulatory framework. To respond to this issue, the Agency identified two options.

Under the first option, EPA would propose that the reuse of removed soil as topsoil at another residential property or child-occupied facility be prohibited. This option addresses the most egregious misuse of removed soil but may not adequately deal with other potential abuses. The second option would involve the development of comprehensive management controls. Comprehensive controls would ensure that soil removals are safe, reliable, and effective. Development of such controls, however, could further delay the rule.

EPA chose the first option. It addresses the worst abuse and can be done without further delaying the rule. The Agency will examine this issue further and determine whether more comprehensive controls are required. If so, these controls would be proposed as a separate amendment to the soil abatement work practice standards. To assist EPA in its examination of this issue, EPA is interested in obtaining comment on the types of practices that should be prohibited and on the types of controls that should be considered.

VIII. Effect of TSCA Section 403 Standards on Other Title X Regulations and Programs

The term ''lead-based paint hazard'' is used throughout Title X. As a result, TSCA section 403 standards will affect the implementation of other Title X programs. This unit of the preamble describes the impact of the proposed standards on the other Title X programs.

A. HUD Programs

1. *HUD grants*. Under section 1011 of Title X, HUD issues grants for the evaluation and reduction of lead-based paint hazards in privately owned, low-income housing. Once today's proposal has been promulgated, clearance testing would have to be conducted following abatements performed with grant funding.

2. *Requirements for Federally-assisted or Federally-owned housing*. Under sections 1012 and 1013 of Title X, HUD is establishing lead-based paint hazard notification, evaluation, and reduction requirements for certain pre-1978 HUD-associated and Federally-owned (prior to sale to the public) housing. The programs covered by these requirements range from HUD-owned housing to single-family insured housing. For programs where hazard evaluation is required, the TSCA section 403 standards, when finalized, will provide criteria to risk assessors for identifying lead-based paint hazards in residences covered by these programs. For programs that require abatement of lead-based paint hazards, the TSCA section 403 standards shall be used to identify residences that contain lead-based paint hazards to determine where abatement will be necessary.

HUD proposed regulations under 1012 and 1013 on June 7, 1996 (61 FR 29170) that reflected EPA's lead-based paint hazard guidance. HUD is required to incorporate the TSCA section 403 standards, or more stringent standards, directly into its final rule or to cross-reference the standards.

3. *HUD Guidelines* The HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing were developed in 1995 under section 1017 of Title X. They provide detailed, comprehensive, technical information on how to identify lead-based paint hazards posed by paint, dust, and soil in residential housing and how to control such hazards safely and efficiently. Although the TSCA section 403 standards will have no regulatory impact on the Guidelines, the Guidelines will be revised periodically to incorporate new information, technological advances, and new Federal regulations, including EPA's lead-based paint hazard standards.

Chapter 5 of the Guidelines on risk assessment would need to be updated to incorporate the standards for lead-based paint hazards. For example, the discussion of the following topics would need to be revised: hazard levels for deteriorated paint, dust (for both risk assessment and screening of dwellings in good condition), and bare soil; and interpretation of sampling results. The clearance standards in Chapter 15 also would need to be revised to be consistent with the TSCA section 403 standards.

4. *Real estate disclosure requirements*. On March 6, 1996 (61 FR 9064) (FRL–5347–9), pursuant to section 1018 of Title X, HUD and EPA jointly issued regulations requiring sellers or lessors of most pre-1978 housing to disclose the presence of known lead-based paint and lead-based paint hazards and provide the potential purchaser or lessee with a copy of the pamphlet, *Protect Your Family from Lead in Your Home*. In addition, sellers must provide a 10–day period to buyers to conduct a risk assessment or inspection for the presence of lead-based paint and lead-based paint hazards. Sellers and lessors must also include warning language in sales contracts (24 CFR part 35, subpart H; 40 CFR part 745, subpart F).

To date, owners have relied on EPA's guidance for advice about conditions that may be considered lead-based paint hazards. By establishing regulatory standards for lead-based paint hazards, the TSCA section 403 rule will provide criteria for triggering certain disclosure by property owners. Furthermore, because the TSCA section 403 standards will be based on a comprehensive analysis of the most recent data and research available, they will offer buyers and lessees a better tool for interpreting risk assessment reports provided by property owners. As part of EPA's outreach efforts in this area, the Agency is planning to provide guidance on how to use the TSCA section 403 standards to interpret sampling results in risk assessment reports. Disclosure of the presence of lead-based paint is unaffected by the TSCA section 403 standards.

B. EPA Programs

1. *Training, accreditation, and certification requirements and work practice standards*. Under TSCA section 402(a), EPA issued a regulation on August 29, 1996 (61 FR 45778), at 40 CFR part 745 requiring individuals engaged in lead-based paint activities in target housing and child-occupied facilities to be trained; these individuals and contractors engaged in the same activities to be certified; and training programs to be accredited. These regulations also contain work practice standards for performing lead-based paint activities, including risk assessments, taking into account reliability, effectiveness, and safety.

The most significant impact of the TSCA section 403 standards on the training and certification programs concerns the determination of when certified workers and contractors are required to perform abatements. According to the training and certification regulations at 40 CFR 745.223, abatement is defined as the permanent elimination of lead-based paint hazards, and must be performed by certified individuals and contractors

unless it is performed by the property owner in an owner-occupied residence (40 CFR 745.220(b)). By identifying lead-based paint hazards, the TSCA section 403 regulations help owners determine when work needs to be performed by certified individuals and contractors.

Today's action also contains proposed changes to the TSCA section 402 regulations. These changes include: the establishment of clearance standards for dust; amendments related to risk assessment and clearance sampling for dust, and sampling for soil; management controls for abated soil; and amendments changing the references to the lead-based paint hazard guidance to the TSCA section 403 regulations when final. The final TSCA section 403 regulations and the accompanying amendments to TSCA section 402 will necessitate changes to EPA's model training curricula in the areas of hazard standards, related underlying advances in scientific and technical information, risk assessment sampling, interpretation of sampling results, approaches for hazard control, and clearance standards.

2. *State Programs*. In conjunction with the TSCA section 402 regulations described above, EPA adopted procedures for States and Indian Tribes to follow when applying to EPA for authorization to administer and enforce a State or Tribal lead-based paint program (40 CFR 745.324). EPA considers standards for lead-based paint hazards and soil-lead level of concern, dust-lead clearance standards, and associated requirements for sampling and interpreting sampling results to be an integral part of the work practice standards for risk assessments and abatements. Therefore, EPA is proposing amendments to subpart Q that would require States and Tribes to establish standards and requirements that are as protective as the Federal standards being proposed today.

States and Tribes that apply for authorization following the date that is 2 years after promulgation of the rule would have to demonstrate, as part of their application for program authorization, that their standards are as protective as the Federal standards. Today's proposed amendment would require all other States and Tribes that wish to retain authorization to demonstrate to EPA's satisfaction that their standards are as protective as the Federal standards within 2 years of the promulgation of the rule. To minimize the reporting burden, these States and Tribes would apply to retain authorization as part of their reports to EPA in accordance with 40 CFR 745.324(h).

As a general matter, States and Tribes that apply to obtain or retain authorization that incorporate the same standards or standards that are more stringent than the Federal standards will meet the ''as protective as'' criteria. States and Indian Tribes that incorporate less stringent standards would have to provide analytical support and other documentation demonstrating that their standards are ''as protective as'' the Federal standards. For example, a State or Tribe may demonstrate that a higher soil-lead hazard standard could be ''as protective as'' the Federal standard because most of the lead found in the soil is less bioavailable than lead considered by the Agency. EPA plans to develop specific guidance on the types of analysis and documentation that a State or Tribe would need to provide to make such a demonstration.

3. *Real estate disclosure requirements*. EPA and HUD jointly developed these requirements. The effects of the TSCA section 403 lead hazard standards on real estate disclosure requirements were discussed previously in reference to the HUD programs.

4. *Public outreach programs*. EPA, in conjunction with HUD and other Federal agencies, has developed various public education programs, such as the National Lead Information Center and outreach campaigns targeting housing providers, health care professionals, the media, persons involved in real estate transactions, and the general public. When promulgated, the TSCA section 403 standards will play a significant role in this public education. Information regarding these standards will communicate the Agency's best judgment concerning the identification of lead-based paint hazards to property owners, State and local officials, tenants, and other decision-makers. To assist in this education, the Agency will be developing materials specifically addressing the TSCA section 403 standards, including a fact sheet and questions and answers bulletin. In addition, some existing outreach materials will be modified to discuss the TSCA section 403 standards or to reference materials with such discussion.

IX. Relationship of TSCA Section 403 Standards to Other EPA Programs

Because lead exposures occur through all media, a variety of EPA programs, in addition to the TSCA Title IV program, address residential lead contamination and lead in soil. The Resource Conservation and Recovery Act (RCRA) regulates as hazardous certain wastes containing lead, including some wastes that may be generated during lead-based paint activities. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) and the RCRA corrective action programs clean up lead released into the environment. EPA's Indoor Air program also seeks to reduce contamination of the indoor environment by substances including lead. This unit describes the relationships between the proposed TSCA section 403 standards and each of these EPA programs.

A. RCRA Hazardous Waste Requirements

Wastes generated by lead-based paint hazard reduction activities may be regulated as ''hazardous wastes'' under RCRA Subtitle C. Wastes may be considered hazardous waste by virtue of being specifically listed as hazardous or by exhibiting a characteristic of hazardous waste. Lead-bearing wastes from lead-based paint activities are not listed wastes. Such wastes, however, may exhibit the hazardous characteristics of toxicity (40 CFR 261.24), corrosivity (40 CFR 261.22), or ignitability (40 CFR 261.21). They are unlikely, due to lead content, to exhibit the other hazardous characteristic of reactivity (that is, be capable of easily generating explosive or toxic gas, especially when mixed with water, or be unstable and undergo violent change without detonating).

Under the toxicity characteristic, wastes or media (e.g., soil) contaminated with wastes are hazardous for lead if, after applying the toxicity characteristic leaching procedure (TCLP) to a sample, the waste produces an extract with a concentration of lead equal to or exceeding 5 milligrams per liter (5 ppm). Corrosive hazardous waste is waste that has a pH less than or equal to 2 (highly acidic) or greater than or equal to 12.5 (highly basic), or that can corrode steel at a certain rate. Unneutralized waste from the use of caustic or acidic paint strippers may be corrosive hazardous waste. Ignitable hazardous waste generally includes liquids with flash points less than 140 °F (60 °C), flammable solids, compressed gases, and oxidizers. Wastes generated by the use of certain solvents for paint stripping may be ignitable hazardous waste.

When promulgated, TSCA section 403 standards will not affect the determination of whether wastes or soil containing lead are hazardous under RCRA. Moreover, there is no direct relationship between the approaches used to identify a TSCA section 403 lead-based paint hazard and a RCRA

characteristic hazardous waste. The TSCA section 403 standards are based on an exposure scenario involving the ingestion of lead-contaminated dust or soil by young children. In contrast, the level at which wastes contaminated with lead are considered hazardous under the RCRA toxicity characteristic is based upon an analysis using a scenario involving the consumption of ground water contaminated by waste constituents leaching from a landfill receiving municipal waste.

The potential applicability of RCRA hazardous waste regulations and the associated compliance costs, however, have informed the development of the proposed TSCA section 403 soil-lead hazard standard. As discussed in Unit IV. of this preamble, when developing TSCA regulations, EPA considered both risk reduction and cost in selecting the proposed soil-lead hazard standard. Because the costs of managing excavated lead-contaminated soil as hazardous waste are significantly higher than the cost of managing this material as non-hazardous waste, identifying this material as hazardous waste would approximately double the cost of abatement and was a factor in the selection of the proposed standard.

B. CERCLA Response Actions and RCRA Corrective Actions

Under CERCLA, the Federal government may undertake or compel responsible parties to cleanup hazardous substance releases. Because lead is a CERCLA hazardous substance, these response actions may address lead contamination in soil and other environmental media. Likewise, soil, sediment, or other media contaminated with lead may be considered a RCRA hazardous waste (as described above) and RCRA hazardous waste management facilities undergoing corrective action may be required to remediate such contamination. The CERCLA and RCRA cleanup programs have similar purposes, but address different types of sites: whereas RCRA regulates permitted hazardous waste treatment, storage, and disposal facilities, CERCLA generally governs abandoned or uncontrolled industrial sites (but may also be applied to residential or commercial properties).

To assist the regulators responsible for CERCLA responses and RCRA corrective actions, EPA has developed soil screening levels (SSLs) for various hazardous constituents, including lead. The SSL for lead is 400 ppm, based on risk analysis using the IEUBK model with a residential scenario (Ref. 84). The SSL is not a cleanup standard. It neither triggers the need for response actions nor defines unacceptable levels of soil contamination. Instead, it helps Federal and State regulators identify and define lead-contaminated areas that require further study.

Where soil-lead concentrations at CERCLA sites or RCRA corrective action facilities are below the SSL, no further response action or study of such contamination is generally warranted. Where contaminant concentrations equal or exceed the SSL, however, further investigation, but not necessarily cleanup, is warranted. These further investigations often involve site characterization and the application of the IEUBK model using site-specific data for sites that include residential property. Federal and State regulators use the results of these investigations to determine the need for remediation and, if necessary, to analyze remedial options and establish site-specific preliminary remediation goals (PRGs) at CERCLA sites and at RCRA corrective action facilities.

The TSCA section 403 standards are defined for largely different purposes and audiences. Unlike CERCLA responses and RCRA corrective actions, residential lead hazard reduction activities often occur without government oversight. The TSCA section 403 standards are intended for use by any person involved in identifying and addressing lead-based paint hazards, including homeowners, rental property owners, tenants, contractors, government housing programs, and Federal, State, and local regulators. The proposed TSCA section 403 standards are designed to provide practical advice widely applicable to residential property. Expensive, residence-specific investigations would not be required. Rather, when promulgated, the standards could be used for millions of homes throughout the nation to evaluate properties quickly at modest cost.

In addition, the criteria used to select hazard control methods differ under TSCA section 403, RCRA, and CERCLA. Under CERCLA, for example, preference is given to ''treatment [methods] which permanently and significantly reduce the volume, toxicity or mobility'' of the hazardous constituents regardless of risk (CERCLA section 121(b)). Likewise, under RCRA, hazardous waste must be treated to meet stringent standards prior to land disposal. TSCA does not have any similar preferences for permanent treatment. Furthermore, Title X recognizes the important role of temporary control measures (i.e, interim controls).

In summary, the TSCA section 403 standards should not affect the selection of cleanup remedies at CERCLA response actions or RCRA corrective action facilities. The TSCA section 403 standards are being developed for different purposes and audiences. They will provide generic guidance that can be used at millions of widely varying sites throughout the nation. Owners of properties with lead-based paint hazards should undertake permanent or interim measures to control these hazards. In contrast, the site-specific investigations that occur under CERCLA and RCRA allow risk and cleanup levels to be narrowly tailored to the individual site with a preference for permanent solutions. Thus, the action levels, cleanup goals, and remedies selected at CERCLA and RCRA sites may differ from those being proposed in today's action.

C. Indoor Air Activities

The Indoor Environment Division of EPA's Office of Air and Radiation seeks to reduce indoor air pollution through a variety of educational and other non-regulatory means. The Indoor Air Program incorporates lead-based paint concerns in its outreach to owners and occupants of residential, public, and commercial buildings, even though lead-based paint concerns are not its primary focus and the inhalation of air containing lead-contaminated dust is not the major pathway of childhood lead exposure. The Indoor Air Program will reference and discuss section 403 standards in its efforts to help building owners and occupants properly identify and respond to lead-based paint hazards and other indoor air problems.

X. Public Record and Electronic Submissions

The official record for this proposed rule has been established under docket control number OPPTS–62156 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC. The record now includes:

1. ''Risk Analysis to Support Standards for Lead in Paint, Dust, and Soil,'' Office of Pollution Prevention and Toxics.
2. The economic analysis.
3. Materials related to the Dialogue Process and other public meetings

(contained in Dockets OPPTS-62148, OPPTS-62151, OPPTS-62151A, and OPPTS-62151B).

4. Support documents, reports, and published literature cited in this report, including all the references listed in Unit XI. of this preamble.

5. Published literature and all other references cited in all relevant documents.

Electronic comments can be sent directly to EPA at oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–62156. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

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XII. Regulatory Assessment Requirements

A. Executive Order 12866

The Agency submitted this proposed action to the Office of Management and Budget (OMB) for review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), and any changes made during that review have been documented in the public record. OMB has determined that this proposed action is ''economically significant,'' because this proposed rule may result in behavioral changes that involve increased expenditures by owners of target housing and child-occupied facilities, with a potential annual effect on the economy of $100 million or more. Although the establishment of the standards contained in this proposed rule do not, in and of themselves, mandate any action, the Agency recognizes that the existence of the hazard standards may influence the decisions or actions of owners of target housing.

The Agency believes that, in establishing the standards, it is appropriate to consider the potential costs and benefits associated with the possible actions that an owner could or might take based on the hazard standard. The Agency has therefore prepared an economic analysis which assumes that a risk assessment would be conducted in all target housing at the time a newborn enters the home, that the owners of the target housing would respond to all identified hazards, and that no activities would occur in the absence of the 403 standards.

The Agency recognizes, however, that risk assessments will not be conducted in all target housing, nor will all the owners of target housing respond to all identified hazards. In addition, intervention activities are occurring and will continue to occur, even in the absence of the 403 standards. Consequently, EPA believes that this analysis overestimates the potential costs and benefits associated with the non-mandatory intervention activities related to the establishment of the proposed standards. Furthermore, EPA used other assumptions in the analysis (e.g., the use of a birth trigger for testing and hazard intervention activities, and the use of a 3 percent discount rate), that can potentially affect the relative balance of costs and benefits. These assumptions are summarized below in the discussion of the Agency's sensitivity analyses, which are presented in Chapter 7 of the Agency's economic analysis.

This analysis is contained in a document entitled *Economic Analysis of Proposed Lead Hazard Standards* (Ref. 83), and is available as a part of the public record for this action. The analysis was used by the decision-makers to help in the selection of the hazard standards proposed in this document. The following summary of the economic analysis presents the benefits, costs, and net benefits for those activities that could be potentially related to the establishment of the lead hazard standards (i.e., related to lead-based paint hazard interventions, as well as the costs of conducting risk assessments to evaluate homes for lead-based paint hazards). The Agency presents costs and benefits for paint interventions separately because they did not affect the Agency's evaluations and decisions regarding dust and soil. As discussed in Unit IV. of this preamble, EPA did not use the economic analysis of the paint component of the proposed regulation in selecting the preferred option for the paint standard due to data limitations. EPA presents the costs of conducting risk assessments separately because these costs are the same for all dust and soil standard options and, therefore, did not affect the Agency's decision-making on the standards.

In general, the economic analysis is designed to provide comparisons of different standards, and does not attempt to predict precisely how much remediation of residential lead-based paint hazards will occur as a result of promulgating these standards. The economic analysis compares alternative standard options in terms of their net benefits. Net benefits are based on the benefits of risk reduction minus the costs of control activities needed to achieve the reduction in risk. The benefit categories all measure health effects resulting from childhood lead exposure. The analysis calculates net benefits for a wide range of alternative standards, including the proposed section 403 hazard levels.

The total costs (estimated over a 50-year span, and discounted at 3 percent) for setting the proposed dust and soil standards, which are based on the proposed standard of 50 μg/ft² for floor dust, 250 μg/ft² for window sill dust and 2,000 ppm for soil, are estimated to be $19 billion, while the total estimated benefits are $108 billion using the IEUBK model and $39 billion using the empirical model, resulting in estimated net benefits of $89 billion using the IEUBK model and $19 billion using the empirical model. For paint interventions, the estimated total cost is $20 billion, with total estimated benefits of $59 billion using the IEUBK model and $5 billion using the empirical model, resulting in estimated net benefits of $39 billion using the IEUBK model and -$15 billion using the empirical model. The total estimated costs for testing are $14 billion, and the Agency did not estimate any benefits for potential testing activities. About 25.4 million homes are projected to exceed one or more of the standards, and the Agency projected approximately 43.8 million children would experience reduced exposure to household lead in soil, dust, and paint.

1. *Dust and soil analysis*. The monetized benefits estimated over the 50-year modeling period for the proposed TSCA section 403 standards of 50 μg/ft² floor dust, 250 μg/ft² window sill dust, and 2,000 ppm soil are $39 billion from the empirical model and $108 billion from the IEUBK model. These estimates are based on the following assumptions: that all owners of target housing will conduct a risk assessment to identify lead hazards at the time when a newborn child enters the home; that these owners will respond to all identified lead hazards; and that no intervention activities will occur in the absence of the 403 standards.

As would be expected, alternative dust and soil standards that are more stringent than these are estimated to produce additional benefits. Changes in stringency affect the benefits differently depending upon the model used. For the empirical model, benefits fall within a fairly tight range of $30 to $47 billion, when options range from 1,000 to 5,000 ppm for soil, from 50 to 200 μg/ft² for floor dust, and 100 to 500 μg/ft² for window sill dust. For the IEUBK model, the range of benefits over these alternative options is wider, from approximately $73 billion to $150 billion.

The costs for the proposed TSCA section 403 standards of 50 μg/ft² floor dust, 250 μg/ft² window sill dust, and 2,000 ppm soil (estimated over the 50-year modeling period and discounted at 3 percent) are $19 billion. This represents the costs of interventions to reduce soil and dust-lead levels in response to these standards. EPA estimates costs independently of the two models (i.e., IEUBK, empirical). Costs, therefore, are the same for both analytical approaches. Alternative dust and soil options that are more stringent than the proposed standards are estimated to have higher costs. Changes in stringency ranging from 1,000 to 5,000 ppm for soil, 40 to 200 μg/ft² for

floor dust, and 100 to 500 μg/ft² for window sill dust, produce a range of costs from about $12 billion to about $38 billion.

The net benefits of the proposed TSCA section 403 standards for dust and soil are shown in Table 12 below. Net benefits have been used to evaluate alternative lead hazard levels. The estimated net benefits for the proposed standards of 50 μg/ft² for floor dust, 250 μg/ft² for window sill dust, and 2,000 ppm for soil are $19 billion (using the empirical model for blood lead) or $89 billion (using the IEUBK model).

Table 12 also provides an indication of the net benefits corresponding to a range of options for the proposed lead hazard standards. Using the empirical model, the net benefits appear to be near the maximum at 2,000 ppm and 5,000 ppm. At the same time, net benefits decrease (in fact become negative) with more stringent soil options under the empirical model.

Table 12.—Net Benefits from Hazard Options Varying around the Proposed Standard: Point Estimates and Ranges*

	Hazard Standard			Net Benefits ($Billions)	
	Floor Dust (μg/ft²)	Window Sill Dust (μg/ft²)	Soil (ppm)	IEUBK Model	Empirical Model
Range of Soil Options	50	250	500	143	5
	50	250	2,000	89	19
	50	250	5,000	61	21
Range of Floor Dust Options	50	250	2,000	89	19
	100	250	2,000	77	19
Range of Sill Dust Options	50	100	2,000	N/A	16
	50	250	2,000	N/A	19
	50	500	2,000	N/A	19

*Net Benefits do not include the costs and benefits of paint interventions, nor testing costs. The models paint intervention costs (over 50 years discounted at 3 percent) are $20 billion. Paint intervention benefits (over 50 years discounted at 3 percent) are $59 billion with the IEUBK Model and $5 billion with the empirical model. Testing costs (over 50 years discounted at 3 percent) are approximately $14 billion. As explained in Unit IV. of this preamble, the net benefit estimates generated by the IEUBK model-based approach and the empirical model-based approach are not comparable.

The IEUBK model, on the other hand, suggests that maximum net benefits occur at more stringent options, and decline with less stringent ones. Net benefits do not vary substantially under either model across the range of dust options evaluated.

Given overall modeling uncertainties, and the fact that both models suggest that net benefits are positive in the 2,000 ppm soil range, the proposed soil and dust standards appear to provide a reasonable combination of national values that will tend to maximize the net benefits of performing interventions to protect children from exposure to lead from these sources. In addition to the relative net benefits, each hazard standard was evaluated in terms of number of children protected. Under the proposed option, it is estimated that the number of children with blood-lead concentrations equal to or exceeding 10 μg/dl would decline by 2 to 6 million over 50 years and the number of children with blood-lead concentrations equal to or exceeding 20 μg/dl would decline by 300,000 to 700,000 in the same timeframe (estimated by the empirical-model based analysis and the IEUBK-model based analysis respectively) (Ref. 83).

2. *Paint analysis*. EPA used the available data on deterioration from the HUD National Survey to estimate costs and benefits associated with repairing or abating deteriorated paint. The Survey reports only the total deterioration in each residence, whereas the proposed hazard standard for paint is based on the amount of deterioration per component in a residence. Because of this difference, as noted in Unit IV. of this preamble, the Agency was unable to use this analysis in selecting a preferred option. In summary, the empirical model-based analysis estimates benefits of $5 billion and the IEUBK model-based analysis estimates benefits of $59 billion. The costs for paint interventions are estimated to be $20 billion yielding net benefits for paint of $-15 billion using the empirical model-based analysis and $39 billion using the IEUBK model-based analysis. For the following reasons, however, the reliability and usefulness of these estimates for characterizing the economic impacts of the proposed standard for deteriorated lead-based paint is significantly limited due to differences in approach and data used. It is also inappropriate to compare the results of each analytical approach.

First, as previously noted, the determination of where paint interventions occur is based on the HUD National Survey, which reports deterioration for an entire residence. The proposed standard, however, is based on the amount of deterioration per component. There is no way to relate the two measurements.

Second, the lack of data to relate quantitatively deteriorated paint to blood-lead concentration limits EPA's ability to measure benefits associated with direct ingestion of lead-based paint. Both modeling approaches (i.e., IEUBK-based and empirical-based) predict benefits based only on the presence or absence of deteriorated paint. Thus, each model's estimate of benefits remains unchanged regardless of the amount of deterioration present.

Third, under the empirical model-based analysis, only interior paint abatement, which is accompanied by dust cleaning, yields dust-related benefits. The analysis does not predict any dust-related benefit for interior paint repair or exterior paint repair or abatement. As discussed in Chapter 4 of the Agency's risk analysis, EPA used data from several abatement studies to estimate the impact of dust cleaning on dust-lead loading when sources of dust-lead contamination were abated. In contrast, the Agency has no basis for estimating the impact of source control alone on dust-lead loading. It is likely, however, that other paint interventions would reduce dust-lead loading. Thus, the empirical model-based analysis probably underestimates the dust-related benefits of paint intervention.

3. *Testing costs*. EPA estimates that the costs of conducting risk assessment to test target housing for the presence of lead-based paint hazards is $14 billion. The analysis assumes that each target housing unit will be tested at the time a newborn enters the home. Testing costs are the same for all hazard standard options. Likewise, the testing costs cannot be assigned to one medium or another because testing costs assume that each of the three media (paint, dust, and soil) are addressed.

4. *Sensitivity and uncertainty analyses*. The economic analysis addresses the robustness of results by reporting model outcomes when each of several different parameters or assumptions are changed. The parameters considered are the discount rate and the value of an IQ point. In addition, the assumption that avoiding small losses of IQ (i.e., less than one point) provides an economic benefit was examined. The first parameter analyzed is discount rate. In the base model, a rate of 3 percent is used. In the sensitivity analysis, 7 percent is used because this is the value recommended in the January 11, 1996 OMB Guidance entitled *Economic Analysis of Federal Regulations Under Executive Order No. 12866*. When the discount rate is 7 percent, model results at each possible standard option change from the base model in the following way: costs decrease, benefits decrease substantially more, and net benefits decrease. Following from these changes, the options at which net benefit would be maximized are less stringent in a 7 percent discount regime than in a 3 percent discount regime. Benefits decrease more than costs because they would be realized over a much longer time horizon, the economically productive lifetime of affected individuals. Costs for actions to protect a given individual would be incurred before the sixth birthday.

The second parameter tested is the value of an IQ point. The base model uses an IQ point value of $8,346, based on recently published analyses (Ref. 69). As an alternative, benefits were calculated using an IQ point value of $6,847, from earlier EPA analyses (Refs. 109 and 110). The total cost calculated would be the same under each assumption, because this parameter does not affect costs. The benefits and net benefits, however, for all options would be lower when the alternative, smaller IQ value is used, because over 95 percent of total benefits are due to changes in IQ. The effect on benefits is small enough, however, that there is no effect on which the standard would maximize net benefits in the IEUBK model, and the empirical model-based analysis predicts only a small decrease of stringency of the window sill dust standard. Thus, the choice of standard is not sensitive to the use of this revised value of an IQ point.

The third issue EPA examined in the sensitivity analysis was the effect of the value of small IQ point differences. The Agency's analysis assumes that a difference in average blood-lead levels between two populations, no matter how small that difference is and regardless of the magnitude of blood-lead levels involved, is associated with a corresponding difference in average IQ scores. In the cost-benefit analysis performed for these standards, the Agency is essentially comparing the blood-lead distributions that would occur between two populations: one with the TSCA section 403 standards versus one without the 403 standards. Furthermore, the analysis relies on the empirical finding that a difference in average IQ scores between two populations, again no matter how small, is associated with a difference in average lifetime earnings. Note that it is not possible to say that for any pair of individuals that a difference in blood-lead will necessarily reflect a difference in IQ scores or lifetime earnings. The available research, however, does demonstrate that such differences do occur on the average for groups of individuals.

Notwithstanding the fact that the risk assessment and benefit-cost analysis were constrained to address population average changes, it was recognized that there might be an interest in considering the contribution to those population average changes made by subgroups in the population whose particular blood-lead and IQ point improvements might be considered small. An analysis was therefore performed and presented in section 7.3.1 of the Economic Analysis to try to characterize the portion of the total benefits from IQ improvements that were contributed by that portion of the population having improvements of less than 1 IQ point. The computational considerations involved in doing that analysis were discussed in detail there. That special analysis showed that, at the proposed standards (window sill dust at 250 $\mu g/ft^2$; floor dust at 50 $\mu g/ft^2$; soil at 2,000 ppm), the contribution of these small IQ point improvements in the population, contributed 30 percent of the value of the IQ point benefits under the IEUBK model and 90 percent of the IQ point benefits under the empirical model.

The Agency, however, recognizes that the methodology used for this sensitivity analysis is preliminary in nature and should not be relied upon for decision-making purposes. More importantly, the Agency is not aware of any technical basis or rationale for not including the benefits associated with small IQ changes.

B. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this proposed action will not have a significant economic impact on a substantial number of small entities. As previously discussed, this proposed rule does not, in and of itself, mandate any action, or directly impose any costs. The Agency does, however, recognize that the existence of the hazard standards may influence the decisions or actions of owners of target housing, and has therefore considered the potential costs and benefits associated with the possible actions that an owner could or might take based on the hazard standard. The Agency also involved potentially affected entities, including representatives of small businesses (e.g., owners of multi-housing and rental properties), and State/Tribal and local governmental agencies, in an extensive ''dialogue'' process, which is discussed in more detail in Unit II. of this preamble, as well as other mechanisms of communication.

In addition, although other regulations implementing other sections of Title X will use or reference the hazard standards that are proposed in this document, the impacts of those regulations on small entities are evaluated in the context of those regulations. To date, EPA has promulgated regulations under sections 402, 404, 406, and 1018. For each of these regulations, EPA evaluated the potential impacts on small entities in compliance with the RFA.

Information relating to this determination will be provided to the Chief Counsel for Advocacy of the Small Business Administration upon request, and is included in the docket for this proposal. Any comments regarding the economic impacts that this proposed regulatory action may impose on small entities should be submitted to the Agency at the address listed above.

C. Unfunded Mandates Reform Act (UMRA) and Executive Order 12875

Although the requirements of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) and Executive Order 12875, *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), do not apply to this proposed rule, the Agency believes that its consideration of the

potential costs and benefits of those non-mandatory activities that could be potentially related to the establishment of the lead hazard standards, i.e., activities related to lead-based paint hazard interventions and risk assessments, as well as its discussions with State and Tribal governments, address these requirements. The UMRA requirements in sections 202 and 205 do not apply to this proposed rule, because this action does not contain any ''Federal mandates'' or impose any ''enforceable duty'' on State/Tribal, or local governments or on the private sector. The requirements in section 203 do not apply because this proposed rule does not contain any regulatory requirements that might significantly or uniquely affect small governments. In addition, since this is not a discretionary act containing an unfunded mandate, no consultation is required under the Executive Order.

Nevertheless, the Agency recognizes that the existence of the hazard standards may influence the decisions or actions regarding the intervention activities undertaken by State/Tribal or local governments as potential owners of child-occupied facilities, even if those actions are not mandated by this or any other EPA regulation. The Agency therefore believes that it is important to consider the potential impacts of this proposed rule on State/Tribal or local governments. It is, of course, difficult to predict whether or what intervention activities might be undertaken by State/Tribal or local governments as a result of the establishment or existence of the proposed hazard standards, but the Agency does not believe that the analysis needs to differentiate between ownership in considering the potential costs related to the possible intervention activities. Therefore, since the Agency considered the potential costs and benefits associated with possible intervention activities in selecting the proposed hazard standards, the Agency has also considered the potential costs that might be experienced by State/Tribal or local governments. Intervention activities in child-occupied facilities, because a much larger number of children are involved, will naturally result in greater benefits, increasing the ratio between costs and benefits significantly.

D. Paperwork Reduction Act (PRA)

This proposed regulatory action does not contain any information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* Specifically, States and Tribes with authorized programs under 40 CFR part 745, subpart L will still need to demonstrate their standards for identifying lead-based paint hazards and soil-lead level of concern, and clearance standards for dust, in the reports that they submit to EPA under 40 CFR 745.324(h). This reporting requirement is contained in the regulations implementing TSCA sections 402(a) and 404, for which the Information Collection Request (ICR) has already been approved by OMB under control number 2070–0155 (EPA ICR No. 1715). As a part of the economic analysis, EPA also re-examined this ICR and determined that the burden estimates provided in the ICR would not change as a result of the promulgation of the standards proposed. Because there are no new information collection requirements to consider, or any changes to the existing requirements that might impact the existing burden estimates, additional OMB review and approval under the PRA is not necessary.

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to EPA at the address provided in the ''ADDRESSES'' section, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the ICR number in any correspondence. The final rule will respond to any comments on the information collection requirements contained in this proposal.

E. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has considered environmental justice-related issues with regard to the potential impacts of this proposed action on the environmental and health conditions in low-income and minority communities. The Agency's analysis found that non-white households are more likely to live in housing with lead-based paint hazards, and their children are expected to realize greater reductions in blood-lead levels if these hazards are mitigated. As a result, non-white households are expected to bear more of the costs of responding to the section 403 standards but also receive more of the benefits. Lower- and upper-income households face roughly the same response costs and are expected to receive the same blood-lead reductions. Lower-income households would have to forego a larger share of their income to respond to the section 403 standards (Ref. 83).

F. Executive Order 13045

This proposed rule is subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because OMB has determined that this is an economically significant regulatory action as defined by Executive Order 12866 (see section A. of this unit), and the Agency has reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate affect on children. In accordance with section 5(501) of Executive Order 13045, the Agency has evaluated the environmental health or safety effects of lead-based paint on children in the selection of the hazard standards contained in this proposed rule. The results of this evaluation are contained in the ''Risk Analysis to Support Standards for Lead in Paint, Dust and Soil'' (Ref. 1), which is summarized and discussed in Unit IV. of this preamble; a copy has been placed in the docket for this action. Futhermore, the proposed regulation would help to prevent lead poisoning

among young children by supporting the implementation of the national lead program. Because exposure to lead in paint, dust, and soil is mostly limited to children under the age of 6, young children are, in fact, the primary beneficiaries of this proposed rule, as well as the program.

G. National Technology Transfer and Advancement Act

This proposed regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104-113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on this conclusion.

List of Subjects in Part 745

Environmental protection, Hazardous substances, Lead-based paint, Lead poisoning, Reporting and recordkeeping requirements.

Dated: May 26, 1998.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR part 745 be amended as follows:

PART 745—[AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2615, 2681-2692 and U.S.C. 4852d.

2. By adding new subpart D to read as follows:

Subpart D—Lead-Based Paint Hazards

Sec.

745.61 Scope and applicability.
745.63 Definitions.
745.65 Lead-based paint hazards.
745.69 Determining whether lead-based paint hazards are present.

Subpart D—Lead-Based Paint Hazards

§ 745.61 Scope and applicability.

(a) This subpart identifies lead-based paint hazards.

(b) The standards for lead-based paint hazards apply to target housing and child-occupied facilities.

(c) Nothing in this subpart requires any person to evaluate the property(ies) for the presence of lead-based paint hazards or to take any action to control these conditions if one or more of them is identified.

§ 745.63 Definitions.

The following definitions apply to this subpart.

Arithmetic mean means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

Certified risk assessor means an individual who has been trained by an accredited training program, as defined by § 745.223, and certified by EPA pursuant to § 745.226 or by an authorized State or Tribal program to conduct risk assessments. A certified risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools, and kindergarten classrooms.

Deteriorated paint means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

Interior window sill means the portion of the horizontal window ledge that protrudes into the interior of the room.

Lead-based paint means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint hazard means hazardous lead-based paint, a dust-lead hazard, or a soil-lead hazard as described in § 745.65.

Paint in poor condition means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (e.g., window sills, baseboards, soffits, trim).

Risk assessment means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

Weighted arithmetic mean means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the number of subsamples it contains. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples. The weighted arithmetic mean is obtained by summing for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 $\mu g/ft^2$, a composite sample (3 subsamples) containing 100 $\mu g/ft^2$, and a composite sample (4 subsamples) containing 110 $\mu g/ft^2$ is 100 $\mu g/ft^2$. This result is based on the equation [60+(3*100)+(4*110)]/8.

Wipe sample means a sample collected by wiping a representative surface of known area with an acceptable wipe material (e.g., moist towelette).

§ 745.65 Lead-based paint hazards.

(a) *Hazardous lead-based paint.* Hazardous lead-based paint is lead-based paint in poor condition.

(b) *Dust-lead hazard.* A dust-lead hazard is dust that contains lead equal to or exceeding 50 $\mu g/ft^2$ on uncarpeted floors or 250 $\mu g/ft^2$ on interior window sills based on wipe samples.

(c) *Soil-lead hazard.* A soil-lead hazard is bare soil that contains total lead equal to or exceeding 2,000 parts per million.

§ 745.69 Determining whether lead-based paint hazards or a soil-lead level of concern are present.

(a) *Applicability*. This section applies to the following:

(1) Determining whether hazardous lead-based paint is present.

(2) Determining whether a dust-lead hazard is present on:

(i) Uncarpeted floors.

(ii) Interior window sills.

(3) Determining whether a soil-lead hazard is present.

(b) *Work practice standards*. Determinations of the presence of lead-based paint hazards or a soil-lead level of concern must be made by a certified risk assessor conducting a risk assessment according to the applicable work practice standards at § 745.227(d) and (h).

(c) *Use of standards*. (1) To determine whether a dust-lead hazard is present, a certified risk assessor must compare the weighted arithmetic means of uncarpeted floor dust samples and interior window sill samples to the applicable standards in § 745.65.

(2) To determine whether a soil-lead hazard is present, a certified risk assessor must compare the arithmetic mean of soil samples to the applicable standard in § 745.65.

3. In § 745.223, by alphabetically adding the following definitions to read as follows:

§ 745.223 Definitions.

* * * * *

Arithmetic mean means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

* * * * *

Common area group means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairwells, and laundry rooms.

* * * * *

Concentration means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

* * * * *

Dripline means the area within 3 feet surrounding the perimeter of a building.

* * * * *

Interior window sill means the portion of the horizontal window ledge that protrudes into the interior of the room.

* * * * *

Loading means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

* * * * *

Mid-yard means an area of a residential yard approximately midway between the outermost edge of the dripline of a residential building and the nearest property boundary or between the outermost edges of the driplines of a residential building and another building on the same property.

* * * * *

Residential building means a building containing one or more residential dwellings.

* * * * *

Weighted arithmetic mean means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the number of subsamples it contains. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples. The weighted arithmetic mean is obtained by summing for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 $\mu g/ft^2$, a composite sample (3 subsamples) containing 100 $\mu g/ft^2$, and a composite sample (4 subsamples) containing 110 $\mu g/ft^2$ is 100 $\mu g/ft^2$. This result is based on the equation [60+(3*100)+(4*110)]/8.

Window trough means, for a typical double-hung window, the portion of the exterior window sill between the interior window well (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to inaccurately as the window ''well.''

Wipe sample means a sample collected by wiping a representative surface of known area with an acceptable wipe material (e.g., moist towelette).

4. In § 745.227, by revising paragraphs (d)(4), (d)(5), (d)(6) introductory text, (d)(7), (d)(8)(i), (e)(7)(i), (e)(8)(v)(A), (e)(8)(v)(B), and (e)(8)(vii), by redesignating paragraphs (d)(11) as paragraph (d)(12) and paragraph (h) as paragraph (i), and by adding paragraphs (d)(11), (e)(8)(viii) and (h) to read as follows:

§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

* * * * *

(d) * * *

(4) Each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history shall be tested for the presence of lead. Each interior window sill determined, using documented methodologies, to have a distinct painting history, shall also be tested for the presence of lead in paint.

(5) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(6) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (d)(4) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected in the following locations:

* * * * *

(7) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected in each room, hallway, or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where the certified risk assessor determines one or more children, age 6 and under, are likely to come into contact with dust.

(8) * * *

(i) Mid-yard areas where bare soil is present; and

* * * * *

(11) The certified risk assessor shall determine whether lead-based paint hazards are present according to paragraph (h) of this section.

* * * * *

(e) * * *

(7) * * *

(i) If the soil is removed: (A) The soil shall be replaced by soil that has a level of lead less than 400 ppm.

(B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

* * * * *

(8) * * *

(v) * * *

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and window trough (if available) and one dust sample shall be taken from the floors of no less than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled.

(B) After conducting an abatement with no containment, two dust samples shall be taken from no less than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if available) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are less than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled.

* * * * *

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with applicable clearance levels for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by the number of subsamples in the composite sample, all the components represented by the failed sample shall be recleaned and retested.

(viii) The clearance levels are 50 μg/ft² for uncarpeted floors, 250 μg/ft² for interior window sills, and 800 μg/ft² for window troughs.

* * * * *

(h) *Determinations.* (1) Hazardous lead-based paint is present on:

(i) All components that have paint in poor condition and that are determined to contain lead-based paint.

(ii) All components that have paint in poor condition and that are similar to and have a similar painting history to a tested component that contains lead-based paint.

(2) A dust-lead hazard is present on:

(i) Uncarpeted floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of uncarpeted floors and interior window sills are equal to or greater than 50 μg/ft² for uncarpeted floors and 250 μg/ft² for interior window sills;

(ii) Uncarpeted floors or interior window sills in an unsampled residential dwelling unit in a multi-family dwelling, if a dust-lead hazard is present on uncarpeted floors or interior window sills, respectively, in at least one sampled residential unit on the property.

(iii) uncarpeted floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on uncarpeted floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(3) A soil-lead hazard is present when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) from the dripline and a composite sample (or arithmetic mean of composite samples) from the mid-yard for each residential building on a property is equal to or greater than 2,000 parts per million.

5. In § 745.325, by revising paragraphs (d)(2)(iii), by redesignating (d)(2)(iv) and (d)(2)(v) as (d)(2)(v) and (d)(2)(vi), respectively, and by adding paragraphs (d)(2)(iv) and (e), to read as follows:

§ 745.325 Lead-based paint activities: State and Tribal program requirements.

* * * * *

(d) * * *

(2) * * *

(iii) Risk assessments consist of at least:

(A) An assessment, including a visual inspection, of the physical characteristics of the residential dwelling or child-occupied facility;

(B) Environmental sampling for lead in paint, dust, and soil;

(C) Environmental sampling requirements for lead in paint, dust, and soil that allow for comparison to the lead-based paint hazard standards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section; and

(D) A determination of the presence of lead-based paint hazards made by comparing the results of visual inspection and environmental sampling to the lead-based paint hazard standards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section.

(iv) The program elements required in § 745.325(d)(2)(iii)(C) and (D) shall be adopted in accordance with the schedule for the demonstration required in paragraph (e) of this section.

(v) * * *

* * * * *

(e) The State or Indian Tribe must demonstrate that it has lead-based paint hazards standards, and clearance standards for dust, that are at least as protective as the standards in § 745.227 as amended on [Insert date of promulgation of the final rule]. A State or Indian Tribe with such a section 402 program approved before [Insert date 2 years following date of promulgation of the final rule] shall make this demonstration no later than the first report submitted pursuant to § 745.324(h) after [Insert date 2 years following date of promulgation of the final rule]. A State or Indian Tribe with such a program submitted but not approved before [Insert date 2 years following date of promulgation of the final rule] may make this demonstration by amending its application or in its first report submitted pursuant to § 745.324(h). A State or Indian Tribe submitting its program on or after [Insert date 2 years following date of promulgation of the final rule] shall make this demonstration in its application.

[FR Doc. 98–14736 Filed 6–2–98; 8:45 am]

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Wednesday
June 3, 1998

Part IV

The President

Proclamation 7103—To Facilitate Positive Adjustment to Competition From Imports of Wheat Gluten

Memorandum of May 30, 1998—Action Under Section 203 of the Trade Act of 1974 Concerning Wheat Gluten

Federal Register
Vol. 63, No. 106
Wednesday, June 3, 1998

Presidential Documents

Title 3—

The President

Proclamation 7103 of May 30, 1998

To Facilitate Positive Adjustment to Competition From Imports of Wheat Gluten

By the President of the United States of America

A Proclamation

1. On March 18, 1998, the United States International Trade Commission (USITC) transmitted to the President a unanimous affirmative determination in its investigation under section 202 of the Trade Act of 1974, as amended (the ''Trade Act'')(19 U.S.C. 2252), with respect to imports of wheat gluten provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States (''HTS''). Under section 202 of the Trade Act, the USITC determined that such wheat gluten is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing a like or directly competitive article. Further, the USITC, pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (''NAFTA Implementation Act'') (19 U.S.C. 3371(a)), made negative findings with respect to imports of wheat gluten from Canada and Mexico. The USITC also transmitted its recommendation made pursuant to section 202(e) of the Trade Act with respect to the action that would address the serious injury to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

2. Pursuant to section 203 of the Trade Act (19 U.S.C. 2253), and taking into account the considerations specified in section 203(a)(2) of the Trade Act, I have determined to implement action of a type described in section 203(a)(3). Such action shall take the form of quantitative limitations on imports of wheat gluten, provided for in HTS subheadings 1109.00.10 and 1109.00.90, imposed for a period of 3 years plus one day, with annual increases in such quota limits of six percent in the second year and in the third year. Except for products of Canada, Mexico, Israel, beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Andean Trade Preference Act (ATPA), and other developing countries that have accounted for a minor share of wheat gluten imports, which shall be excluded from any restriction, such quantitative limitations shall apply to imports from all countries and the quota quantity shall be allocated among such countries. Pursuant to section 203(a)(1)(A) of the Trade Act (19 U.S.C. 2253(a)(1)(A)), I have further determined that these actions will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

3. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203 and 604 of the Trade Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to establish quantitative limitations for wheat gluten classified in HTS subheadings 1109.00.10 and 1109.00.90, subchapter III of chapter 99 of the HTS is modified as provided in the Annex to this proclamation.

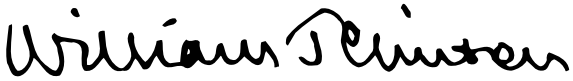
(2) Wheat gluten that is the product of Canada, of Mexico, of Israel, of beneficiary countries under the CBERA and the ATPA, and of developing countries listed in general note 4(a) to the HTS shall be excluded from the quantitative limitations established by this proclamation, and such imports shall not be counted toward such limitations for any quota period created herein.

(3) In the event that a quota quantity established by this proclamation and allocated to a country or to ''other countries'' is significantly underutilized, the United States Trade Representative is authorized to reallocate all or part of the unfilled portion of such quota quantity to any other country or countries and, upon publication of notice in the **Federal Register**, to modify the HTS provisions created by the Annex to this proclamation to reflect any such reallocation.

(4) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(5) The modifications to the HTS made by this proclamation, including the Annex hereto, shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EDT on June 1, 1998, and shall continue in effect as provided in the Annex to this proclamation, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of May, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



Billing code 3195–01–P

Annex

Modifications to the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after June 1, 1998, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by inserting in numerical sequence the following new U.S. note, subheadings and superior text thereto, with the language inserted in the columns entitled ''Heading/Subheading'', ''Article Description'', and ''Quota Quantity'', and upon the close of June 1, 2002, these provisions and superior text shall be deleted from the HTS:

''	7. For purposes of subheadings 9903.11.05, 9903.11.06, and 9903.11.07, the term: ''*European Community*'' means Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.''	
	Wheat gluten, whether or not dried, except products of Canada, of Mexico, of Israel, of beneficiary countries under the Caribbean Basin Economic Recovery Act (as enumerated in general note 7 to this schedule) or of the Andean Trade Preference Act (as enumerated in general note 11 to this schedule), or of countries enumerated in general note 4(a) to this schedule as that note existed on June 1, 1998 (provided for in subheadings 1109.00.10 and 1109.00.90):	
9903.11.05	If entered during the period from June 1, 1998, through May 31, 1999, inclusive, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no wheat gluten the product of such country may be entered during the remainder of such period:	
	Australia	28,315,000 kg
	Europen Community	24,513,000 kg
	Other countries	4,693,000 kg
9903.11.06	If entered during the period from June 1, 1999, through May 31, 2000, inclusive, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no wheat gluten the product of such country may be entered during the remainder of such period:	
	Australia	30,014,000 kg
	European Community	25,983,000 kg
	Other countries	4,975,000 kg
9903.11.07	If entered during the period from June 1, 2000, through June 1, 2001, inclusive, in the respective aggregate quantity of goods the product of a foreign country specified below, after which no wheat gluten the product of such country may be entered during the remainder of such period:	
	Australia	31,814,000 kg
	European Community	27,543,000 kg
	Other countries	5,273,000 kg''

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Filed 6–2–98; 8:45 am
Billing code 3190–01–M

Presidential Documents

Title 3—

The President

Memorandum of May 30, 1998

Action Under Section 203 of the Trade Act of 1974 Concerning Wheat Gluten

Memorandum for the Secretary of the Treasury[,] the Secretary of Agriculture[, and] the United States Trade Representative

On March 18, 1998, the United States International Trade Commission (USITC) submitted to me a report that contained: (1) a determination pursuant to section 202 of the Trade Act of 1974 (19 U.S.C. 2252) (the ''Trade Act'') that imports of wheat gluten are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry; and (2) negative findings made pursuant to section 311(a) of the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act'') (19 U.S.C. 3371(a)) with respect to imports of wheat gluten from Canada and Mexico.

After considering all relevant aspects of the investigation, including the factors set forth in section 203(a)(2) of the Trade Act (19 U.S.C. 2253), I have implemented actions of a type described in section 203(a)(3). Specifically, I have determined that the most appropriate action is a quantitative limitation on imports of wheat gluten. I have proclaimed such action for a period of approximately 3 years in order to provide time for the domestic industry to implement an adjustment plan that will facilitate its positive adjustment to import competition. I have set the quantitative limitation at an amount equal to 126.812 million pounds in the first year, an amount which represents total average imports in the crop years ending June 30, 1993, through June 30, 1995. This amount will increase by six percent annually for the duration of the relief period. I believe that this amount is the relief necessary to remedy the serious injury and to promote positive adjustment. The quota is allocated based on average import shares in the period covered by the crop years ending June 30, 1993, through June 30, 1995. Shares of countries excluded from the quota are assigned on a pro rata basis to countries subject to the quota. To ensure that the quota is substantially filled, I have authorized the United States Trade Representative to reallocate any significant unused quota allocations. I considered taking other forms of action, such as increasing tariffs on imports of wheat gluten, and have determined that action in such forms would not, in light of the nature of trade in wheat gluten, meet the goals of remedying serious injury and facilitating industry adjustment.

I agree with the USITC's findings under section 311(a) of the NAFTA Implementation Act, and therefore determine, pursuant to section 312(a) of the NAFTA Implementation Act, that imports of wheat gluten produced in Canada do not contribute importantly to the serious injury caused by imports and that imports of wheat gluten produced in Mexico do not account for a substantial share of total imports of such wheat gluten. Therefore, pursuant to section 312(b) of the NAFTA Implementation Act, the quantitative limitation will not apply to imports of wheat gluten from Canada or Mexico. Similarly, the limitation will not apply to imports of wheat gluten from Israel, and beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Andean Trade Preference Act (ATPA), in light of the USITC's statement that its recommendation does not apply to imports from those countries. Moreover, other developing countries that have ac-

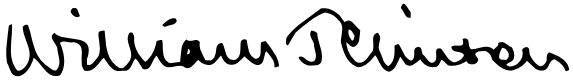
counted for a minor share of wheat gluten imports are excluded from the quantitative limitation.

As an additional means of arriving at a long-term solution to this trade issue, I have directed the United States Trade Representative, with the assistance of the Secretary of Agriculture, to seek to initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury found to exist.

I have determined that the actions described above will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs. This action provides the domestic industry with necessary temporary relief from increased import competition, while also assuring our trading partners significant continued access to the United States market.

I also note that, pursuant to section 204 of the Trade Act, the USITC will monitor developments with respect to the domestic industry, including progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition, and will provide to me and to the Congress a report of its monitoring no later than the date that is the midpoint of the period the action is in effect.

The United States Trade Representative is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 30, 1998.

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