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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.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AH61

Federal Employees Health Benefits Program: Disenrollment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that are consistent with existing administrative procedures requiring employing offices to provide information about enrollees in the Federal Employees Health Benefits (FEHB) Program to the carriers of the FEHB plans in which they are enrolled. Carriers are also required to use the information provided by employing offices to reconcile their enrollment records. These regulations will regularize the conditions that would allow carriers to disenroll individuals when their employing office of record does not show them as enrolled in the carrier's plan and the carrier is otherwise unable to verify the enrollment. The purpose of these regulations is to facilitate reconciliation of carrier and employing office enrollment records, especially in cases where the carrier has not previously received a notice showing an enrollment no longer is valid.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Jay D. Fritz (202) 606–0004.

SUPPLEMENTARY INFORMATION: On November 28, 1997, OPM issued proposed regulations in the **Federal Register** (62 FR 63282) that would amend part 890 to allow carriers of FEHB plans to disenroll individuals when (1) the payroll office of record with the carrier is unable to provide information about the enrollment, (2) the carrier receives reliable information that an individual with a self only enrollment has died, (3) a child survivor annuitant becomes age 22, unless the carrier has information indicating that the child is eligible for continued coverage because the child is incapable of self support due to a physical or mental disability, and (4) a former employee notifies the carrier that he or she has separated from Federal employment under circumstances that do not entitle him or her to an immediate annuity.

OPM received comments from six insurance carriers, one Government agency, and one health plan trade association. Seven of the commenters were in favor of the proposed regulations although each had specific areas of concern. One commenter was opposed to the proposed regulations. We will address the areas of concern below. We have tried to list these issues in the same order as the regulations to which they pertain.

One commenter suggested that we modify 5 CFR 890.107(a) to indicate that lawsuits filed over disenrollments are to be filed against the employing office. We believe that lawsuits involving disenrollments are the equivalent of lawsuits to compel enrollments which are adequately addressed at § 890.107(a).

One commenter requested that carriers be allowed to cancel an inactive contract in a situation where two identification numbers belong to one individual, the carrier determines which coverage should be active, and information about the incorrect enrollment is not available from the employing office. We believe this is strictly an enrollment issue that needs to be resolved between the employing office and the carrier and is outside the scope of these regulations.

Several commenters expressed concerns over the responsibilities of employing offices in responding to a carrier's request to provide documentation necessary to resolve enrollment discrepancies. Two commenters requested that employing offices be required to respond within a certain time frame to a carrier's request to provide documentation necessary to resolve an enrollment discrepancy. Two other commenters suggested the regulations indicate that if the employing office has not responded to a carrier's request for information within a set amount of time, the carrier may proceed with issuing a disenrollment notification. We are modifying the regulations to indicate that if a carrier has not received requested information from the employing office within 31 days of the request, they may proceed with issuing the disenrollment notice.

One commenter suggested that we change § 890.308(a)(1) to indicate that an enrollee will be disenrolled 31 ''calendar'' days after the date of the disenrollment notice since the term ''calendar'' is used elsewhere in the regulations. We are making this modification in the interest of clarity.

Another commenter believes that 31 calendar days is not sufficient time for an enrollee to respond to a carrier's disenrollment notice. We feel that 31 days is enough time for an individual to either contact the employing office or supply the carrier with appropriate documentation to resolve an enrollment discrepancy. If for some reason an individual does not provide documentation within the 31 calendar day time frame and he or she is disenrolled, the disenrollment will be voided and coverage reinstated retroactively upon presentation of the documentation.

Several commenters suggested that OPM and the carriers create a standard disenrollment notification letter and a standard letter advising individuals of conversion rights and TCC eligibility when applicable. OPM agrees and will work administratively with the carriers on creating these standard letters.

Two commenters expressed concern that after an individual receives a disenrollment notice, the individual is to deliver appropriate documentation resolving the discrepancy to the carrier instead of the employing office. The commenters feel that if the employing office does not see the documentation, they will not correct their records and the discrepancy will arise again in the next reconciliation. OPM believes that appropriate documentation should be sent to the carrier instead of the employing office since the carrier is taking the action to disenroll the individual and can rescind that action. We also expect that in many cases the individual will contact the employing office for assistance upon receipt of the

disenrollment notice, resulting in correction of employing office records. In addition, the standard disenrollment letter will advise individuals to send appropriate documentation to both their carrier and their employing office.

Two commenters inquired about the effective date of an individual's disenrollment. One questioned the disenrollment date when the carrier and the employing office are unable to reconcile the enrollment, and the other questioned the disenrollment date when the carrier receives reliable evidence that an enrollee with a self only enrollment has died but the date of death is unknown. In the first case, the disenrollment date will be 31 calendar days after the disenrollment notice is sent to the enrollee as the carrier would not have any knowledge as to when the employing office of record ceased forwarding premiums for that individual. In the second case, we are modifying the regulations to indicate that disenrollment would be effective the last day of the pay period in which the carrier received notice of the death.

One commenter requested that OPM give carriers discretion to delay disenrollments in appropriate cases. It is our intention for carriers to use the disenrollment process with appropriate discretion in all cases, but especially in cases where the carrier believes an individual is eligible for coverage but needs time to forward documentation. We are modifying the regulations to allow carriers this discretion.

One commenter asked if carriers should convey an individual's disenrollment date to the employing office when the individual is disenrolled 31 days after written notification is sent. We do not believe carriers should be required to make this notification. Since prior attempts at contact by the carrier have been ineffectual, it is unlikely they would know the office of record to which to send the notification.

One commenter suggested that we clarify the procedures for an individual disputing a disenrollment notice from a carrier. We are modifying the regulations so that after a carrier receives information from an individual attempting to resolve an enrollment discrepancy, the carrier will communicate its decision on the information to both the employing office and the individual. Only at the point where the information is determined to be inadequate to resolve the enrollment discrepancy should the reconsideration process with the individual's employing office begin.

One commenter suggested that employing offices be required to notify the carrier of a request made by an individual for reconsideration of a disenrollment decision. The commenter believes that the carrier may have information that bears on the enrollment issue. We are modifying the regulations to incorporate this requirement.

One commenter suggested that we clarify the regulations to indicate that if an employing office overturns a carrier's disenrollment determination upon reconsideration, the enrollment will be reinstated retroactively. OPM agrees and we are modifying the regulations for clarity, as all reinstatements of enrollment under these regulations will be made retroactively.

We are also revising the regulations to remove the requirement that reconsideration decisions be issued to the carriers in writing. After a reconsideration decision is made, agencies are still to issue a written notice of its final decision to the individual, however, agencies should contact the carrier by telephone with the reconsideration decision. We have made this change since currently much enrollment activity is handled between the agencies and carriers by telephone. In the case of reconsideration decisions to reinstate FEHB enrollment, we do not want individuals to remain disenrolled while a carrier waits for a written notice to be forwarded from the agency. Through use of the telephone, an individual that is eligible for FEHB coverage may be quickly reinstated.

One commenter suggested the regulations require that employing offices issue reconsideration decisions within a set time frame. We believe reconsideration should be in accordance with the existing processes developed within each individual employing office to process reconsideration requests under 5 CFR 890.104(c).

Two commenters expressed concern over retroactive enrollments in health maintenance organizations for individuals who received routine services from non-network providers during the period covered by the retroactive enrollment. When these situations arise, OPM requests that carriers review each occurrence on a case-by-case basis. In situations of true hardship, where services could not be deferred until the enrollment problem was resolved, we would expect the carriers to provide coverage for the non-network services in question.

Several commenters were concerned about our proposal allowing carriers, upon receiving from a reliable source information of the death of an enrollee with a self only enrollment, to disenroll the individual. We are modifying the regulations to include certain examples of what OPM considers reliable information that an enrollee has died. We are also eliminating the requirement that carriers attempt to notify the affected individual or a family member of the disenrollment. Upon additional review, we have determined that an attempt to notify the affected individual or a member of their family is unnecessary. If, however, the enrollee is not deceased and attempts to receive services, we expect the carrier to cover the services, void the disenrollment and reinstate coverage retroactively.

One commenter noted that a child survivor annuitant must be a full-time student in order to continue their health benefits enrollment beyond age 18, while the regulations only address the disenrollment of child survivor annuitants who reach age 22. While we are aware of the possibility that some child survivor annuitants under age 22 would not be eligible for FEHB coverage, we do not want carriers attempting to disenroll them. Members of this segment of the population are frequently dropped from, and reinstated to, the annuity rolls. Each time they move on or off the annuity rolls, their eligibility for FEHB enrollment changes. It would be difficult, if not impossible, for carriers to determine when these individuals would lose entitlement to an annuity and, consequently, their FEHB coverage. We will rely on the retirement system to keep carriers apprised of the enrollment eligibility of members of this group.

Two commenters suggested that we require the carriers to give notice of conversion rights when a child survivor annuitant covered under a self only enrollment loses entitlement to an annuity and is disenrolled. OPM agrees that notice of conversion rights be given to these individuals. However, the notice will be included in the written notice of disenrollment and specific regulatory language is not needed. Carriers must send the written notice of disenrollment to the individual prior to the individual's 22nd birthday.

We are removing the specific regulatory requirement that an enrollee who notifies the carrier that he or she has separated from Federal employment be notified of their right to convert to a non-group contract and possible eligibility to enroll under temporary continuation of coverage. In its place, we are requiring that the carrier provide the enrollee with a written notice of disenrollment prescribed or approved by OPM. This notice will contain the information on conversion and temporary continuation of coverage.

One commenter expressed concern that the regulations do not specify any

grounds under which a child survivor annuitant might request reconsideration of a carrier's decision to disenroll the individual. The grounds that an individual would have for requesting reconsideration would be that the person is over age 22, but is incapable of self-support. In cases where the retirement system is provided with evidence of the situation stated above, they would order the carrier to reinstate coverage retroactively.

One commenter suggested that we change the regulations to allow child survivor annuitants 60 calendar days from the date of the carrier's disenrollment notice to file a request for reconsideration. To provide consistency among the time frames for filing reconsideration requests, we are modifying the regulations to allow 60 calendar days instead of the current 30 calendar days.

One commenter asserted that by allowing carriers to disenroll individuals, OPM is relinquishing its responsibilities in administering the FEHB Program and increasing the workload burden on the employing offices. OPM disagrees. The regulations will facilitate reconciliation of carrier and employing office enrollment records. Under these regulations, carriers may disenroll individuals only if the carrier has not received a notice terminating the enrollment or the individual has died, lost eligibility, or left Federal employment. We are modifying the regulations to give the carriers more discretion so they are not forced to disenroll an individual if they feel it would not be appropriate. We expect that few individuals would either reach the end of the disenrollment process without their enrollment status becoming clear or be otherwise incorrectly disenrolled. As a result, there would be few reconsideration requests filed with employing offices. However, if an employing office should find that it is receiving a large number of reconsideration requests, it may find that its training and procedures on transmitting enrollment transactions and performing enrollment reconciliations need to be reviewed and strengthened.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect administrative procedures for Federal agencies and health benefit carriers that participate in the FEHB Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251.

2. In subpart A, § 890.110 is added to read as follows:

§ 890.110 Enrollment reconciliation.

(a) Each employing office must report to each carrier or its surrogate on a quarterly basis the names of the individuals who are enrolled in the carrier's plan in a format and containing such information as required by OPM.

(b) The carrier must compare the data provided with its own enrollment records. When the carrier finds in its aggregate enrollment records individuals whose names do not appear in the report from the employing office of record, the carrier must request the employing office to provide the documentation necessary to resolve the discrepancy.

3. In subpart C, § 890.308 is added to read as follows:

§ 890.308 Disenrollment.

(a)(1) Except as otherwise provided in this section, a carrier that cannot reconcile its record of an individual's enrollment with agency enrollment records or does not receive documentation necessary to resolve the discrepancy from the employing office within 31 days of a request must provide written notice to the individual that the employing office of record does not show him or her as enrolled in the carrier's plan and that he or she will be disenrolled 31 calendar days after the date of the notice unless the enrollee provides appropriate documentation to resolve the discrepancy. Appropriate documentation includes, but is not limited to, a copy of the Standard Form 2809 (basic enrollment document) (or a letter confirming an electronic transaction), the Standard Form 2810 transferring the enrollment into the gaining employing office (or the equivalent electronic submission), copies of earnings and leave statements or annuity statements showing withholdings for the health benefits plan, or a document or other credible information from the enrollee's employing office stating that the individual is entitled to continued enrollment in the plan and that the premiums are being paid. After receiving documentation from the enrollee, the carrier must notify both the enrollee and the employing office of record of their decision on the information.

(2) If the carrier does not receive documentation required under paragraph (a)(1) of this section within the specified time frame, the carrier should disenroll the individual, without further notice.

(3) The enrollee may request his or her employing office to reconsider the carrier's decision to disenroll the individual. The request for reconsideration must be made in writing and must include the enrollee's name, address, Social Security Number or other personal identification number, name of carrier, reason(s) for the request, and, if applicable, retirement claim number. The employing office must notify the carrier when a request for reconsideration of the decision to disenroll the individual is made.

(4) A request for reconsideration of the carrier's decision must be filed within 60 calendar days after the date of the carrier's disenrollment notice. The time limit on filing may be extended when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(5) After reconsideration, the employing office must issue a written notice of its final decision to the individual and notify the carrier of the decision. The notice must fully set forth the findings and conclusions on which the decision was based. If upon reconsideration the employing office determines the individual is entitled to continued enrollment in the plan, the disenrollment under paragraph (a)(2) of

this section is void and coverage is reinstated retroactively.

(6) If, at any time after the disenrollment has occurred, the employing office or OPM determines that another section of this part applies to the individual's enrollment or the carrier discovers or receives appropriate documentation showing that another section of this part applies to the individual's enrollment, the disenrollment under paragraph (a)(2) of this section is void and coverage is reinstated retroactively.

(b) When a carrier receives, from any reliable source, information of the death of an enrollee with a self only enrollment, the carrier may take action to disenroll the individual on the date set forth in § 890.304(a)(1)(iv) or § 890.304(b)(4), as appropriate. When the date of death is unknown, the carrier may take action to disenroll the individual on the date which is the last day of the pay period in which information of the death is received. Reliable sources include, but are not limited to, claims for hospital or physician costs incurred at time of death and correspondence returned from the Postal Service noting that the addressee is deceased. If, at any time after the disenrollment has occurred, the employing office or OPM determines that another section of this part applies to the individual's enrollment or the carrier discovers or receives appropriate documentation showing that another section of this part applies to the individual's enrollment, the disenrollment under this paragraph (b) is void and coverage is reinstated retroactively.

(c)(1) When a child survivor annuitant covered under a self only enrollment reaches age 22, the carrier may take action to disenroll the individual effective with the date set forth in § 890.304(c)(1) unless records with the carrier indicate that the child is incapable of self support due to a physical or mental disability. The carrier must provide the enrollee with a written notice of disenrollment prescribed or approved by OPM prior to the date set forth in § 890.304(c)(1).

(2) The child survivor annuitant may request the retirement system to reconsider the carrier's decision to disenroll the individual. The request for reconsideration must be made in writing and include the enrollee's name, address, Social Security Number or other identifier, name of carrier, reason(s) for the request, and the survivor annuity claim number. The retirement system must notify the carrier when a request for reconsideration of the carrier's decision to disenroll the individual is made.

(3) A request for reconsideration of the carrier's decision must be filed with the retirement system within 60 calendar days from the date of the carrier's disenrollment notice. The time limit on filing may be extended when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(4) After reconsideration, the retirement system must issue a written notice of its final decision to the child survivor annuitant and notify the carrier of the decision. The notice must fully set forth the findings and conclusions on which the decision was based. If upon reconsideration the retirement system determines that he or she is entitled to continued enrollment in the plan, the disenrollment under paragraph (c)(1) of this section is void and coverage is reinstated retroactively.

(5) If, at any time after the disenrollment has occurred, the employing office or OPM determines that another provision of this part applies to the individual's enrollment or the carrier discovers or receives appropriate documentation showing that another section of this part applies to the individual's enrollment, the disenrollment under paragraph (c)(1) of this section is void and coverage is reinstated retroactively.

(d) When an enrollee notifies the carrier that he or she has separated from Federal employment and is no longer eligible for enrollment, the carrier must disenroll the individual on the last day of the pay period in which the separation occurred, if known, otherwise the carrier must disenroll the employee on the date the employee provides as the date of separation. The carrier must provide the enrollee with a written notice of disenrollment prescribed or approved by OPM.

[FR Doc. 98–29330 Filed 11–3–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–138–AD; Amendment 39–10865; AD 98–23–02]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 180 and 185 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 80–10–01, which applies to certain Cessna Aircraft Company (Cessna) 180 and 185 series airplanes that have either Airglas Engineering Company, Inc., (AECI) Model LW3600–180 (single position) or Model LW3600–180A (two position) fixed penetration wheel skis installed in accordance with Supplemental Type Certificate (STC) SA213AL. AD 80–10–01 requires modifying the ski bungee assemblies, safety cables, and check cables, and their attachments to the airplane and the skis; limiting the maximum airspeed to 160 knots with skis installed; and installing an airspeed limitation placard. This AD is the result of field reports of incidents occurring on the affected airplanes that were in compliance with AD 80–10–01, and the fact that Cessna Model 180K airplanes were inadvertently left out of the existing AD. This AD retains the actions required by AD 80–10–01; requires re-marking the airspeed indicator to display the reduced airspeed limits and placing a certain airplane flight manual (AFM) supplement in the cockpit; and adds Cessna Model 180K airplanes to the Applicability section of the AD. The actions specified by this AD are intended to prevent one or both wheel skis from rotating into a nose-down position during flight, which could result in loss of control of the airplane and/or possible airplane damage during flight or landing operations.

DATES: Effective December 22, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 22, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Airglas Engineering Company, Inc., P.O. Box 190107, Anchorage, Alaska 99519–0107; telephone: (907) 344–1450; facsimile: (907) 349–4938. 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–138–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. Gordon K. Mandell, Aerospace Engineer, FAA, Anchorage Aircraft Certification Office, 222 West 7th Avenue, #14, Room 128, Anchorage, Alaska 99513–7587; telephone: (907) 271–2670; facsimile: (907) 271–6365.

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 applies to certain Cessna 180 and 185 series airplanes that have either Airglas Engineering Company, Inc., (AECI) Model LW3600–180 (single position) or Model LW3600–180A (two position) fixed penetration wheel skis installed in accordance with STC SA213AL was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 26, 1998 (63 FR 34833). The NPRM proposed to supersede AD 80–10–01, Amendment 39–3762, which currently requires modifying the ski bungee assemblies, safety cables, and check cables, and their attachments to the airplane and the skis; limiting the maximum airspeed to 160 knots with skis installed; and installing an airspeed limitation placard. The NPRM proposed to require the following:

—Modifying the ski bungee assemblies, safety cables, and check cables, and their attachments to the airplane and the skis;

—Installing a placard adjacent to the airspeed indicator limiting the never exceed speed to 160 knots with the skis installed;

—Re-marking the airspeed indicator to display the reduced never exceed speed (160 KIAS) and the reduced maximum structural cruising speed (139 KIAS) with the skis installed; and

—Placing AECI Document No. AE97–13FM, ''Supplemental Airplane Flight Manual and Airplane Flight Manual Supplement'', dated October 10, 1997, in the airplane cockpit.

Accomplishment of the proposed actions as specified in the NPRM would be required in accordance with AECI Service Bulletin (SB) No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997; AECI Drawing No. LW3600–180A–1 and –2, Revision ''B'', dated September 21, 1979; AECI Drawing No. LW3600–180A–3, Revision ''A'', dated April 30, 1979; AECI Drawing No. LW3600–180, Revision ''F'', dated September 21, 1979 (for single position wheel ski installations) or AECI Drawing No. LW3600–180A, Revision ''E'', dated September 21, 1979 (for two position wheel ski installations); AECI Drawing No. LW3600–180A–11, originally issued: September 21, 1979; and AECI Document AE97–13FM, ''Supplemental Airplane Flight Manual and Airplane Flight Manual Supplement'', dated October 10, 1997.

The NPRM was the result of field reports of incidents occurring on the affected airplanes that were in compliance with AD 80–10–01, and the fact that Cessna Model 180K airplanes were inadvertently left out of the existing AD.

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

Comment Disposition

The one commenter states that requiring re-marking of the airspeed indicator to display the reduced airspeed limits will not fix the problem because airplane operators that ignore placard requirements will also ignore the airspeed indicator requirements. This commenter operates one of the affected airplanes with skis for 6 months out of each year.

The commenter states that, if the proposed AD is adopted, he will have to accomplish pitot and static pressure checks required by current regulation every 6 months when he changes the airspeed indicator during ski installation and removal.

The commenter also states that skis are similar to other devices, such as landing gear, flaps, ramps, and doors that are affixed to or incorporated into aircraft. The commenter states that the maximum speed at which the other devices can be extended or opened in flight are specified only by placards and not by markings on the airspeed indicator.

The commenter goes on to state that, based on the above information, the costs of installing and removing the skis will become extremely high, and the commenter asks the FAA to remove the requirement of re-marking the airspeed indicator to display the reduced airspeed limits.

The FAA does not concur that the requirement in the proposed AD of re-marking the airspeed indicator is not justified.

The FAA's intent of requiring that the airspeed indicator be re-marked is not to provide another airspeed limit indication for certain pilots to ignore, but to provide consistent indications of airspeed limits, i.e., to eliminate the confusion generated by having the information in an airspeed limitation placard contradicting the airspeed indicator.

The proposed AD requires re-marking the airspeed indicator, but does not specifically require removing the existing airspeed indicator and replacing it with one marked differently. If the existing airspeed indicator is left in place and re-marked, no pitot and static pressure checks would be required. Each airplane owner/operator has the choice of changing the markings of the airspeed indicator either by replacing the airspeed indicator or by re-marking the existing airspeed indicator without removing it.

The FAA understands that an owner/operator who decides to replace the airspeed indicator will have to accomplish pitot and static pressure checks each time the airspeed indicator is replaced and that there are costs involved with this. However, the FAA has determined that the safety benefits of eliminating the confusion caused when the airspeed indicator contradicts current placards far outweigh this burden.

In addition, the FAA does not consider skis similar to other devices, such as landing gear, flaps, ramps, and doors that are affixed to or incorporated into aircraft. The compared items are all ones that can be extended or opened and retracted or closed during flight. On the other hand, the installation of skis on aircraft changes the aircraft's configuration until the skis are removed. Fixed penetration wheel skis cannot be extended or opened and then retracted or closed.

The commenter's assertion that the maximum speed at which wing flaps can be extended in flight is not specified by airspeed indicator markings is incorrect. The range of airspeeds over which the flaps of a small airplane can be extended in flight is specified by a white arc on the airspeed indicator. The upper end of the white arc is the maximum speed at which the flaps can be extended.

No changes have been made to the final rule as a result of these comments.

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 impose any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 170 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $350 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $100,300, or $590 per airplane.

AECI has informed the FAA that approximately 12 of the affected airplanes have the modification required by this AD already incorporated. Based on this, the cost impact of the proposed AD is reduced by $7,080, from $100,300 to $93,220.

None of the above figures take into account the costs involved if operators would have to re-accomplish the work, i.e., ski removal and re-installation.

AD 80–10–01 currently requires most of the same actions on the affected airplanes that are required by this AD. The only differences between this AD and AD 80–10–01 are the addition of Cessna Model 180K airplanes to the applicability and the requirements for re-marking the airspeed indicator and placing an AFM supplement in the cockpit. Fabricating and installing the placard, placing the AFM supplement in the cockpit, and re-marking the airspeed indicator (provided the indicator is re-marked by painting the outside of the glass) can be accomplished by:

—*For airplanes operated in accordance with part 91 of the Federal Aviation Regulations (14 CFR part 91):* An owner/operator who holds at least a private pilot's certificate; and

—*For airplanes operated in accordance with part 135 of the Federal Aviation Regulations (14 CFR part 135):* An operator who holds an operating certificate issued under part 135 of the Federal Aviation Regulations (14 CFR part 135), as authorized by sections 43.3, 43.7, and 43.9 of the Federal Aviation Regulations (14 CFR 43.3, 43.7, and 43.9).

The only cost impact upon the public for airplanes other than the affected Cessna Model 180K airplanes is the time it will take the affected airplane owners/operators to incorporate these actions. Therefore, this AD has no additional cost impact over that already required by AD 80–10–01, except for the costs associated with the affected Cessna Model 180K airplanes.

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 removing Airworthiness Directive (AD) 80–10–01, Amendment 39–3762, and by adding a new AD to read as follows:

98–23–02 Cessna Aircraft Company: Amendment 39–10865; Docket No. 97–CE–138–AD; Supersedes AD 80–10–01, Amendment 39–3762.

Applicability: The following airplane models, all serial numbers; certificated in any category, that have either Airglas Engineering Company, Inc., (AECI) Model LW3600–180 (single position) or Model LW3600–180A (two position) fixed penetration wheel skis installed in accordance with Supplemental Type Certificate (STC) SA213AL:

Models

180	180D	180H	185A	185E
180A	180E	180J	185B	A185E
180B	180F	180K	185C	A185F
180C	180G	185	185D	

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 (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent one or both wheel skis from rotating into a nose-down position during flight, which could result in loss of control of the airplane and/or possible airplane damage during flight or landing operations, accomplish the following:

(a) Modify the wheel ski bungee assemblies, safety cables, and check cables, and their attachments to the airplane and the skis, in accordance with Airglas Engineering Company, Inc. (AECI) Drawing No. LW3600–180A–1 and –2, Revision ''B'', dated September 21, 1979; AECI Drawing No. LW3600–180A–3, Revision ''A'', dated April 30, 1979; and AECI Drawing No. LW3600–180, Revision ''F'', dated September 21, 1979 (for single position wheel ski installations) or AECI Drawing No. LW3600–180A, Revision ''E'', dated September 21, 1979 (for two position wheel ski installations).

Note 2: AECI Service Bulletin (SB) No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997, specifies following the procedures provided in the drawings referenced in paragraph (a) of this AD.

(b) Fabricate a placard using letters at least ⅛ inch in height and install this placard adjacent to the airspeed indicator, in accordance with AECI Drawing No. LW3600–180A–11, originally issued: September 21, 1979, and AECI SB No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997.

(c) Re-mark the airspeed indicator to display the never exceed airspeed (160 knots indicated airspeed (KIAS)) and the maximum structural cruising speed (139 KIAS) with skis installed, in accordance with AECI SB No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997.

(d) Place AECI Document AE97–13FM, ''Supplemental Airplane Flight Manual and Airplane Flight Manual Supplement'', dated October 10, 1997, in the airplane cockpit, in accordance with AECI SB No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997.

(e) The placard, airspeed indicator re-marking (provided the indicator is re-marked

by painting the outside of the glass), and AFM supplement placement requirements of paragraphs (b), (c), and (d) of this AD, respectively, can be accomplished by:

(1) *For airplanes operated in accordance with part 91 of the Federal Aviation Regulations (14 CFR part 91):* An owner/operator who holds at least a private pilot's certificate; and

(2) *For airplanes operated in accordance with part 135 of the Federal Aviation Regulations (14 CFR part 135):* An operator who holds an operating certificate issued under part 135 of the Federal Aviation Regulations (14 CFR part 135), as authorized by sections 43.3, 43.7, and 43.9 of the Federal Aviation Regulations (14 CFR 43.3, 43.7, and 43.9).

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

(g) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Anchorage Aircraft Certification Office (ACO), 222 West 7th Avenue, #14, Room 128, Anchorage, Alaska 99513–7587.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Anchorage ACO.

(2) Alternative methods of compliance approved for AD 80–10–01 are not considered approved as alternative methods of compliance for this AD.

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

(h) The modifications, placard installation, airspeed indicator re-marking, and AFM supplement placement required by this AD shall be done in accordance with AECI SB No. LW3600–3, originally issued: September 21, 1979; Amended: October 10, 1997; AECI Drawing No. LW3600–180A–1 and –2, Revision ''B'', dated September 21, 1979; AECI Drawing No. LW3600–180A–3, Revision ''A'', dated April 30, 1979; AECI Drawing No. LW3600–180, Revision ''F'', dated September 21, 1979 (for single position wheel ski installations) or AECI Drawing No. LW3600–180A, Revision ''E'', dated September 21, 1979 (for two position wheel ski installations); AECI Drawing No. LW3600–180A–11, originally issued: September 21, 1979; and AECI Document AE97–13FM, ''Supplemental Airplane Flight Manual and Airplane Flight Manual Supplement'', 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 Airglas Engineering Company, Inc., P.O. Box 190107, Anchorage, Alaska 99519–0107. 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.

(i) This amendment supersedes AD 80–10–01, Amendment 39–3762.

(j) This amendment becomes effective on December 22, 1998.

Issued in Kansas City, Missouri, on October 27, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–29363 Filed 11–3–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 92N–0314]

Tamper-Evident Packaging Requirements for Over-the-Counter Human Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on tamper-resistant packaging to require that all over-the-counter (OTC) human drug products marketed in two-piece, hard gelatin capsules be sealed using a tamper-evident technology; to change the term ''tamper-resistant'' in the labeling of all OTC drug products to ''tamper-evident;'' and to specify that the required OTC drug product labeling statement must refer to all packaging features used to comply with the tamper-evident packaging requirements, including those on the secondary package, the immediate container or closure, and any capsule sealing technologies used. FDA is taking this action as a result of its continuing review of the potential public health threat posed by product tampering and to improve consumer protection by addressing specific vulnerabilities in the OTC drug market.

DATES: Effective December 4, 1998.

Compliance dates: All two-piece, hard gelatin capsules subject to the final rule that are initially introduced or initially delivered for introduction into interstate commerce by November 4, 1999, must be sealed in compliance with the requirements of the final rule.

OTC drug products that use the term ''tamper-resistant'' in their labeling must change the term to ''tamper-evident'' by November 6, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas C. Kuchenberg, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5640.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 18, 1994 (59 FR 2542), FDA proposed to amend the tamper-evident packaging requirements for OTC drug products in § 211.132 (21 CFR 211.132). This regulation, which is intended to protect consumers from malicious tampering with OTC drug products, was first codified in 1982 and amended in 1989.

The 1982 regulation (47 FR 50442, November 5, 1982) was issued in response to a tampering incident in the Chicago area in which seven people died after ingesting cyanide-laced Extra-Strength Tylenol capsules. The regulation required, among other things, that any OTC drug product (except a dermatologic, dentifrice, insulin, or lozenge product) for retail sale be packaged in a ''tamper-resistant'' package, so that a breach of the package would provide visible evidence to consumers that tampering had occurred. Although the risk of tampering was reduced significantly by this rule, the two-piece, hard gelatin capsule remained vulnerable to tampering. Three deaths in 1986 were associated with this dosage form. In response to the continued susceptibility of two-piece, hard gelatin capsules, FDA amended § 211.132 (54 FR 5227, February 2, 1989) to require that OTC drug products marketed in two-piece, hard gelatin capsules must be packaged using at least two tamper-resistant packaging features, or with at least one tamper-resistant packaging feature if a tamper-resistant capsule seal was employed.

Despite these regulations, two-piece, hard gelatin capsules have continued to be a target of malicious drug tampering. This dosage form was implicated in a February 1991 tragedy, resulting in two deaths, involving Sudafed capsules contaminated with cyanide. The Sudafed package and dosage form met FDA's tamper-resistant standards, and there were visible signs of tampering that were both numerous and conspicuous. Based on investigations and discussions surrounding the 1991 tampering fatalities, as well as FDA's ongoing review of the public health threat from OTC drug product tampering, the agency initiated this rulemaking to reduce the potential for tampering with vulnerable two-piece, hard gelatin capsules. The agency invited comments from the public not only with respect to the proposed amendments, but also on effective ways to educate consumers about OTC drug product tampering issues and steps

consumers could take to reduce the threat from tampering. FDA also invited comments on consumer behavior in buying and using OTC drug products and how tamper-evident packaging and associated labeling affect their behavior. The agency also requested comments on whether additional regulatory changes, such as the establishment of performance standards for tamper-evident packaging, may be necessary.

II. Highlights of the Final Rule

The final rule amends the current tamper-resistant packaging requirements for OTC human drug products to further decrease the risks posed by product tampering by: (1) Mandating the sealing of all OTC two-piece, hard gelatin capsules; and (2) changing the terminology used throughout the agency's regulatory program from ''tamper-resistant'' to ''tamper-evident'' to characterize more accurately the role of tamper-evident packaging in protecting consumers.

The final rule requires that all OTC drug products marketed in two-piece, hard gelatin capsules be sealed using a tamper-evident technology, and that the packaging of the sealed capsules have a minimum of one tamper-evident feature. This amends the current requirement that a minimum of two tamper-resistant features be used for this dosage form if the capsule is not sealed. The capsule sealing requirement is necessary because two-piece hard gelatin capsules remain vulnerable to malicious tampering.

The final rule changes the terminology used throughout FDA's regulatory program from ''tamper-resistant'' to ''tamper-evident.'' The words ''tamper-evident'' appropriately underscore the importance of heightening consumer awareness to any evidence of tampering, rather than implying that a particular package is difficult to breach or is tamper-proof. Labeling is unacceptable if it implies that the product is tamper resistant or tamper proof.

The final rule clarifies, in § 211.132(c), that an OTC drug product's labeling statement must identify all tamper-evident packaging features used, including those on the secondary package, the immediate container or closure, and any capsule sealing technologies used. This clarification is necessary because some firms have interpreted the regulation as requiring reference to the tamper-evident features only on the outside of the package.

The final rule replaces the term ''throat lozenge'' with ''lozenge'' in § 211.132(a) and (b), thus slightly broadening the exemption from, and narrowing the scope of, the rule.

Reflecting the change from tamper-resistant to tamper-evident, and consistent with proposed § 211.132(b), the final rule eliminates the reference to ''aerosol product container.'' However, the reference to ''aerosol products'' in § 211.132(c) was inadvertently omitted in the proposed rule, and FDA has restored this language to make it clear that no tamper-evident features are required for aerosol products. FDA is also restoring the words ''materials or through commonly available'' in the explanation of the term ''distinctive by design'' in § 211.132(b). These words were inadvertently omitted in the proposed rule.

The dates for compliance with the sealing requirement and terminology change are 1 year and 2 years respectively from the date of publication of this final rule in the **Federal Register**. In response to comments, the final rule does not include a retail effective date as proposed because of the expected high rate of manufacturer compliance with the rule.

III. Comments on the Proposed Rule

A. General

FDA received 43 comments on the proposed rule, a substantial majority of which were from the general public. The remaining comments were from OTC drug manufacturers and packers, professional societies, and organizations with special interests in consumer safety and product packaging.

Many comments supported the requirement that two-piece, hard gelatin capsules be sealed. One of these comments stated:

> [U]nless two-piece, hard gelatin capsules used in OTC drug products are required to be sealed, as FDA is proposing, it is just a matter of time until another successful tampering incident involving this dosage form occurs. Each publicized tampering incident further erodes the public confidence in the safety of our OTC drug supply.

However, some comments were less supportive, including one that stated that:

> [T]he amendment requiring two-piece, hard gelatin capsules be sealed is unnecessary in light of the protections already required under the present regulation. * * * [F]urther regulation will only result in additional costs which will be borne by the consumer. Furthermore, such changes cannot completely eliminate the dangers of product tampering.

A significant majority of comments supported the change in terminology from ''tamper-resistant'' to ''tamper-evident.'' These comments concurred with the agency's position that the term ''tamper-evident'' more accurately describes the role of packaging and other features designed to decrease the risk of harm from tampering. A typical comment on this issue stated that ''such a change imparts an added degree of awareness to the consumer that no package design is 'tamper-proof'.'' Other comments were less supportive, saying that the change in language would not substantially aid consumer awareness or significantly reduce the threat of tampering harm.

B. Scope

Current § 211.132 applies to manufacturers and packers who package OTC drug products, except dermatologic, dentifrice, insulin, or throat lozenge products. The final rule maintains the current scope, except that it exempts all lozenge products rather than only throat lozenges.

1. One comment stated that the agency should expand the scope of the rule to include all OTC drug products, including dermatologics.

Dermatologic, dentifrice, and insulin products have been exempted from the OTC tampering regulations since they were issued in 1982. These product classes are exempted because of a lower probability of tampering and in the case of dermatologic and dentifrice products, a lower risk of severe consequences. Therefore the agency declines to apply the regulation to these product classes in this rulemaking.

2. One comment asserted that FDA had not considered the effect of the proposed rule on vitamins and other supplements sold in two-piece, hard gelatin capsules and stated that the economic impact on dietary supplement manufacturers and the public would be immense.

The scope of the regulation is limited to OTC drug products and is not intended to cover products that are regulated as dietary supplements.

C. Effectiveness of Sealing Requirement

Proposed § 211.132(b)(2) stated that, in addition to an acceptable tamper-evident packaging feature, any two-piece, hard gelatin capsule covered by the OTC tamper-evident packaging rule must be sealed using an acceptable tamper-evident technology.

3. Four comments asserted that if two-piece, hard gelatin capsules were sealed, consumers would have a false sense of security that such capsules are impenetrable.

The agency recognizes that an additional level of protection against tampering may make consumers feel more secure about using OTC drug products. However, the sealing requirement, along with the other

regulatory standards set forth in this final rule, will in fact add a measure of protection against malicious tampering by making it more difficult for a person to tamper with a product without leaving visible evidence that tampering has occurred. Thus the heightened sense of security may have some basis in fact. Because all packaging is penetrable and no packaging or dosage form is tamper-proof, consumers should be vigilant when buying and using OTC drug products. The change in terminology from ''tamper-resistant'' to ''tamper-evident,'' in combination with the agency's efforts to educate consumers about tamper-evident packaging, is designed to alert consumers to examine OTC drug product packaging for evidence of tampering.

4. Two comments claimed that consumers would not notice any tampering with sealed capsules and, thus, would not be protected by this requirement. Another comment stated that a breach in the tamper-evident packaging feature would more likely be noticed than a breach of a capsule seal.

The agency does not agree with the comments. However, a major benefit of the capsule-sealing feature is that sealing makes it virtually impossible for a tamperer to disturb the integrity of the product and recombine the two parts of the capsule without leaving conspicuous signs of entry. Although not all seals are visible in the unbreached state, some seals have distinctive characteristics (e.g., color scheme) that make it less likely that a substituted capsule would go unnoticed. Such signs of tampering with the product itself may be more likely to be noticed than less obvious manifestations of tampering left on certain tamper-evident packaging features such as container mouth inner seals, film wrappers, and heat shrink bands or wrappers. Some or all of these protective features could be removed by a tamperer without leaving any signs of tampering to consumers unaware of the packaging normally used. Thus, for the two-piece, hard gelatin capsule dosage form, which has been particularly vulnerable to criminal tampering, it is important to have the dual protection of a package tamper-evident feature plus the capsule-sealing feature.

5. Three comments stated that the sealing requirement would be ineffective in reducing the overall tampering risk because it only addresses the vulnerability of one OTC drug product dosage form, the two-piece, hard gelatin capsule, while other dosage forms go unprotected.

It is true that consumer products other than two-piece, hard gelatin capsules are vulnerable to tampering. For this reason, in addition to the capsule sealing requirement, current § 211.132 requires that all OTC drug products (except those specifically exempted) be packaged using a tamper-evident feature. This final rule maintains this requirement and proposes an extra measure of protection for OTC two-piece, hard gelatin capsules which, as explained in the preamble to the proposed rule, have been persistently implicated in the most serious tampering incidents (59 FR 2542 at 2543). Thus the agency believes the rule will reduce the overall tampering risk.

6. Two comments stated that the sealing requirement would not yield a significant benefit because most OTC two-piece, hard gelatin capsule drug products are already sealed.

While it is true that there are few two-piece, hard gelatin capsule drug products currently marketed without a seal, the remaining unsealed capsules may provide an attractive target for would-be tamperers. The availability of unsealed OTC drug product capsules makes it relatively easy for the tamperer to substitute them for other, sealed capsules with a similar appearance. Thus, the universal sealing of two-piece, hard gelatin capsule drug products will not only make products that are presently unsealed safer, but will also bolster the effectiveness of the sealing feature on currently sealed products by reducing opportunities for substitution.

7. Several comments proposed alternative means of reducing the threat of drug tampering. Some comments recommended that OTC drug products marketed in two-piece, hard gelatin capsules be banned or restricted to pharmacy counter sales.

FDA has considered these options and finds that a ban or restriction on the sale of two-piece, hard gelatin capsule OTC drug products is not warranted because the benefits of allowing the continued OTC marketing of the dosage form outweigh the risks posed by possible tampering. Consumers might mistakenly think that the threat of tampering has been eliminated by such an action and thus be lulled into a false sense of security. A complacent consumer may not remain vigilant to signs of tampering with other dosage forms.

In addition, capsules are a valuable dosage form option for several reasons: (1) Many consumers prefer capsules because they are easier to swallow than some other dosage forms and this factor may increase patient compliance with a drug regimen. (2) Some medicines cannot easily be put in tablet form because of the detrimental effects of tableting on the stability of the ingredients. (3) Capsules are less susceptible than other dosage forms to damage during shipping. Uncoated tablets may chip or break during shipping and, thus, may deliver less than the recommended amounts of ingredients, possibly affecting the product's efficacy. (4) Capsules contain fewer inactive ingredients than some tablet and oral liquid formulations, thus lowering the risk of allergic reactions. (5) Capsules are a preferred means of delivering sustained-release medications. Capsules containing encapsulated beads of active ingredients provide a means of delivering medications safely over prolonged periods, thus enhancing patient compliance. (6) The printing and color combinations that are possible with capsules aid consumers and health professionals in distinguishing medicines. Product distinction is important in aiding patient compliance with drug regimens and in the effective handling of overdose cases (Ref. 1).

Because of the numerous advantages of capsules, the agency believes that restricting two-piece, hard gelatin capsules to behind-the-counter sales would be a disservice to consumers. If capsules were kept behind the counter, consumers could not easily compare products. Also, because behind-the-counter space is limited, the expense and inconvenience of storing products might cause retail outlets to limit the number of OTC capsule drug products they make available.

8. Comments suggested several other alternative methods of protecting consumers against tampering, including requiring video surveillance of areas where tamper-prone products are displayed, and requiring that tamper-prone products have a holographic label to make evidence of tampering more visible.

Although these suggestions have merit insofar as they would provide an additional level of protection against tampering, FDA has determined that sealing the capsules is the preferred alternative because it will benefit the consuming public while keeping implementation costs low. FDA encourages manufacturers to continue to use innovative tamper-evident technologies to provide protection to the consumer and encourages retail outlets to play a significant role in protecting the consumer and apprehending tamperers. Retailers are encouraged, for example, to train their employees to handle products properly to avoid an accidental breach of the tamper-evident features and to play a role in inspecting products for signs of tampering when working at the cash register, placing

products on retail shelves, and otherwise handling products.

9. Two comments asserted that consumers accustomed to the use of two package tamper-evident features on their OTC drug products may be concerned if one of the familiar features is missing. As a result, manufacturers would, in effect, be compelled to use two package tamper-evident features in addition to the sealing feature.

FDA is not mandating that three tamper-evident features be used, and the agency is not convinced that consumers will be alarmed by a change in a product's tamper-evident features. Informative labeling will help allay the anxiety that consumers may feel. Retailers will also be able to explain the change in packaging to interested or concerned customers.

D. Dates

10. Two comments opposed the proposed retail level effective date for compliance with the sealing requirement. These comments characterized the effective date as extraordinary, insupportable, and unprecedented. The comments said that the retail effective date places an undue burden on retailers to examine all of their products, determine which products covered by the rule are out of compliance, and return those products to the manufacturers. According to the comments, the prospect of conducting these resource-intensive compliance checks would likely lead retailers to return all products marketed in two-piece, hard gelatin capsules rather than just those products that were, in fact, out of compliance. The comments asserted that such a marketing disruption is not justified in light of the negligible number of unsealed capsules that would be on the market 2 years after the publication of the final rule.

FDA has considered the benefits of a retail level effective date and the burden that would be placed on retailers, and agrees that such a condition is currently unwarranted. The agency expects that, because no unsealed capsules may be initially introduced into interstate commerce 1 year after publication of this final rule, a negligible quantity of noncomplying products will remain on the market 2 years after publication of the final rule. The agency bases this expectation in part on the high level of compliance with the effective date of the 1982 tamper-resistant packaging rule. The agency has, accordingly, removed the proposed retail level effective date from this final rule.

While FDA encourages manufacturers to revise OTC drug product labeling to replace the term ''tamper-resistant'' with ''tamper-evident'' as soon as possible, the agency recognizes that substantial revision of OTC labeling may be required by a final rule based on the proposed OTC labeling rule published in the **Federal Register** of February 27, 1997 (62 FR 9024). A reasonable effort has been made to coordinate implementation of the two rules and, following publication of a final OTC labeling rule, FDA will consider whether to extend the compliance date of the labeling changes provided by this regulation to coincide with the effective date of the OTC labeling final rule. The agency emphasizes that any such extension would apply only to the labeling requirements and not to the sealing requirements of this rule. All two-piece, hard gelatin capsules subject to this regulation that are initially introduced or initially delivered for introduction into interstate commerce must be sealed in compliance with this regulation by the date provided in the ''Dates'' section of this document.

E. Effectiveness of Change in Terminology from ''Tamper-Resistant'' to ''Tamper-Evident''

FDA proposed to amend § 211.132 by changing the term ''tamper-resistant'' to ''tamper-evident.''

11. Fourteen comments, while agreeing with the proposed change, stated that its effectiveness would depend on an education campaign to bolster awareness of steps consumers can take to protect themselves. The most common concerns expressed by comments opposed to the proposed change were that consumers will not notice the change or that they will not understand the distinction between ''tamper-resistant'' and ''tamper-evident.''

The agency recognizes that this change may go unnoticed by those consumers who do not regularly read labels. It is nonetheless important that labeling accurately and truthfully characterize the degree of protection afforded by tamper-evident packaging. It is particularly important that measures designed to discourage tampering do not convey a false sense of security or reduce consumer vigilance. The agency believes the term ''tamper-evident'' better indicates the need for active consumer surveillance of protective packaging features. FDA stated in the proposed rule and reiterates here that ''the term 'tamper evident' more accurately describes the role of packaging in reducing the likelihood of harm from tampering, and emphasizes the necessity of consumer involvement in the effectiveness of any packaging system designed to meet the requirements of this regulation'' (59 FR 2542 at 2544). The role of consumer education in enhancing protection against tampering is discussed in the response to comment 20 in section III.G of this document.

12. Several comments suggested a requirement that the labeling statement on tamper-evident features be printed in a more conspicuous format (e.g., in bold face, underlined type, or contrasting colors).

The agency does not believe that such a requirement is necessary at this time. While such labeling measures would no doubt attract some consumers' attention initially, the agency believes that many other factors must be weighed in a consideration of such a requirement. First, such prominence of the tamper-evident message may distract consumers from other labeling information, such as warnings and directions for use, that may be equally important. Second, in light of the crucial role of OTC drug products in our health care system, consumers must not be discouraged from using OTC medications because of an excessive emphasis on the tampering threat.

13. One comment stated that the term ''tamper-evident'' would not convey the appropriate message, but rather would give consumers a false sense that it would be ''glaringly obvious'' if a product's antitampering feature had been breached. Another comment stated that consumers are intelligent and do not interpret the term ''tamper-resistant'' to mean ''tamper-proof.''

FDA does not agree that the term ''tamper-evident'' will mislead the consumer or that the term ''tamper-resistant'' does not. While the term ''tamper-resistant'' does not technically mean that a product is tamper proof, the term focuses on the packaging technology itself and can imply that it is difficult to breach an antitampering feature. While it may not be difficult to breach some commonly used antitampering features, it is difficult to breach a feature without leaving visible signs of tampering. Such visible signs will only protect consumers from tampering harm if they are aware that an antitampering feature is breached or missing. The proposed change in the terminology appropriately shifts the emphasis from the ability of the feature itself to protect consumers to the ability of vigilant consumers to protect themselves.

14. One comment asserted that the rule improperly shifts the burden of preventing drug product tampering from the OTC industry to the ''unsuspecting sick and poor consumers.''

FDA does not agree. The proposed rule will require some manufacturers of hard capsules to take additional steps to prevent tampering by sealing two-piece, hard gelatin capsules. Nonetheless, because it is impossible to make a tamper-proof package, the success of an antitampering regulatory program necessarily depends in part on consumers' attentiveness; consumers must take some responsibility for protecting themselves. FDA-mandated tamper-evident features will allow vigilant consumers to minimize their chances of being victimized by a malicious tamperer. Ultimately, the best defense against tampering is an awareness of the tamper-evident features and a careful inspection of all products.

15. One comment stated that packages should, in fact, be required to be tamper resistant.

FDA does not believe that such a requirement is practical. The intent of tamper-evident packaging is to alert the consumer to signs of tampering without making the package more difficult to open. Otherwise, those who have difficulty opening packages, such as the elderly and disabled, are more likely to avoid using products contained in such packaging.

16. One comment requested clarification regarding the extent of the regulation's restriction on the use of certain terms in OTC drug product labeling.

It is not the intent of the regulation to mandate the use of the specific term ''tamper-evident'' in labeling. Indeed, any words that correctly characterize the role of packaging in reducing the likelihood of harm from tampering (without an implication that a package or dosage form is tamper resistant or tamper proof) and that place appropriate emphasis on the importance of consumer involvement in their own protection would be acceptable under the rule.

17. One comment recommended shortening the 2-year effective date for implementing the labeling changes.

FDA does not agree that the proposed time for implementation of the labeling change should be shortened. The agency determined that a 2-year implementation is prudent because it achieves an expeditious implementation while at the same time not unreasonably burdening industry. Any burden to industry is minimized by a 2-year compliance date because most product labels are routinely reprinted within an 18- to 24-month period.

F. Listing of All Tamper-Evident Features

Proposed § 211.132(c) clarified that the labeling statements on all OTC drug products are required to identify all packaging features used to comply with proposed § 211.132(b)(1), not just the features on the external package. These packaging features would include those on the secondary package, the immediate container or closure, and any capsule-sealing technologies used to meet the requirements of the regulation.

18. Five of the seven comments raising the issue were in favor of this proposed revision. One comment expressed reservations about the lack of a requirement that the labeling on the inner package contain information regarding tamper-evident features, stating that persons are more likely to read the information on the inner labeling. The comment suggested that the proposed rule should give manufacturers more specific direction as to what information must be provided regarding possible signs of tampering (e.g., directions to compare lot numbers of blister packs with those on the box) and more specific guidance regarding the requisite prominence with which such information must be displayed.

The role of drug labeling is to effectively communicate consequential information regarding the safe and effective use of a drug. If the amount of information is too great, consumers may miss the essential message. The agency believes that § 211.132(c)(1) provides sufficient guidance to ensure that the important safety message is conveyed to consumers and that more specific direction to manufacturers is unnecessary.

19. One comment stated that revised labeling is unwarranted because consumers do not read the labeling and, thus, the reworded rule will have no impact.

FDA is charged with protecting the public health, and package labeling is one indispensable mechanism for conveying such information as instructions for use, warnings, and signs of possible tampering. Many consumers do read package labeling, and all consumers should have the opportunity to avail themselves of such information.

G. Consumer Education Campaign

The proposal stated that consumer education and involvement are important to help prevent malicious tampering, and discussed steps that FDA has taken to inform consumers to be alert for drug product tampering.

20. Nearly all of the comments stressed the need for a consumer education campaign in conjunction with implementation of the new tamper-evident requirements. Several comments cited the Sudafed tampering incident, which resulted in two deaths despite numerous and conspicuous signs of intrusion, as evidence that consumer education is an indispensable element of an antitampering campaign. The comments generally focused on two options for educating consumers: (1) A widespread media campaign using such means of communication as public service announcements, magazine advertisements, news articles, press releases, signs placed where OTC drug products are sold, brochures, or public workshops; and (2) a requirement for additional or stronger warnings on OTC drug product labels about the risks from product tampering.

While FDA encourages the drug industry to provide consumers as much information as is feasible regarding tampering, the agency will not mandate stronger tamper-evident messages on drug product labeling at this time. As previously discussed, the agency believes that the labeling requirements in this final rule provide necessary information to consumers without the negative consequences that can result from exaggerated emphasis on a single issue. Rather, FDA will focus its efforts on disseminating information through public service announcements, journal articles, store displays, flyers sent through the mail or disseminated with the purchase of an OTC drug product, or workshops aimed at specific target audiences. Messages will be aimed at informing consumers about tamper-evident packaging, the need for vigilance, and the safety of the OTC drug supply.

The extent of educational efforts undertaken depends, in large part, on support from interested parties. FDA appreciates the willingness of some professional societies to assist in the agency's educational endeavors. The agency requests assistance from the drug industry, professional organizations, consumer groups, and other Government agencies in conveying an effective, consistent message to consumers about drug tampering. Organizations, in coordination with FDA, are encouraged to use their newsletters, magazines, or other networking capacities to notify constituencies about the signs of drug product tampering.

21. Comments advocating a media campaign emphasized the importance of reaching a vast audience (e.g., through publication in a widely circulated magazine or through prime time

television public service announcements).

FDA recognizes the importance of imparting the message about drug tampering to as great a target audience as feasible. However, the agency must conduct any educational campaign so that the increased visibility of the tampering issue does not have the unintended effects of stimulating tampering or creating undue anxiety about the threats posed by tampering. In an effort to achieve this delicate balance, FDA must carefully choose a clear and focused message and a method of delivery to ensure that the message is perceived as intended.

H. Packaging Performance Standards

In the proposed rule FDA invited discussion on the possibility of establishing performance standards for tamper-evident packaging.

Three comments urged FDA to adopt packaging performance standards and two comments opposed such standards.

22. One comment in support of packaging performance standards stated that FDA's current method of evaluating tamper evidence is not objective and does not take into consideration all factors involved in violating a package seal. Another comment expressed a different view, stating that packaging performance standards are unnecessary because packaging guidance already exists through this rule and FDA's Compliance Policy Guide (CPG) 7132a.17 entitled ''Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products'' (Ref. 2). One comment that supported the use of packaging performance standards stated that many aspects of packaging needed to be improved if the packages are to provide adequate evidence of tampering.

The agency has concluded that § 211.132 and CPG 7132a.17 (which the agency will amend to conform to this final rule) will provide adequate guidance for a determination of whether a package meets the tamper-evident requirement. FDA does not use a rigid checklist of criteria to determine whether a package meets the tamper-evident requirement. The agency deems a technology to be in compliance with the regulation if the feature provides visible evidence to consumers that tampering has occurred, as required by the tamper-evident packaging regulation, and complies with the other regulatory requirements of § 211.132. Additional guidance on tamper-evident packaging is found in CPG 7132a.17 that lists examples of packaging and sealing technologies that are, and are not, capable of meeting tamper-evident packaging requirements.

FDA has considered the advantages and disadvantages of implementing packaging performance standards and finds that the drawbacks of requiring tamper-evident features to meet specific performance standards outweigh the advantages of such a system. The agency's current policy allows for flexibility in packaging technology and encourages technical innovation to improve tamper evidence and enhance packaging security.

The agency believes that the way to encourage improvements in feature design is not to impose additional regulatory requirements, but rather to set forth the general standard of tamper evidence and to remain flexible with respect to use of alternative technologies. Use of measurable performance standards might result in a premature ranking of tamper-evident technologies, and FDA has concluded that the establishment of performance standards for tamper-evident packaging is not necessary at this time.

23. One comment expressed a concern that a tamper-evident feature of a package may interfere with the package's child-resistant feature.

The agency wishes to clarify that the tamper-evident packaging rule does not affect a manufacturer's responsibility to comply with other applicable regulatory requirements, including the requirement of child-resistant packaging issued by the Consumer Product Safety Commission and found at 16 CFR 1700. The agency appreciates the comment's concern and reiterates that the manufacturer must ensure that the tamper-evident features of a package do not interfere with its child-resistant features.

I. Economic Impact

As noted earlier, FDA requirements for OTC drug product packaging to protect against drug tampering have been in effect since 1982. This final rule clarifies the application of the current regulation, amends the current regulation to require sealing of products marketed in two-piece, hard gelatin capsules, and requires that the labeling of certain products be modified to substitute the term ''tamper-evident'' for ''tamper-resistant.'' FDA estimated, in the proposed rule, that the total one-time costs of the changes would be approximately $1.8 to $3 million to seal the few two-piece, hard gelatin capsule products that are currently unsealed, and for other minor costs associated with a change in the terminology used in the labeling of some products.

24. Some of the comments that specifically raised the issue of the cost of sealing considered the cost reasonable. Other comments stated that the sealing requirement is unduly burdensome and would result in unwarranted increased costs to manufacturers and higher prices to consumers.

An analysis of the costs of compliance with the new regulation is only meaningful in the context of expected benefits. While the important benefits that are expected to result from the sealing requirement have been discussed, it is impossible to predict precisely the number of lives that may be saved or injuries prevented by these new requirements. Nevertheless, in view of the public health benefits that can be reasonably expected from this added measure of consumer protection, the costs of compliance with the sealing requirement are relatively low.

25. Five comments stated that the cost of sealing all two-piece, hard gelatin capsules would be much higher than FDA's estimate. The comments questioned the premises on which the cost to industry estimate of $1.8 to $3 million was based. One of these comments said that at least 22 OTC drug products—not 12, as FDA estimated—are currently marketed as unsealed two-piece, hard gelatin capsules. Another comment said that, for companies with numerous OTC drug products offered in the capsule dosage form, compliance with the proposed rule would require the purchase of more than one hard gelatin capsule sealing machine, which, in combination with the required parts for the sealing machine and gelatin sealing solution, would total approximately $700,000. The comment asserted that the eventual cost of compliance would be substantially more because of additional costs for necessary alterations to the manufacturing facility's encapsulating area.

FDA's original cost estimate assumed that each affected product would require a separate gelatin capsule sealing and banding machine at a cost of $250,000 per machine. Consequently, this calculation is not inconsistent with the estimate of $700,000 for a company that manufactures several affected products. FDA acknowledges that its earlier estimate of 12 affected products may be too small and has accepted the estimate that 22 products are currently marketed in unsealed two-piece hard gelatin capsules. Using this higher figure, as detailed in section VIII of this document, FDA has revised its estimated compliance costs for this provision to $5.5 million.

26. Five comments expressed concern that the costs of compliance would be passed on to consumers of OTC drug products in the form of higher prices. One comment estimated that the cost passed on to the consumer would be in the range of $1 to $2 per bottle. Another comment estimated that the cost passed on to the consumer would be about 35 to 55 cents per 100-count bottle.

FDA realizes that a portion of the cost of compliance may be passed on to consumers and the agency has revised its estimate of this cost in section VIII of this document. In addition to the $250,000 cost of a gelatin capsule sealing and banding machine, the cost of labeling changes is expected to average $2,500 for each branded OTC drug and $850 for each private label OTC drug. Individual companies control product pricing and it is conceivable that the price of certain very low volume drug products might be noticeably increased. However, given the one-time impact of most of the costs of this rule, the safety benefits, and the overall costs of drug product manufacturing, the agency does not believe the price of many products will be substantially affected.

27. One comment stated that tamper-evident packaging features would be a cheaper, more effective alternative to sealing. The comment provided no support for this theory.

As explained earlier, FDA believes that packaging requirements do not effectively minimize the dangers posed by OTC drug product tampering and that the sealing requirement is necessary to address the continued vulnerability of two-piece, hard gelatin capsules.

28. Several comments stated that the cost of the labeling change to eliminate terms such as ''tamper-resistant'' was unreasonably burdensome.

In response to several comments, FDA reexamined the estimated cost of proposed labeling changes and has revised the $5 to $6 million estimate to $10 million. Even as revised, however, FDA disagrees that the cost of the labeling change is unreasonably burdensome. The use of terminology accurately characterizing the degree of protection offered by tamper-resistant packaging is a cost effective step toward educating consumers. The agency has further reduced the burden of the labeling change to industry by giving manufacturers up to 2 years to make the conversion.

IV. Legal Authority

FDA's revision of the tamper-resistant packaging requirements for OTC drug products is authorized by the Federal Food, Drug, and Cosmetic Act (the act). As discussed in the proposed rule (59 FR 2542 at 2545), the agency is authorized to establish requirements for container and package design that provide protection against intentional product adulteration by tampering and to establish requirements for labeling statements alerting consumers to tamper-evident features. (See also 47 FR 50442 at 50447, November 5, 1982, for additional discussion of the legal authority for requirements related to drug product tampering.)

V. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen between 9 a.m. and 4 p.m, Monday through Friday.

1. The Nonprescription Drug Manufacturers Association, ''The Sale of OTC Medicines in Capsule Form Should Not Be Banned or Restricted,'' position statement, March 9, 1991.

2. FDA Compliance Policy Guide 7132a.17, ''Tamper Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products,'' May 21, 1992. This document is also available at cost from the National Technical Information Service (NTIS), U.S. Dept. of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, 703–487–4650.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule is not subject to review by the Office of Management and Budget. Requiring manufacturers to use the term ''tamper-evident'' in the labeling and to identify tamper-evident features and capsule sealing technologies in the labeling is exempt under 5 CFR 1320.3(c)(2) as a public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public.

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

VIII. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all cost 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). If an agency determines that a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Section 202 of the Unfunded Mandates Reform Act (Pub. L. 104–4) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that might result in an expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any year.

As discussed in this preamble, the regulatory history of measures to reduce the risk of product tampering, the agency evaluation of alternative control strategies suggested in response to comments, and the revised implementation schedule demonstrate that this rule is consistent with the principles set forth in the Executive Order and these two statutes.

A. Executive Order 12866

FDA had estimated that the January 18, 1994 (59 FR 2542) proposed rule to strengthen tamper-evident packaging requirements would impose compliance costs of $3 million for sealing the two-piece hard gelatin capsules. One comment to the proposed rule stated that at least 22 products are currently marketed in unsealed two-piece hard gelatin capsules, not 12 products as FDA had estimated. Based on this comment, FDA has revised its estimated compliance costs for this provision to $5.5 million ($250,000 per capsule sealing machine x 22 products).

Compliance costs for relabeling OTC's containing the ''tamper-resistant'' terminology with the ''tamper-evident'' terminology was estimated at $5 to $6 million in the proposed rule. Based on information from the Nonprescription Drug Manufacturers Association (NDMA) indicating that these labels were routinely reprinted within an 18 to 24 month period, the incremental cost of this provision was expected to be minimal. Several comments, however, stated that the cost of the labeling change was unreasonably burdensome. FDA has reviewed the latest data on label change costs and patterns and revised its estimate of compliance costs for this provision. The agency estimates that about 20 percent of OTC drug labels are reprinted over any 2-year period, as shown by survey data from NDMA.

Further, FDA finds that branded OTC drugs have much higher per label costs than do private label OTC drugs. Based on recent information, FDA estimates that a minor label change would cost from $2,000 to $3,000 for each branded OTC drug. Private label costs for a minor change are estimated to range from $500 to $1,200, or an average of $850 per OTC drug.

FDA has also revised its estimate of the number of products (stock keeping units or SKU's) that are subject to the labeling provisions of the tamper-evident packaging. FDA estimates this number at about 62,000 SKU's (including both branded and private label SKU's). Whereas the proposal estimated that 60 percent of the SKU's would be out of compliance with the new rule, a very limited survey of OTC drug products now shows a noncompliance rate of about 15 percent. Accounting for all of the above factors, FDA estimates the compliance cost of the labeling provision at $10 million. These costs, however, would be mitigated to the extent that companies can coordinate this effort with the forthcoming rule to standardize all OTC drug labels.

To summarize, the estimated total one-time costs of the final rule are the sum of the $5.5 million to seal the capsule products that are currently not sealed and the $10 million to change the labeling on the products that currently use the ''tamper-resistant'' terminology. Total one-time compliance costs, therefore, are estimated at $15.5 million. The rule will not impose any other annual costs on the OTC drug industry.

Because this final rule is not a significant regulatory action as defined by Executive Order 12866, an additional assessment of the rule under section 6 of the Executive Order is not necessary.

B. Regulatory Flexibility Act

According to the Regulatory Flexibility Act, the final rule should include ''a succinct statement of the need for, and objectives of, the rule.'' FDA is taking this action as a result of its continuing review of the potential public health threat posed by product tampering and to improve consumer protection by addressing specific vulnerabilities in the OTC drug market.

FDA accepts the industry estimate of 22 products currently marketed in two-piece hard gelatin capsules. FDA does not have a definitive estimate of the percentage of these companies that may be small. The Small Business Administration (SBA) defines small pharmaceutical manufacturers as those having less than 750 employees. It is likely, however, that many of these firms will not be small. FDA estimates that, at a maximum, only 2 of the original 12 products identified by FDA were made by a small manufacturer. Using the same ratio (2:12), a low-end range estimate of about 4 of the 22 affected products would be made by a small manufacturer. A high-end estimate of 12 was developed by assuming that all of the 10 products not previously accounted for (22 - 12 = 10) are made by different small manufacturers. The final estimate, therefore, is a range of 4 to 12 products from small manufacturers that are marketed in two-piece hard gelatin capsules. These small businesses are expected to incur average one-time compliance costs of $150,000 to $250,000 for purchasing the capsule sealing machinery if it is not already available. Other firms may choose to contract out the manufacturing process for these products.

Further, the proposed rule estimated that about 780 products (including different sizes and strengths) would be affected by the labeling provisions of this rule. Using more recent data, FDA revised its estimate of the number of product SKU's in need of relabeling to about 9,300. Due to the 2-year phase-in period for ''tamper-evident'' labeling, FDA expects only about 7,450 of these SKU's to be affected outside of their normal reprinting patterns. FDA does not have a good estimate of the number of small companies that would have to relabel their products. It can be assumed, however, that each small company has very few SKU's, as the large companies and a small number of large private labelers market numerous SKU's. As noted previously, each affected SKU is estimated to incur a one-time relabeling cost of either $850 or $2,500.

FDA attempted to minimize the burden of this rule on manufacturers by granting them 2 years after final publication to comply with the labeling provisions. Also, FDA has not included any new reporting or recordkeeping requirements. After review of the comments, FDA has revised the final rule even further. The proposed rule would have created a 2-year effective date at the retail level. Comments to the proposed rule claimed that it would require burdensome compliance checks by retailers in order to check for a negligible quantity of noncomplying products. In response to these comments, FDA has chosen an alternative policy that does not include a retail effective date.

Several other alternatives were considered. Comments suggested a requirement that: (1) Two-piece capsules be kept behind the counter, (2) video surveillance be provided for retail space where OTC drug products are sold, (3) holographic labels be used on OTC drugs, (4) bold print or contrasting colors be used to further illuminate the tamper-evident warning on OTC drugs and (5) packaging performance standards be developed and applied to tamper-evident OTC drug packaging. FDA considered these alternatives and determined that the additional compliance costs they would create cannot be justified by the small amount of increased awareness of tamper-evident packaging they would offer.

C. Unfunded Mandates Reform Act

FDA concludes that this regulation will not result in expenditure of $100 million by State, local or tribal governments, in the aggregate, or by the private sector, in any 1 year. Therefore, under the Unfunded Mandates Reform Act, no further analysis is required.

List of Subjects in 21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 211 is amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 357, 360b, 371, 374.

2. Section 211.132 is amended by revising the section heading, by removing in paragraph (a) the word ''throat'', by removing in paragraphs (a) and (d)(2) the words ''tamper-resistant'' and adding in their place the words ''tamper-evident'', and by revising paragraphs (b) and (c), and the second sentence in the introductory text of paragraph (d) to read as follows:

§ 211.132 Tamper-evident packaging requirements for over-the-counter (OTC) human drug products.

* * * * *

(b) *Requirements for tamper-evident package.* (1) Each manufacturer and packer who packages an OTC drug product (except a dermatological, dentifrice, insulin, or lozenge product) for retail sale shall package the product in a tamper-evident package, if this product is accessible to the public while held for sale. A tamper-evident package

is one having one or more indicators or barriers to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. To reduce the likelihood of successful tampering and to increase the likelihood that consumers will discover if a product has been tampered with, the package is required to be distinctive by design or by the use of one or more indicators or barriers to entry that employ an identifying characteristic (e.g., a pattern, name, registered trademark, logo, or picture). For purposes of this section, the term ''distinctive by design'' means the packaging cannot be duplicated with commonly available materials or through commonly available processes. A tamper-evident package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual indication of package integrity. The tamper-evident feature shall be designed to and shall remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(2) In addition to the tamper-evident packaging feature described in paragraph (b)(1) of this section, any two-piece, hard gelatin capsule covered by this section must be sealed using an acceptable tamper-evident technology.

(c) *Labeling.* (1) In order to alert consumers to the specific tamper-evident feature(s) used, each retail package of an OTC drug product covered by this section (except ammonia inhalant in crushable glass ampules, containers of compressed medical oxygen, or aerosol products that depend upon the power of a liquefied or compressed gas to expel the contents from the container) is required to bear a statement that:

(i) Identifies all tamper-evident feature(s) and any capsule sealing technologies used to comply with paragraph (b) of this section;

(ii) Is prominently placed on the package; and

(iii) Is so placed that it will be unaffected if the tamper-evident feature of the package is breached or missing.

(2) If the tamper-evident feature chosen to meet the requirements in paragraph (b) of this section uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement. For example, the labeling statement on a bottle with a shrink band could say ''For your protection, this bottle has an imprinted seal around the neck.''

(d) * * * A request for an exemption is required to be submitted in the form of a citizen petition under § 10.30 of this chapter and should be clearly identified on the envelope as a ''Request for Exemption from the Tamper-Evident Packaging Rule.'' * * *

* * * * *

Dated: October 28, 1998.

William B. Schultz,

Deputy Commissioner for Policy

[FR Doc. 98–29388 Filed 11–3–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6182–9]

Technical Amendments to Approval and Promulgation of Air Quality State Implementation Plans, Texas; Recodification of, and Revisions to the State Implementation Plan; Chapter 114; Correction of Effective Date Under the Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On July 1, 1998 (63 FR 35839), EPA published in the **Federal Register** a direct final rule concerning the Approval and Promulgation of Air Quality Implementation Plans, Texas; Recodification of, and Revisions to the State Implementation Plan, Chapter 114, which established an effective date of August 31, 1998. This document corrects the effective date of the rule to November 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Deese, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7253.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States, head of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on July 1, 1998, by operation of law, the rule did not take effect on August 31, 1998 as stated. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 1, 1998, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), establish any technical standards subject to the section 12(d) of the National Technology Transfer and Advancement Act, or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or with officials of Indian tribal governments as specified by Executive Orders 12875 and 13084 (63 FR 27655, involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994), or involve special consideration of children's health and safety risks under Executive Order 13045 (62 FR 19885, April 23, 1997). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to

the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders, as applicable, for the underlying rule is discussed in the July 1, 1998 **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States; however, in accordance with 5 U.S.C. 808(2), this rule is effective on November 4, 1998. This action is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought by January 4, 1999.

Dated: October 26, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–29449 Filed 11–3–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 2

[CGD 96–067]

RIN 2115–AF40

Vessel Inspection User Fees

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting as final, with changes, the interim rule it published on April 21, 1997. The interim rule reduced annual vessel inspection user fees for small passenger vessels and exempted publicly owned ferries from payment of vessel inspection user fees as required by the Coast Guard Authorization Act of 1996. The rule also revised the discretionary exemption criteria for vessels owned or operated by non-profit organizations.

DATES: This final rule is effective December 4, 1998.

ADDRESSES: Documents, as indicated in this preamble, are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 1–800–842–8740, extension 7–1477 or 202–267–1477.

FOR FURTHER INFORMATION CONTACT: CDR Mark McEwen, Office of Planning and Resources, Budget and Resources Division (G–MRP–2), Marine Safety and Environmental Protection at 202–267–1409.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 21, 1997, the Coast Guard published an interim rule entitled Vessel Inspection User Fees in the **Federal Register** (62 FR 19229). The rule reduced the annual vessel inspection fees for small passenger vessels to the limits established under the Coast Guard Authorization Act of 1996 (the Act) (Pub. L. 104–324); exempted publicly owned ferries from annual vessel inspection fees, as mandated by Congress; and added definitions for the terms *publicly owned, ferry, political subdivision, State, youth,* and *non-profit organization.* The Coast Guard also revised the exemption criteria for vessels owned or operated by a non-profit organization to include some non-profit organizations that did not previously qualify for exemption from payment of fees.

The Coast Guard received 26 letters commenting on the interim rule. Twenty-five comments were from ferry owners or operators (21 ''privately owned'' ferries, 1 ''publicly owned'' ferry, and 3 ''unspecified ownership'' ferries). The remaining comment was from the Passenger Vessel Association (PVA). No public hearing was requested, and none was held.

Discussion of Comments and Changes

Fee Caps

As required by the Act, the interim rule capped the annual vessel inspection fees for small passenger vessels less than 65 feet in length at $300 and for small passenger vessels 65 feet or over in length at $600. The Coast Guard did not receive any comments on this issue and it has not been changed in the final rule.

Definitions

The interim rule added several definitions to 46 CFR 2.10–25. Only the definition of *ferry* was mentioned in the comments. The interim rule defined *ferry* as a vessel transporting passengers or vehicles on a regular run, over the most direct route between a point of embarkation and a point of debarkation on lands separated by a body of water other than an ocean, or between a point of embarkation and an island within the same State.

The Coast Guard received two comments recommending that the rule use the definition of *ferry* in subchapter T, 46 CFR 175.10–9 (now 46 CFR 175.400) and subchapter H, 46 CFR 70.10–15. The Coast Guard agrees that the definition should be consistent with those in subchapters T and H. The definition has been changed in the final rule to conform with those in subchapters T and H.

The Coast Guard has also revised the definition of *youth* by raising the age limit in the definition from 18 to 21 so the exemption could apply to vessels owned by colleges and universities providing courses of marine environmental studies and meeting the other exemption requirements.

Exemption Criteria

The interim rule revised the exemption criteria in 46 CFR 2.10–5 to allow some non-profit organizations that did not previously meet the narrowly drawn criteria to qualify for exemption from payment of fees. The Coast Guard received no comments on this revision, but we have changed the language in this section concerning fundraising activities to clearly give owners and operators flexibility in scheduling these activities.

Publicly Owned Ferries

Small passenger vessels, passenger ships, and passenger barges operating as ferries pay the annual vessel inspection fee for the vessel category to which they belong, since there is no fee category established specifically for ferries. As required by the Act, the interim rule amended 46 CFR 2.10–25 to exempt publicly owned ferries from the user fee requirements of 46 CFR part 2.

All of the written comments discussed the issue of exempting publicly owned ferries and stated that owners or operators of privately owned ferries should receive the same exemption as publicly owned ferries.

Identical Services

Nineteen comments stated that privately owned ferries and publicly owned ferries provide identical services. Several of the comments stated that all ferries provide lifeline services, such as serving as the primary or sole means of transportation for residents and visitors; providing vital transportation services for passengers, autos, trucks, and buses

to islands, riverine, and coastal communities; providing transportation of mail, packages, ambulances, food, and other things needed to supply a thriving community; and breaking ice to remote locations when needed.

The majority of comments stated that all privately owned ferries contribute to local economies by paying taxes; providing commuter services; transporting a large number of tourists; or providing service for commercial vehicles. One comment from a privately owned ferry stated it enhanced commerce by providing an important link between two major interstates.

Many comments stated that ferries in general are important to the overall infrastructure of mass transit because they provide such services as an efficient and popular mode of transit; reduce the costs of constructing and maintaining costly infrastructure; meet the increasing interest of government and the DOT transportation goals to reduce energy use and air pollution, as well as provide safe, comfortable, cost-effective transportation; and reduce vehicular traffic. Many comments also stated that privately owned ferry companies provide at least half of the waterborne passenger transportation service in this nation.

Seventeen comments discussed the economic burden of vessel inspection user fees on privately owned ferries. Several of the comments stated that continuing user fees for privately owned ferries exaggerates an uneven playing field, particularly when their exempted, publicly owned counterparts operate in direct competition. Fourteen of the comments stated the fees are yet another cost to an industry already operating without any financial assistance or subsidies. Additionally, several comments stated that fares, schedules, routes, and insurance requirements of some privately owned ferries are regulated by other rules and regulations. The comments did not describe in detail how this affected them, other than as a limitation on their ability to pass these costs on to their passengers.

Congress did not include privately owned ferries in the exclusion provision of the Act and the legislative history of the Act does not explain why Congress exempted only publicly owned ferries. The Coast Guard is implementing the requirements in the Act and has not changed the final rule.

A comment from one owner of a privately owned ferry stated that he was one of eight ferry operations required to pay the annual vessel inspection user fee for a Passenger Ship. Currently, his fee is $6,835.00. The comment requested the Coast Guard ''eliminate these user fees or at least provide this operation with the same break afforded to the other [small] passenger vessels'' under the Act, reducing his user fee from $6,835.00 to $600.00.

The legislative history of the Act is silent on why Congress only capped the fees of small passenger vessels and not other types of passenger vessels. With no relief provided in the Act to reduce any other passenger vessel user fees, the Coast Guard has not changed the vessel inspection user fees for passenger ships or other types of passenger vessels that were not covered by the Act.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Act placed a cap on fees charged for the inspection of small passenger vessels which reduced the economic burden imposed on small businesses. The Act also provided an exemption for publicly owned ferries from the payment of user fees, which eliminated costs to States, State agencies, and local governments. Implementation of these provisions began on November 1, 1996.

The exemption criteria in 46 CFR 2.10–5 allow additional exemptions from payments of fees for vessels owned or operated by non-profit organizations because the Coast Guard determined it is clearly within the public interest to do so.

User fee revenues will be reduced by approximately $2.8 million dollars as a result of the Congressional cap on small passenger vessels and its exemption of the publicly owned ferries, and the Coast Guard's broadening of the exemption eligibility criteria for vessel owners or operators of non-profit organizations. The cap on small passenger vessels will affect 5,880 vessels; it reduces revenues to the government and provides savings to the small passenger vessel industry in the amount of $2.25 million dollars. The exemption of publicly owned ferries affects 170 vessels; it reduces revenues to the government and provides a savings to the industry in the amount of $428,200 dollars. Broadening the exemption eligibility for non-profit organizations is estimated to affect 100 vessels; it will reduce revenues to the government and will provide savings to industry in the amount of $67,000 dollars.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would 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, governmental jurisdictions with populations of less than 50,000.

The Coast Guard has reviewed this rule for potential impact on small entities under the Regulatory Flexibility Act. This rule reduces an existing economic burden on small businesses owning inspected small passenger vessels or ferrries specified by the Act, or that qualify for the revised exemption status by lowering or eliminating fees required for Coast Guard vessel inspection services. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. The interim rule informed individuals applying for an exemption under this rule that their local Officer in Charge, Marine Inspection (OCMI) could provide assistance, or they could call, toll free, 1–800–941–3337. Individuals seeking further assistance may still call, toll free, 1–800–941–3337.

During the interim rule comment period, assistance was provided to small entities by explaining the reasons for the annual user fee cap reduction for small passenger vessels and the revision of the discretionary exemption criteria for vessels owned or operated by non-profit organizations.

Collection of Information

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

Federalism

The Coast Guard analyzed this rule under the principles and criteria contained in Executive Order 12612 and determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule amends user fees for vessel inspection and examination services to cap fees paid for services related to small passenger vessels, and exempts publicly owned ferries from payment of the fees.

Unfunded Mandates

Under the Unfunded Mandates Reform Act (Pub. L. 104–4), the Coast Guard considered whether this final rule will result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). Section 205 of the Unfunded Mandates Reform Act requires the Coast Guard to identify and to consider a reasonable number of regulatory alternates, and from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of this final rule. This rule does not impose additional costs upon any State, local, and tribal governments as a result of a mandate imposed upon them as a government agency. The completed analysis estimates that this final rule will provide a total savings to vessel owners and operators of approximately $2.8 million dollars. Publicly owned ferries will no longer have to pay a total of $428,200 in annual inspection user fees. This rule will, therefore, result in the reduction or elimination of fees paid by State, local, and tribal governments for inspection services provided to the applicable vessels owned by such entities.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(a) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. Paragraph (34)(a) of that instruction excludes editorial or procedural regulations that clearly do not have any environmental impacts. ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 2

Fees, Marine safety, Vessels.

Accordingly, the interim rule amending 46 CFR part 2 which was published in 62 FR 19229 on April 21, 1997, is adopted as a final rule with the following changes and amendments:

PART 2—VESSELS INSPECTIONS

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

Authority: 14 U.S.C 664; 31 U.S.C. 9701; 33 U.S.C. 1903; 43 U.S.C. 1333, 1356; 46 U.S.C. 2110, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec 27, 1950, Ch 1155, sections 1, 2, 64 Stat. 1120 [see 46 U.S.C. App. Note prec. 1].

2. In § 2.10–5, revise paragraph (c)(2) to read as follows:

§ 2.10–5 Exemptions.

* * * * *

(c) * * *

(2) The vessel's use for fundraising activities without regard to the age of the participants aboard the vessel, provided revenues raised are for the operation and maintenance of the vessel and that such fundraising activities do not exceed one day of fundraising for each month of the vessel's operating season.

* * * * *

3. In § 2.10–25, revise the definitions of *ferry* and *youth* to read as follows:

§ 2.10–25 Definitions.

* * * * *

Ferry means a vessel that:

(1) Operates in other than ocean or coastwise service;

(2) Has provisions only for deck passengers or vehicles, or both;

(3) Operates on a short run on a frequent schedule between two points over the most direct water route; and

(4) Offers a public service of a type normally attributed to a bridge or tunnel.

* * * * *

Youth means an individual 21 years of age or younger.

Dated: September 28, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–29497 Filed 11–3–98; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–296]

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant, United States Coast Guard, authority pertaining to the enforcement of various conservation statutes. These statutes include the Atlantic Coastal Fisheries Cooperative Management Act of 1993, Lacey Act Amendments of 1981, Endangered Species Act of 1973, Atlantic Tunas Convention Act of 1975, Eastern Pacific Tuna Licensing Act of 1984, North Pacific Anadromous Stocks Convention Act of 1992, Pacific Salmon Treaty Act of 1985, Fur Seal Act of 1966, Antarctic Conservation Act of 1978, Antarctic Living Marine Resources Convention Act of 1984, North Pacific Halibut Act of 1982, High Seas Fishing Compliance Act of 1995, and the Northwest Atlantic Fisheries Compliance Act of 1995. In order that the Code of Federal Regulations reflect this delegation, a change is necessary.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Gwyneth Radloff, Office of the General Counsel, C–50, (202) 366–9305, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation, as Secretary of the Department in which the Coast Guard is operating, is authorized to enforce each of the above Acts. The Secretary of Transportation is delegating this authority under these Acts to the Commandant of the Coast Guard. Delegation of authority to enforce these statutes is necessary to allow the Coast Guard to enter into cooperative fishery enforcement agreements with the National Marine Fisheries Service and state agencies.

In order to improve the speed and efficiency with which the Coast Guard can meet enforcement obligations, the Secretary is delegating authority to consult with other federal agencies or departments concerning the promulgation of regulations under the authority of the Eastern Pacific Tuna

Licensing Act, Pacific Salmon Treaty Act, and Antarctic Living Marine Resources Convention Act. For this same reason the Secretary is also delegating authority to promulgate regulations needed for enforcement of the Endangered Species Act.

This rule amends 49 CFR 1.46 by adding a new paragraph to reflect the delegation of the Secretary's authority under the aforementioned Acts to the Commandant of the Coast Guard.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 533(b). Furthermore, since this amendment expedites the Coast Guard's ability to meet the needs of its conservation and enforcement obligations, the Secretary for good cause finds, under 5 U.S.C. 553(d)(3), that notice, and public procedure on notice, before the effective date of this rule are unnecessary, and that this rule should be made effective on the date of publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. In § 1.46, paragraph (ppp) is added to read as follows:

§ 1.46 Delegations to the Commandant of the Coast Guard.

* * * * *

(ooo) Carry out the functions and exercise the authority vested in the Secretary by the following statutes:

(1) 16 U.S.C. 5106(h), relating to authorization of a person to enforce a moratorium declared under 16 U.S.C. 5106(c), pursuant to the Atlantic Coastal Fisheries Cooperative Management Act of 1993, as amended, Pub. L. 103–206, 107 Stat. 2447.

(2) 16 U.S.C. 3375(a), relating to the enforcement of the Lacey Act Amendments of 1981, as amended, Pub. L. 97–79, 95 Stat. 1073.

(3) 16 U.S.C. 1540(e) and (f), relating to promulgation of regulations under, and the enforcement of the Endangered Species Act of 1973, as amended, Pub. L. 93–205, 81 Stat. 844.

(4) 16 U.S.C. 971c and 971d, relating to the enforcement of the Atlantic Tunas Convention Act of 1975, as amended, Pub. L. 94–70, 89 Stat. 385.

(5) 16 U.S.C. 972e and 972g, relating to promulgation of regulations under, and enforcement of the Eastern Pacific Tuna Licensing Act of 1984, as amended, Pub. L. 98–445, 98 Stat. 1715.

(6) 16 U.S.C. 5008(a), relating to the enforcement of the North Pacific Anadromous Stocks Convention Act of 1992, as amended, Pub. L. 102–587, 106 Stat. 5098.

(7) 16 U.S.C. 3636 and 3637, relating to promulgation of regulations under, and the enforcement of the Pacific Salmon Treaty Act of 1985, as amended, Pub. L. No. 99–5, 99 Stat. 7.

(8) 16 U.S.C. 1156 and 1172(a), relating to the enforcement of the Fur Seal Act of 1966, as amended, Pub. L. 89–702, 80 Stat. 1091.

(9) 16 U.S.C. 2409, relating to the enforcement of the Antarctic Conservation Act of 1978, as amended, Pub. L. 95–541, 92 Stat. 2048.

(10) 16 U.S.C. 2434(b), 2436, and 2439, relating to conservation measures and promulgation of regulations under, and enforcement of the Antarctic Living Marine Resources Convention Act of 1984, as amended, Pub. L. 98–623, 98 Stat. 3398.

(11) 16 U.S.C. 773i, relating to the enforcement of the North Pacific Halibut Act of 1982, as amended, Pub. L. 97–176, 96 Stat. 78.

(12) 16 U.S.C. 5506, relating to the enforcement of the High Seas Fishing Compliance Act of 1995, as amended, Pub. L. 104–43, 109 Stat. 367.

(13) 16 U.S.C. 5606(e), relating to the enforcement of the Northwest Atlantic Fisheries Compliance Act of 1995, as amended, Pub. L. 104–43, 109 Stat. 377.

Issued in Washington, DC, this 27th day of October, 1998.

Rodney Slater,

Secretary of Transportation.

[FR Doc. 98–29517 Filed 11–3–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–144; Amdt. 195–65]

RIN 2137–AC 78

Risk-Based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines Rule

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule allows operators of older hazardous liquid and carbon dioxide pipelines to elect a risk-based alternative in lieu of the existing rule. The existing rule requires the hydrostatic pressure testing of certain older pipelines. The risk-based alternative would allow operators to elect an approach to evaluating the integrity of these lines that takes into account individual risk factors. This would allow operators to focus resources on higher risk pipelines and effect a greater reduction in the overall risk from pipeline accidents.

DATE: This final rule takes effect November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this final rule, or Dockets Unit (202) 366–4046, for copies of this final rule document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1994, RSPA published a final rule, ''Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines,'' (Amdt. 195–51; 59 FR 29379) to ensure that certain older pipelines have an adequate safety margin between their maximum operating pressure and test pressure. This safety margin is to be provided by pressure testing according to part 195 standards or operation at 80 percent or less of a qualified prior test or operating pressure. The pipelines covered by the rule are steel interstate pipelines constructed before January 8, 1971, steel interstate offshore gathering lines constructed before August 1, 1977, or steel intrastate pipelines constructed before October 21, 1985, that transport hazardous liquids subject to part 195. Also covered are steel carbon dioxide pipelines constructed before July 12, 1991, subject to part 195.

On June 23, 1995, the American Petroleum Institute (API) filed a petition on behalf of many liquid pipeline operators that proposed a risk-based alternative to the required pressure testing rule. API indicated that its proposal would allow operators to focus resources on higher risk pipelines and to effect a greater reduction in the overall risk from pipeline accidents.

In order to determine whether the API proposal had merit, RSPA held a public meeting on March 25, 1996. On May 8 and November 7, 1996, and on May 17, 1997, RSPA briefed the Technical Hazardous Liquid Pipeline Safety

Standards Committee (THLPSSC) on the API proposal and steps taken by RSPA to develop a proposed rule. As discussed in more detail below, RSPA finds considerable merit in a risk-based approach to pressure testing of older hazardous liquid pipelines. It provides accelerated testing of electric resistance welded (ERW) pipe, incorporates the use of new technology, and provides for continuing internal inspection of older pipelines through a pigging program. RSPA has been working actively with the pipeline industry to develop a risk management framework for pipeline regulations. The API proposal is consistent with the risk assessment and management approach to safety. The API proposal provides an opportunity to pilot a risk-based approach in a rulemaking forum. Accordingly, this final rule requires a risk-based alternative to the pressure testing rule that has been modeled after the API proposal.

RSPA has extended time for compliance with the pressure testing rule in order to allow completion of this final rule on a risk-based alternative. The deadline for complying with § 195.302(c)(1) is extended to December 7, 1998. The deadline for complying with § 195.302(c)(2)(i) is extended to December 7, 2000. The deadline for complying with § 195.302(c)(2)(ii) is extended to December 7, 2003. (62 FR 54591; October 21, 1997).

Major Features of Risk-Based Alternative

The risk-based alternative to the rule requiring the pressure testing of older pipelines has six main features:

1. Highest Priority Is Given to the Highest Risk Facilities; Lowest Risk Facilities Are Excepted From Additional Measures

Pre-1970 electric resistance welded (ERW) and lapwelded pipelines susceptible to longitudinal seam failures exhibit the highest potential risk because of their combination of probability of failure and potential for larger volume releases as evidenced by historical records. Pressure testing is the only available technology for verifying the integrity of pre-1970 ERW and lapwelded pipelines, because it can detect the type of seam failures endemic to some ERW and all lapwelded pipe. This risk-based alternative requires accelerated testing of pre-1970 ERW and lapwelded pipe susceptible to longitudinal seam failure in certain locations (risk classification C and B) where people and environment might be significantly affected. However, in locations (risk classification A) where consequences to the public or environment are less significant, the risk-based alternative allows delayed testing for pre-1970 ERW and lapwelded pipe susceptible to longitudinal failure and allows the operator to determine the need for pressure testing of other types of pipe.

2. Consequence Factors Such as Location (Population and Environment), Product Type, and Release Potential Are Taken Into Consideration When Setting Testing Priorities

This risk-based alternative takes into account the most significant variables that may impact the severity of a release, i.e., location with respect to populated and environmentally sensitive [1] areas, the nature of the product transported, and the potential volume of product release. Historically, a very small percentage of releases adversely impacted public safety and environment. By taking these potential consequences into consideration in the timing of tests, an operator's resources will be more effectively applied to reduce risks.

3. Best Available Technology Is Applied To Verify Pipeline Integrity

The risk-based alternative encourages the use of the most effective means to ensure pipeline integrity. This rule utilizes the strength of two primary technologies—pressure testing and magnetic flux leakage/ultrasonic internal inspection devices. Each technology provides testing advantages in particular circumstances. This rule allows the operator to evaluate the pipeline risk considerations and to choose the most appropriate technology.

4. Timing of Tests Is Based on Risk

Considering the probability and consequence factors, the risk-based rule increases the priority of a limited amount of pre-1970 ERW and all lapwelded pipelines and maintains the three-year timing for risk classification B and C lines which represent the highest risk to people and environment. Pipelines with lower risks (risk classification A) are allowed a longer testing schedule or are eliminated (non-high risk pre-1970 ERW pipelines) from a mandatory testing requirement. Nothing in this rule precludes an operator from accelerating these schedules based on their pipeline operating and maintenance history.

[1] ''Environmentally sensitive areas'' is not currently defined, but operators are encouraged to use their best judgment in applying this factor. This factor may be defined in future rulemaking.

5. Reduces Test Water Requirements

This rule would allow operators options that require less test water and generate less water requiring treatment.

6. Provides an Opportunity To Reduce Operating Costs and Maintain the Necessary Margins of Safety by Applying the Risk-Based Concept

Acceptance and implementation of this rule provides an opportunity to pilot a risk-based approach to regulation. OPS anticipates increased use of risk-based approaches in future rulemakings.

Proposed Rule

RSPA published an NPRM (63 FR 5918; February 5, 1998), proposing to add a new section to Part 195 entitled ''Risk-based alternative to pressure testing.'' NPRM also proposed that existing § 195.303 ''Test pressure'', and § 195.304 ''Testing of components'' would be renumbered as § 195.304 and § 195.305 respectively. The comment period closed April 6, 1998. Commenters included an industry association, two pipeline operating companies and a safety consultant.

Advisory Committee Review

On May 6, 1998, RSPA submitted the proposed rule and regulatory evaluation to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). Each proposed hazardous liquid pipeline safety standard must be submitted to the THLPSSC for Committee's view as to its technical feasibility, reasonableness, cost-effectiveness, and practicability. At the meeting, the THLPSSC declined to approve the proposed rule and unanimously requested that ''environmentally sensitive areas'' be included within the consequence factors for setting testing priorities. Some members argued that not including an environmental factor at this time would result in many segments of pipeline remaining untested for many more years. The Committee asked that the proposed rule be resubmitted for consideration through a mail ballot. On May 12, 1998, RSPA sent letter ballots to THLPSSC members to vote on revised language to be included in the final rule. RSPA received 10 of 12 ballots. All 10 members voted to approve the proposed rule provided the revised language was included. The THLPSSC also recommended discussion in the preamble to the final rule of the need to include consideration of environmentally sensitive areas even before a clear definition of the term is developed.

RSPA did not include an environmental factor in the proposed rule because of the lack of agreement on a definition. Following public briefings on the progress of the rulemaking at the THLPSSC meetings in November 1996 and May 1997, API objected to inclusion of an environmental factor as premature in light of the ongoing rulemaking to define unusually sensitive areas (USAs). At that time, RSPA intended to include an interim definition that could later be replaced, if appropriate, by the definition of USAs.

Although we do not necessarily agree that a definition of USAs should be the sole basis for inclusion of an environmental factor for a risk-based alternative to pressure testing, we recognized in the proposed rule the difficulties of defining an environmental factor before the USA definition is formulated. The difficulty in articulating a factor was made very apparent by THLPSSC members at the May 1997 meeting. One member argued that the environmental factor under consideration for the proposed rule was inadequate; two other members challenged that argument. Discussions with the members and API following that meeting indicated little chance of agreement on a definition prior to definition of USAs. Based on the discussion at the THLPSSC on May 6, 1998, it appears that there is broad agreement that environmentally sensitive areas will be considered by the industry even in the absence of a definition. Accordingly, we are following the advice of the THLPSSC and including environmentally sensitive areas within the consequence factors in this final rule. We recognize that we may need to revisit this issue once we have defined ''unusually sensitive areas.''

The Final Rule

The new § 195.303 ''Risk-based alternative to pressure testing'' would allow an operator of older hazardous liquid and carbon dioxide pipeline to elect an approach to evaluating the integrity of lines that takes into account individual risk factors. This alternative establishes test priorities based on the inherent risk of a given pipeline segment. Each pipeline is assigned a risk classification based on several indicators. In assigning a risk classification to a given pipeline segment, the first step is to determine whether or not the segment contains pre-1970 ERW and lap-weld pipe susceptible to longitudinal seam failures. Certain pre-1970 ERW and lap-weld pipeline segments are susceptible to longitudinal seam failures. An operator must consider the seam-related leak history of the pipe and pipe manufacturing information as available, which may include the pipe steel's mechanical properties, including fracture toughness; the manufacturing process and controls related to seam properties, including whether the ERW process was high-frequency or low-frequency, whether the weld seam was heat treated, whether the seam was inspected, the test pressure and duration during mill hydrotest; the quality control of the steel-making process; and other factors pertinent to seam properties and quality.

The next step is to determine the pipeline segment's proximity to populated and environmentally sensitive areas (Location). ''Environmentally sensitive areas'' is not currently defined. However, we expect operators to use their best judgment in applying this factor. Some good examples of areas which would be environmentally sensitive are waters used for drinking and fishing. This environmental factor may be defined in a future rulemaking.

The risk classification of a segment is also adjusted based on the pipeline failure history, the product transported, and the volume potentially releasable in a failure. Additional guidance for use of the alternative is provided in a new appendix B.

The pipeline failure history, denoted in the final rule as ''Probability of Failure Indicator,'' is an important factor. The history of past failures (types of failures, number of failures, sizes of releases, etc.) plays an important role in determining the chances of future occurrences for a particular pipeline system. Therefore, it has been included as risk factor in the matrix for determining the risk classification. In the final rule the probability of failure indicator is considered ''high risk'' if the pipeline segment has experienced more than three failures in last 10 years due to time-dependent defects (due to corrosion, gouges, or problems developed during manufacture, construction or operation, etc.). Pipeline operators should make an appropriate investigation of spills to determine whether they are due to time-dependent defects. An operator's determination should be based on sound engineering judgment and be documented. In addition, the final rule provides compliance dates and recordkeeping requirements for those operators who elect the risk-based alternative to pressure testing of older hazardous liquid and carbon dioxide pipelines.

RSPA believes this rule will provide the pipeline industry with the flexibility to elect alternative technology for evaluating pipeline integrity without sacrificing safety.

Discussion of Comments

RSPA received four comments in response to the NPRM. Commenters included one industry association (API), two pipeline operating companies, and a safety consultant. Three commenters including API expressed strong support, but one commenter (a safety consultant) opposed issuing this risk-based rule.

Performance measures—In the proposed rule, RSPA sought comment and information on how to measure the performance of this risk-based alternative to determine effectiveness, particularly in comparison with the pressure test rule. RSPA received no comment. RSPA plans to examine the future performance of those pipeline segments that are pressure tested and compare it to the future performance of pipeline segments that are internally inspected or that are not tested at all.

Failure history—In the proposed rule, RSPA sought comment on excluding insignificant failures from the failure history risk factor. RSPA also sought comment on whether the failure should be quantified or if only a reportable incident should be considered.

One operator commented that only Department Of Transportation (DOT) reportable incidents be included. API commented that spills, regardless of whether reportable or not, should be included in the risk-based alternative engineering evaluation process by the operator making its own engineering judgment. The judgment should be documented and applied, when appropriate, to the failure history risk factor. API believes that proper documentation removes subjective judgments during agency audits/evaluations of the use of the risk-based alternative.

One commenter asked whether third party damage resulting in the immediate release of product would be considered a time-dependent defect in Table 6.

RSPA agrees that proper documentation would clarify the validity of decisions about whether spills are related to time-dependent defects or are truly insignificant during agency evaluation of the use of the risk-based alternative. This also eliminates need for failures to be quantified. Third party damage resulting in the immediate release of product does not constitute a time-dependent defect. Time-dependent defects are defects that result in spills due to corrosion, gouges, or problems developed during manufacture, construction or operation, etc. This is already covered in subnote 2 in Table 6

of Appendix B. Therefore, no changes have been made to Table 6.

Opposition to issuing the risk-based rule—One commenter (a safety consultant) opposed issuing this rule. Commenter argued that this rule might have been more meritorious had it been proposed after the results were in on the risk management demonstration projects. This commenter said that the notice published in the **Federal Register** on November 15, 1996 (61 FR 58605) states that the demonstration projects will test whether allowing operators the flexibility to allocate safety resources through risk management is an effective way to improve safety, environmental protection, and reliability. They will also provide data on how to administer risk management as a permanent feature of the Federal pipeline safety program if risk management proves to be viable regulation alternative. Therefore, this commenter said this rulemaking should be delayed until the completion of the risk management demonstration projects. This commenter also contended that the purpose of the API petition requesting the risk-based alternative was to reduce, or delay, the economic burden on pipeline companies as a result of the requirements of the final rule for pressure testing published by RSPA on June 7, 1994, (59 FR 29379).

RSPA disagrees that this rule should be delayed until completion of the risk management demonstration projects. The Accountable Pipeline Safety and Partnership Act of 1996 (Pub. L. 104–304, Oct. 12, 1996) that establishes the Risk Management Demonstration Program contemplates a limited number of projects. RSPA will approve no more than ten (10). Currently, none of projects being considered addresses the pressure testing of older pipelines that are impacted by the June 1994 pressure test rule. The Demonstration Program is looking at whole set of activities rather than focusing on an individual regulation. Also, delay until completion of the projects would unreasonably delay addressing issues of older hazardous liquid pipelines. These pipelines include high risk ERW pipelines.

The risk-based approach to older pipelines provides an opportunity to pilot a risk-based approach in a rulemaking forum as opposed to a demonstration project forum. RSPA believes this rule will provide the pipeline industry with the flexibility to elect alternative technology for evaluating pipeline integrity without sacrificing safety.

Proposed § 195.303(b)(4)(ii)—API suggested that this paragraph be revised to clarify that up to three time-dependent failures in 10 years would be low-risk. The proposed rule inadvertently limited the low risk assignation to two failures. This is inconsistent with the proposed Table 6. We agree and have revised this paragraph to be consistent with Table 6.

Proposed § 195.303(c): API said that the last sentence in the text of § 195.303(c) should be clarified so that operators understand that for those segments that fall under Risk Classification A ''no additional measures'' refers to no additional measures under this subpart (i.e. subpart E—Pressure Testing). API said that the last sentence as proposed appears to be broader. We have revised this section for clarity as recommended by the API.

Proposed § 195.303(g): API said that the text of § 195.303(g) should be clarified so that operators understand that pressure testing under the risk-based alternative, like the existing final rule, would be a one-time test. The review of risk classifications should be required only for those pipeline segments that have not yet been tested under § 195.303(a) or § 195.303(c). We agree and have clarified the wording.

Proposed § 195.303(i): API said that requiring operators to give a written notification and get approval from the Administrator before discontinuing from this program, should be eliminated from this rulemaking. Adding that this section is confusing, contradictory and results in a different standard of care for the risk-based alternative compared with the existing final rule. API said that operators should have flexibility to elect test portions and change plans of their system using the existing final rule and portions of their systems under the risk based alternative. The intent of § 195.303(i) requirement is to avoid operators switching from one testing program to another, causing delays in testing. Eliminating this requirement may make it difficult to enforce the regulatory deadlines. Requirements in this rule does not prevent an operator from choosing pressure testing for some segments and risk-based alternative for the remaining segments of a pipeline. Therefore, this section is retained.

Do previous in-line inspections on pipeline systems constitute compliance? API and one commenter requested that RSPA should allow previous in-line inspections and subsequent maintenance of a pipeline documented by company records as in compliance with this rule. RSPA will accept previous in-line inspections on pipeline conducted in the five years prior to the effective date of this final rule provided that anomalies found by previous smart pig runs have been repaired and pipeline has been maintained. RSPA will not accept older in-line inspections for the following reasons: (1) Technology keeps changing rapidly and internal inspection devices have greatly improved in recent years, (2) older internal inspection devices probably did not provide adequate data, (3) new corrosion or other defects may have developed since last in-line inspection.

Appendix B Table 1—API suggested that term ''pipeline system'' be changed to ''pipeline segment'' in Footnote 1 to Table 1, for clarity and agreement with the intent of the risk-based rule. We agree.

Additional Clarifying Guidance for both Operators and Inspectors—A number of operators (via API) offered suggestions for ways of making the rule more understandable, including rearranging the tables in the appendix, making the tables more explicit or providing flow charts that visually clarify the decision-making paths. RSPA realizes that a flowchart or decision tree with a couple of examples could aid the operators. However, the need to avoid further delay in addressing the issues of older hazardous liquid pipelines makes it impossible for RSPA to prepare such additional aids to implementation at this stage. Nothing precludes API with the help of its members from developing a flowchart and perhaps a few examples on how to apply this risk-based rule for its members.

V. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is a significant regulatory action under Executive Order 12866. Therefore, this rule was reviewed by the Office of Management and Budget. In addition, this final rule is significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979) because it is the first explicitly risk-based approach to rulemaking final by the Office of Pipeline Safety. A copy of the regulatory evaluation to this rule is also available in the docket office for review.

This section summarizes the conclusions of the regulatory evaluation. RSPA's pressure testing final rule was published on June 7, 1994 (59 FR 29379) along with a regulatory evaluation which found that the rule had a positive net benefit to the public, i.e., the benefits of the rule exceeded the cost (Present value costs of the earlier proposal were estimated to be between $134–$179 million in 1997 dollars while the present value benefits were

estimated as $230–$283 million). RSPA believes that the risk-based alternative maintains the necessary margins of safety, therefore, the benefits of this alternative should be similar to the benefits of the earlier proposal. The present value costs for the risk-based alternative are estimated to be between $88.4–$98.4 million for reasons described below. The final rule allows the use of alternative technology (smart pigs) for evaluating pipeline integrity. On average smart pig testing is less expensive than pressure testing by $2,650/mile. In some cases smart pig technology provides more information about pipeline anomalies than pressure testing. The risk-based alternative would reduce the total amount of test water, which should lower the waste treatment costs and generate less hazardous waste. The risk-based alternative would allow operators to forgo testing where pipelines have low operating pressures, transport non-volatile product, operate in rural and environmentally non-sensitive areas, and have good records on pipeline failure history.

This risk-based approach is an ongoing process. RSPA believes that the risk-based alternative maintains the necessary margins of safety for the public and environment. Moreover, RSPA concludes that this alternative has the potential for positive improvements for the environment while reducing operating costs by allowing operators to elect those test methods most appropriate to the circumstances of each pipeline.

Regulatory Flexibility Act

The regulatory flexibility analysis of the earlier final rule concluded that it would not have a significant impact on a substantial number of small entities. RSPA believes that because this regulation offers an alternative to operators that could reduce the less than significant impact of the earlier regulation even further, this rule does not have a significant impact on a substantial number of small entities. Based on the facts available about the anticipated impact of this rulemaking action, I certify pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the action will not have a significant economic impact on a substantial number of small entities.

RSPA, in the proposed rule, had requested comments from small entities which might be impacted by this rule. We received no comments. This supports our earlier conclusion that this rule will have no significant impact on a substantial number of small entities.

Executive Order 12612

This rule will not have substantial direct effect on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13084

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule would not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply.

Unfunded Mandates

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

Paperwork Reduction Act

This rule does not substantially modify the paperwork burden on pipeline operators. Under the current pressure testing regulations operators are required to have testing plans, schedules, and records. The risk-based alternative would require the same or equivalent plans, schedules, and records for either pressure testing or internal inspection. Therefore, there is no additional paperwork required. Operators who choose the risk-based alternative will be required to have records that the pipeline segment which is not being tested qualifies for the risk-based alternative. According to conversations between OPS and the pipeline industry some of this information is already available in the form of drawings or plans that can be found either in operators' Facility Response Plans required by the Oil Pollution Act of 1990 (OPA 90) or in emergency response plans required by RSPA.

Operators will be required to periodically review the pipelines that qualify for the risk-based alternative to ensure that they still qualify. OPS believes that operators can conduct this review as part of their normal procedures.

Because of the above analysis, OPS does not believe that operators will have any additional paperwork burden because of this alternative, and therefore no separate paperwork submission is required.

National Environmental Policy Act

RSPA has analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined that this action would not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact are in the docket.

List of Subjects in 49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends part 195 of title 49 of the Code of Federal Regulations as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, and 60109; and 49 CFR 1.53.

2. Section 195.302 is amended by adding a new paragraph (b)(4) to read as follows:

§ 195.302 General requirements.

* * * * *

(b) * * *

(4) Those portions of older hazardous liquid and carbon dioxide pipelines for which an operator has elected the risk-based alternative under § 195.303 and which are not required to be tested based on the risk-based criteria.

* * * * *

3. Section 195.302(a) is amended by removing cross-reference ''§ 195.304(b)'' and adding cross-reference ''§ 195.305(b)''.

4. In paragraph (c) of § 195.302, the introductory text is revised to read as follows:

§ 195.302 General requirements.

* * * * *

(c) Except for pipelines that transport HVL onshore, low-stress pipelines, and pipelines covered under § 195.303, the following compliance deadlines apply to pipelines under paragraphs (b)(1) and (b)(2)(i) of this section that have not been pressure tested under this subpart:

* * * * *

§§ 195.303 and 195.304 [Redesignated as §§ 195.304 and 195.305]

5. Section 195.303 *Test pressure.* and § 195.304 *Testing of components.* are redesignated as § 195.304 *Test pressure.* and § 195.305 *Testing of components.*

6. Part 195 is amended by adding a new § 195.303 to read as follows:

§ 195.303 Risk-based alternative to pressure testing older hazardous liquid and carbon dioxide pipelines.

(a) An operator may elect to follow a program for testing a pipeline on risk-based criteria as an alternative to the pressure testing in § 195.302(b)(1)(i)–(iii) and § 195.302(b)(2)(i) of this subpart. Appendix B provides guidance on how this program will work. An operator electing such a program shall assign a risk classification to each pipeline segment according to the indicators described in paragraph (b) of this section as follows:

(1) Risk Classification A if the location indicator is ranked as low or medium risk, the product and volume indicators are ranked as low risk, and the probability of failure indicator is ranked as low risk;

(2) Risk Classification C if the location indicator is ranked as high risk; or

(3) Risk Classification B.

(b) An operator shall evaluate each pipeline segment in the program according to the following indicators of risk:

(1) The location indicator is—

(i) High risk if an area is non-rural or environmentally sensitive [1]; or

(ii) Medium risk; or

(iii) Low risk if an area is not high or medium risk.

(2) The product indicator is [1]

(i) High risk if the product transported is highly toxic or is both highly volatile and flammable;

(ii) Medium risk if the product transported is flammable with a flashpoint of less than 100° F, but not highly volatile; or

(iii) Low risk if the product transported is not high or medium risk.

(3) The volume indicator is—

(i) High risk if the line is at least 18 inches in nominal diameter;

(ii) Medium risk if the line is at least 10 inches, but less than 18 inches, in nominal diameter; or

(iii) Low risk if the line is not high or medium risk.

(4) The probability of failure indicator is—

(i) High risk if the segment has experienced more than three failures in the last 10 years due to time-dependent defects (e.g., corrosion, gouges, or problems developed during manufacture, construction or operation, etc.); or

(ii) Low risk if the segment has experienced three failures or less in the last 10 years due to time-dependent defects.

(c) The program under paragraph (a) of this section shall provide for pressure testing for a segment constructed of electric resistance-welded (ERW) pipe and lapwelded pipe manufactured prior to 1970 susceptible to longitudinal seam failures as determined through paragraph (d) of this section. The timing of such pressure test may be determined based on risk classifications discussed under paragraph (b) of this section. For other segments, the program may provide for use of a magnetic flux leakage or ultrasonic internal inspection survey as an alternative to pressure testing and, in the case of such segments in Risk Classification A, may provide for no additional measures under this subpart.

(d) All pre-1970 ERW pipe and lapwelded pipe is deemed susceptible to longitudinal seam failures unless an engineering analysis shows otherwise. In conducting an engineering analysis an operator must consider the seam-related leak history of the pipe and pipe manufacturing information as available, which may include the pipe steel's mechanical properties, including fracture toughness; the manufacturing process and controls related to seam properties, including whether the ERW process was high-frequency or low-frequency, whether the weld seam was heat treated, whether the seam was inspected, the test pressure and duration during mill hydrotest; the quality control of the steel-making process; and other factors pertinent to seam properties and quality.

(e) Pressure testing done under this section must be conducted in accordance with this subpart. Except for segments in Risk Classification B which are not constructed with pre-1970 ERW pipe, water must be the test medium.

(f) An operator electing to follow a program under paragraph (a) must develop plans that include the method of testing and a schedule for the testing by December 7, 1998. The compliance deadlines for completion of testing are as shown in the table below:

TABLE.—§ 195.303—TEST DEADLINES

Pipeline segment	Risk classification	Test deadline
Pre-1970 Pipe susceptible to longitudinal seam failures [defined in § 195.303(c) & (d)].	C or B A	12/7/2000. 12/7/2002.
All Other Pipeline Segments.	C B A	12/7/2002. 12/7/2004. Additional testing not required.

(g) An operator must review the risk classifications for those pipeline segments which have not yet been tested under paragraph (a) of this section or otherwise inspected under paragraph (c) of this section at intervals not to exceed 15 months. If the risk classification of an untested or uninspected segment changes, an operator must take appropriate action within two years, or establish the maximum operating pressure under § 195.406(a)(5).

(h) An operator must maintain records establishing compliance with this section, including records verifying the risk classifications, the plans and schedule for testing, the conduct of the testing, and the review of the risk classifications.

(i) An operator may discontinue a program under this section only after written notification to the Administrator and approval, if needed, of a schedule for pressure testing.

§ 195.406 [Amended]

7. Section 195.406(a)(4) is amended by removing cross-reference ''§ 195.304'' and adding cross-reference ''§ 195.305''

8. A new Appendix B is added to part 195 to read as follows:

Appendix B—Risk-Based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

Risk-Based Alternative

This Appendix provides guidance on how a risk-based alternative to pressure testing older hazardous liquid and carbon dioxide pipelines rule allowed by § 195.303 will work. This risk-based alternative establishes test priorities for older pipelines, not previously pressure tested, based on the inherent risk of a given pipeline segment. The first step is to determine the classification based on the type of pipe or on the pipeline segment's proximity to populated or environmentally sensitive area. Secondly, the classifications must be adjusted based on the pipeline failure history, product transported, and the release volume potential.

[1] (See Appendix B, Table C).

Tables 2–6 give definitions of risk classification A, B, and C facilities. For the purposes of this rule, pipeline segments containing high risk electric resistance-welded pipe (ERW pipe) and lapwelded pipe manufactured prior to 1970 and considered a risk classification C or B facility shall be treated as the top priority for testing because of the higher risk associated with the susceptibility of this pipe to longitudinal seam failures.

In all cases, operators shall annually, at intervals not to exceed 15 months, review their facilities to reassess the classification and shall take appropriate action within two years or operate the pipeline system at a lower pressure. Pipeline failures, changes in the characteristics of the pipeline route, or changes in service should all trigger a reassessment of the originally classification.

Table 1 explains different levels of test requirements depending on the inherent risk of a given pipeline segment. The overall risk classification is determined based on the type of pipe involved, the facility's location, the product transported, the relative volume of flow and pipeline failure history as determined from Tables 2–6.

TABLE 1. TEST REQUIREMENTS—MAINLINE SEGMENTS OUTSIDE OF TERMINALS, STATIONS, AND TANK FARMS

Pipeline segment	Risk classification	Test deadline [1]	Test medium
Pre-1970 Pipeline Segments susceptible to longitudinal seam failures [2]	C or B	12/7/2000 [3]	Water only.
	A	12/7/2002 [3]	Water only.
All Other Pipeline Segments	C	12/7/2002 [4]	Water only.
	B	12/7/2004 [4]	Water/Liq.[5]
	A	Additional pressure testing not required.	

[1] If operational experience indicates a history of past failures for a particular pipeline segment, failure causes (time-dependent defects due to corrosion, construction, manufacture, or transmission problems, etc.) shall be reviewed in determining risk classification (See Table 6) and the timing of the pressure test should be accelerated.

[2] All pre-1970 ERW pipeline segments may not require testing. In determining which ERW pipeline segments should be included in this category, an operator must consider the seam-related leak history of the pipe and pipe manufacturing information as available, which may include the pipe steel's mechanical properties, including fracture toughness; the manufacturing process and controls related to seam properties, including whether the ERW process was high-frequency or low-frequency, whether the weld seam was heat treated, whether the seam was inspected, the test pressure and duration during mill hydrotest; the quality control of the steel-making process; and other factors pertinent to seam properties and quality.

[3] For those pipeline operators with extensive mileage of pre-1970 ERW pipe, any waiver requests for timing relief should be supported by an assessment of hazards in accordance with location, product, volume, and probability of failure considerations consistent with Tables 3, 4, 5, and 6.

[4] A magnetic flux leakage or ultrasonic internal inspection survey may be utilized as an alternative to pressure testing where leak history and operating experience do not indicate leaks caused by longitudinal cracks or seam failures.

[5] Pressure tests utilizing a hydrocarbon liquid may be conducted, but only with a liquid which does not vaporize rapidly.

Using LOCATION, PRODUCT, VOLUME, and FAILURE HISTORY ''Indicators'' from Tables 3, 4, 5, and 6 respectively, the overall risk classification of a given pipeline or pipeline segment can be established from Table 2. The LOCATION Indicator is the primary factor which determines overall risk, with the PRODUCT, VOLUME, and PROBABILITY OF FAILURE Indicators used to adjust to a higher or lower overall risk classification per the following table.

TABLE 2.—RISK CLASSIFICATION

Risk classification	Hazard location indicator	Product/volume indicator	Probability of failure indicator
A	L or M	L/L	L.
B	Not A or C Risk Classification		
C	H	Any	Any.

H=High M=Moderate L=Low.

NOTE: For Location, Product, Volume, and Probability of Failure Indicators, see Tables 3, 4, 5, and 6.

Table 3 is used to establish the LOCATION Indicator used in Table 2. Based on the population and environment characteristics associated with a pipeline facility's location, a LOCATION Indicator of H, M or L is selected.

TABLE 3.—LOCATION INDICATORS—PIPELINE SEGMENTS

Indicator	Population [1]	Environment [2]
H	Non-rural areas	Environmentally sensitive [2] areas.
M		
L	Rural areas	Not environmentally sensitive [2] areas.

[1] The effects of potential vapor migration should be considered for pipeline segments transporting highly volatile or toxic products.

[2] We expect operators to use their best judgment in applying this factor.

Tables 4, 5 and 6 are used to establish the PRODUCT, VOLUME, and PROBABILITY OF FAILURE Indicators respectively, in Table 2. The PRODUCT Indicator is selected from Table 4 as H, M, or L based on the acute and chronic hazards associated with the product transported. The VOLUME Indicator is selected from Table 5 as H, M, or L based on the nominal diameter of the pipeline. The Probability of Failure Indicator is selected from Table 6.

TABLE 4.—PRODUCT INDICATORS

Indicator	Considerations	Product examples
H	(Highly volatile and flammable)	(Propane, butane, Natural Gas Liquid (NGL), ammonia)
	Highly toxic	(Benzene, high Hydrogen Sulfide content crude oils).
M	Flammable—flashpoint <100F	(Gasoline, JP4, low flashpoint crude oils).
This section has been revised to include reference to ANSI/NFPA 59A in paragraph (a) as follows: L.	Non-flammable—flashpoint 100+F	(Diesel, fuel oil, kerosene, JP5, most crude oils).
	Highly volatile and non-flammable/non-toxic	Carbon Dioxide.

Considerations: The degree of acute and chronic toxicity to humans, wildlife, and aquatic life; reactivity; and, volatility, flammability, and water solubility determine the Product Indicator. Comprehensive Environmental Response, Compensation and Liability Act Reportable Quantity values can be used as an indication of chronic toxicity. National Fire Protection Association health factors can be used for rating acute hazards.

TABLE 5.—VOLUME INDICATORS

Indicator	Line size
H	≥18″.
M	10″–16″ nominal diameters.
L	≤8″ nominal diameter.

H=High M=Moderate L=Low.

Table 6 is used to establish the PROBABILITY OF FAILURE Indicator used in Table 2. The ''Probability of Failure'' Indicator is selected from Table 6 as H or L.

TABLE 6.—PROBABILITY OF FAILURE INDICATORS

[in each haz. location]

Indicator	Failure history (time-dependent defects) [2]
H [1]	>Three spills in last 10 years.
L	≤Three spills in last 10 years.

H=High L=Low.

[1] Pipeline segments with greater than three product spills in the last 10 years should be reviewed for failure causes as described in subnote [2]. The pipeline operator should make an appropriate investigation and reach a decision based on sound engineering judgment, and be able to demonstrate the basis of the decision.

[2] Time-Dependent Defects are defects that result in spills due to corrosion, gouges, or problems developed during manufacture, construction or operation, etc.

Issued in Washington, DC, on October 26, 1998.

Kelley S. Coyner,

Administrator, Research and Special Programs Administration.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–4281]

RIN 2127–AG38

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Statement of policy.

SUMMARY: This document announces that NHTSA will participate in an international effort under the aegis of the United Nations' Meeting of Experts on Lighting to develop a process for evaluating new ideas for signal lamps on vehicles. When that effort is complete, NHTSA will evaluate the results and see if it is appropriate to implement some or all of that process in the agency's evaluations of signal lighting ideas. Until the internationally-recommended process is available for NHTSA's consideration, the agency is adopting the policy (described in **SUPPLEMENTARY INFORMATION**) for evaluating requests to require or permit new or different signal lighting or signal lighting actuation.

FOR FURTHER INFORMATION CONTACT: Stephen R. Kratzke, Director, Office of Crash Avoidance Standards, NHTSA, 400 Seventh Street, S.W., Washington DC 20590. Mr. Kratzke's telephone number is (202) 366–4931 and his facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION:

Statement of Policy

When the agency is asked to evaluate a new signal lighting idea, NHTSA will ask:

1. Does the new signal lighting idea require a change in the standardized operation or appearance of a required lamp or piece of lighting equipment?

a. If NHTSA determines the answer is NO, does the new signal lighting idea impair the effectiveness of required lamps or lighting equipment?

i. If NHTSA determines the answer is YES, the new signal lighting idea is expressly prohibited by the lighting standard.

ii. If NHTSA determines the answer is NO, the new lighting signal idea may be installed on vehicles.

b. If NHTSA determines the answer is YES, the agency will proceed to Part 2 of this evaluation.

2. The current standardized approach for signal lighting has positive safety benefits by virtue of its broad public and international acceptance. Does the request to alter the current standardized approach for signal lighting present data purporting to show positive safety benefits from the new signal idea?

a. If no data are provided, NHTSA will not treat the request as a petition for rulemaking. The request will be forwarded to a public docket that will collect information describing all proposed new signal lighting ideas and systems. The docket will be available for review by NHTSA and others who may wish to plan future research based on the ideas and inventions collected in the docket.

b. If data are provided, NHTSA will treat the request as a petition for rulemaking. NHTSA will evaluate the data to determine if they show persuasive evidence of a positive safety impact.

i. If NO determination of positive safety can be made, NHTSA will not change its regulations to permit the new signal lighting idea, because that would negatively affect standardization of signal lighting.

ii. If YES, a determination of positive safety can be made. NHTSA will propose to amend its lighting standard to either permit or require the new signal lighting idea.

Background on Stop Lamps

Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices and Associated Equipment (49

CFR 571.108) specifies types of signal lamps to be installed on new motor vehicles, and regulates their performance in terms of color, brightness, quantity, duty cycle (steady or flashing), and details of activation (e.g., activated when the service brakes are applied)[1]. All motor vehicles are required to have red stop lamps on the rear of the vehicle. Standard No. 108 requires that those stop lamps be activated ''upon application of the service brakes.'' The goal of this activation requirement is to communicate to following drivers that the driver of the vehicle ahead has purposefully applied the brakes. This activation requirement does not differentiate between tapping the brakes and a hard braking application. Similarly, it does not indicate all times the vehicle may be slowing, such as when the driver downshifts or rapidly removes his or her foot from the accelerator pedal.

Many inventors have approached NHTSA over the past 30 years with ideas for changes that the inventors believe would improve stop lamps. Most of these ideas involve sending a different signal from the stop lamps for hard braking than for other, more typical brake applications. The agency has responded to these ideas by stating that it sees positive benefits from the current stop lamp activation provisions in Standard No. 108, which ensure a uniform, unambiguous signal that the driver has chosen to activate the service brakes. That is useful information for following drivers. However, NHTSA has acknowledged that it is *possible* that using a different action to activate the stop lamps or having the stop lamps send different signals might improve safety. The agency has stated it will consider changing the stop lamp requirements if it were shown that a change would yield a net safety benefit.

Baran's First Petition for ABWS and NHTSA'S Response

Baran Advanced Technologies, Ltd. of Israel manufactures an Advanced Brake Warning System (ABWS) that is intended to activate the stop lamps during emergency braking before the driver puts his or her foot on the brake pedal. The goal of this system is to give drivers of following vehicles an earlier warning of emergency braking. ABWS senses the rate at which the accelerator pedal returns to its upper stop after being released. It activates the stop lamps for one second if the accelerator pedal reaches its upper stop at greater than the set rate. Its operation is based on the assumption that any rapid release of the accelerator pedal is the beginning of an emergency braking maneuver and will be immediately followed by application of the brake pedal.

The issue of ABWS and the stop lamp requirements in Standard No. 108 goes back nearly a decade. In 1989, an Israeli competitor of Baran called ATAT asked for an interpretation to permit its version of ABWS to be installed in the aftermarket. ATAT did not want any mandate to use its version of ABWS and it did not want to install the device on new vehicles. In a January 25, 1990 letter, NHTSA told ATAT that its device could not legally be installed even in the aftermarket. The agency explained that activating the stop lamps upon rapid removal of the driver's foot from the accelerator would undermine standardization of the stop lamp signal and ''can only create the potential for confusion and dilution of the effectiveness of the stop [lamp] signal.''

The subject rested there until Baran filed a petition for rulemaking in 1993. Baran did not question the agency's interpretation of the existing requirements of Standard No. 108. However, Baran asked that the Standard's requirements be changed to permit its ABWS to activate the stop lamps upon rapid removal of the driver's foot from the accelerator pedal.

Baran relied upon two studies to support its request for a change to Standard No. 108 to permit the installation of its ABWS system. The first was a paper by Enke titled ''Possibilities for Improving Safety Within the Driver-Vehicle Environment Control Loop.'' This paper estimates that the impact speed of 25 percent of rear end crashes is no more than 10 km/h, or 6 miles per hour and that the distance traveled at that speed in 0.25 second is exactly equal to the distance required to stop from 10 km/h. Baran claimed that this paper showed that providing a driver with an additional 0.25 second of warning of an impending stop by the driver ahead of him or her could yield a 25 to 30 percent reduction in all rear-end crashes.

The second paper on which Baran relied was a NHTSA report on Intelligent Vehicle Highway System (IVHS) countermeasures to rear end crashes (DOT HS 807 995). This report found that 75 percent of rear-end crashes ''do not involve simply a 'too-slow' reaction of the following driver to a sudden crash threat.'' In fact, the most common scenario noted in the report for these 75 percent of rear-end crashes involves a lead vehicle that has been completely stopped for an extended interval (2 to 6 seconds) before it is struck by a following vehicle. However, the other 25 percent of rear-end crashes ''may involve driver reaction time following a sudden crash threat as a critical factor.'' Baran believed that this report's finding was consistent with and bolstered the finding in Enke's report.

NHTSA carefully evaluated these reports and other data in response to Baran's petition. First, the IVHS paper found that rear-end crashes in which the following driver was attentive enough to respond to an earlier stop lamp signal were substantially less than 8 percent of all rear-end crashes, not 25 percent as interpreted by Baran. Second, a report by the Technical University of Darmstadt in Germany, titled Efficiency of Advanced Brake Light Devices, FO57 May 1994, found that responses by attentive test subjects improved by 0.10 to 0.15 second, instead of the 0.25 second improvement expected by Baran. This difference would substantially reduce the expected benefits of ABWS. Third, the potential safety benefits of ABWS appeared questionable. ABWS would allow as much as an additional 0.15 seconds of braking by following drivers, *but only if* the following driver immediately brakes hard upon seeing the stop lamps activated without waiting for any other cues that the lead vehicle is stopping, such as the car pitching or the tires and/or brakes squealing. To the extent the following driver waits for these other cues before braking, the potential benefits from ABWS are reduced. Recent research by Mercedes-Benz using a vehicle simulator in Germany found that more than 90 percent of drivers do not brake hard enough even when they have these cues *and* the lead vehicle's stop lamps are activated.

Fourth and finally, NHTSA was concerned that ABWS could negatively impact existing safety. At present, stop lamps are activated when the driver of a vehicle applies the brakes. ABWS would change this so that stop lamps were activated when the driver applies the brakes or rapidly removes his or her foot from the accelerator pedal. Baran's report on its ABWS that was submitted along with its 1993 petition showed that 23 percent of the time drivers did not brake after ABWS activated the stop lamps. Like the little boy who cried wolf, stop lamps that are activated when there is no subsequent braking are less likely to be immediately heeded in a real emergency. That undermines the most basic purpose of stop lamps. In addition, the agency was concerned that aggressive drivers could intentionally

[1] For the sake of simplicity, the rest of this document uses ''NHTSA's lighting standard'' or ''Standard No. 108,'' instead of the full legal citation for this standard.

use these ''false alarms'' from the ABWS to further dilute the meaning of stop lamps.

Based on these analyses, involving both the absence of demonstrated net safety benefits and the possibility of net safety losses, NHTSA denied Baran's ABWS petition in a **Federal Register** notice of August 3, 1994 (59 FR 39522). In this denial, the agency expressly noted that it would consider data about the safety impacts of ABWS from a field study then being conducted by the Israeli Highway Safety Administration when those data became available and might reevaluate its decision in light of those data.

Baran's Second Petition for ABWS and NHTSA's Response

Less than a year after NHTSA's denial of Baran's first petition to allow ABWS, Baran submitted a second petition to allow ABWS. There were two changed factors since Baran's 1993 petition. First, Allied Signal, a major U.S. manufacturer of braking systems and components, had joined Baran in the petition. Second, the petition provided some preliminary, but not validated, data from the ongoing Israeli field study indicating that ABWS-equipped vehicles were in fewer crashes. The bulk of the petition contained a thorough explanation of why Baran and Allied Signal disagreed with NHTSA's judgment that current stop lamp signals would be more ambiguous if ABWS were permitted in the United States.

Upon review of this petition, NHTSA decided that the overarching issue was to define and articulate the agency's policy on braking and other lighting signals, so as to place the ABWS petition in the proper context. Once this NHTSA policy was articulated, the agency believed it would be a relatively simple matter to apply that policy in specific instances, whether to ABWS or some other signal. Up to this point, the ABWS discussions had involved only the parties asking for ABWS and the agency. Given the agency's desire to place ABWS in the broader context of signal lighting signals generally, NHTSA believed many more parties than ABWS petitioners and NHTSA should be involved in the discussion. Accordingly, NHTSA decided to publish a **Federal Register** notice asking for public comments on the agency's general policy on signals and on how that general policy should be applied in the case of four specific brake signaling ideas. Although all of the specific examples discussed in this notice were brake signaling ideas, NHTSA was also concerned about the appropriate policy for other signals, like turn signals. The four specific brake signaling ideas discussed were ABWS, flashing Center High Mounted Stop Lamps (CHMSLs) to warn of hard braking, flashing CHMSLs to identify a stopped vehicle, and ''brake'' lamps on the front of vehicles to indicate the vehicle is braking.

December 1996 Request for Comments

NHTSA published a **Federal Register** notice on December 13, 1996 (61 FR 65510) that articulated the agency's general policy regarding new signal lighting ideas and how that policy would apply in the case of four specific brake signaling ideas, including ABWS, and asked the public for comments. NHTSA explained the basic purpose underlying its signal lighting policy as follows:

> It is important that the integrity of the required signal lamps be maintained, and that auxiliary signal lamps not detract attention from the messages that the required signal lamps are sending. A vehicle signaling system must be as simple and as unambiguous as possible to others who share the roadway if traffic is to proceed in a safe and orderly fashion. As noted earlier, in many other countries, all auxiliary exterior lamps are expressly forbidden unless there is a specific regulation allowing it. 61 FR 65516.

The agency went on to explain that its paramount concern with signaling was to maintain standardization so as to minimize ambiguity about the meaning of required signal lamps. NHTSA will not give up the safety benefits of standardization unless there are data showing a net safety gain from doing so. Such data would generally come from large scale fleet tests over a significant number of vehicle miles. NHTSA has sponsored fleet tests to demonstrate the effectiveness of Center High Mounted Stop Lamps (CHMSLs) and conspicuity treatments for heavy trailers and truck tractors. However, these fleet tests are very expensive and time-consuming. Accordingly, the agency only conducts fleet tests after the signaling concept being evaluated has been analyzed within the agency and found to be sufficiently promising to have fleet testing included in NHTSA's research plan. NHTSA has neither the budget nor the time to sponsor fleet testing of most signal lighting ideas presented to it.

This leaves the inventor of the signaling concept as the other likely source to sponsor fleet tests or otherwise gather persuasive data showing a net safety benefit would result from the new signaling concept. NHTSA acknowledged that the costs and logistics of fleet testing may preclude most inventors from sponsoring those tests. Accordingly, the agency asked for comments on its recommendation to inventors that, unless the inventor has data showing a net safety benefit from his or her new signaling concept, the signaling concept should be presented to NHTSA as a candidate for further research. If the suggestions are found to have merit, they can influence agency research priorities and perhaps be included in the agency's research plan. Upon completion of the research project, NHTSA would have data that would allow it to consider whether to permit or require a new signaling concept.

This broad policy was then applied to four specific signaling concepts. The first three were signaling ideas that were at that time unsupported by field tests or other data. The AlliedSignal/Baran ABWS was discussed, along with flashing CHMSLs to warn of hard braking and flashing CHMSLs to identify a stopped vehicle. While each of these concepts has some intuitive appeal, adopting any of these three suggestions would eliminate the standardization that is already in place for stop lamps. Since there were no data showing any offsetting safety benefits for diluting the standardization, NHTSA indicated that it was reluctant to amend its lighting standard to permit the introduction of any of these concepts, but asked for public comment on this approach.

The fourth signaling idea on which public comment was sought was front ''brake'' lamp systems that would alert an oncoming vehicle that the subject vehicle was braking. Again, there were no data provided to show safety benefits for this signaling concept. However, S5.1.3 of Standard No. 108 provides that, ''No additional lamp, reflective device, or other motor vehicle equipment shall be installed that impairs the effectiveness of lighting equipment required by this standard.'' Front ''brake'' lamps can be implemented in ways that would not affect the operation of any of the required lamps now on vehicles. Assuming front ''brake'' lamps were implemented so as not to interfere with the effectiveness of required front lighting equipment, front brake lamps are permitted to be installed on vehicles now, without any changes to the lighting standard.

There are some noteworthy paradoxes associated with these four signaling ideas. The first three have some intuitive appeal, but may not be offered because they would dilute standardization of stop lamp signals. The fourth has little, if any, intuitive appeal. In fact, NHTSA stated that it expected no safety benefits from front

''brake'' lamps. However, this concept may be offered on vehicles because it would not affect the standardized meaning of any required equipment. Nevertheless, the proponents of front ''brake'' lamps are not pleased with this result—they believe front ''brake'' lamps should be required. NHTSA asked the public for comments on its policy approach in this area and for comments on the four specific signaling ideas discussed in the notice.

Public Comments on the December 1996 Notice

NHTSA received more than 25 comments in response to its request for comments. With respect to the policy that should be followed in this area, Professor Rudolf Mortimer of the University of Illinois cautioned that decisions on any specific signal lighting idea should be made by looking broadly at all parts of the signaling system, not by considering ''a host of seemingly desirable separate items that have no relationship to each other or the system as a whole.'' Other commenters, including the Insurance Institute for Highway Safety (IIHS) and the American Automobile Manufacturers Association (AAMA) noted that opportunities may exist to further improve the signaling required by Standard No. 108, and that it is important for the agency to periodically review design-restrictive standards like Standard No. 108 to assure that its restrictions still serve a safety need.

Volvo's comments urged the agency to adopt a permissive standard. Volvo suggested that NHTSA permit the installation of any auxiliary signal function that *might* work, unless that auxiliary signal plainly impaired the effectiveness of required signal lamps. However, Volvo commented that auxiliary signal functions should be mandated only if there were proof of significant safety benefits.

With the exception of Volvo, however, there was a general consensus in favor of the broad policy outlined by NHTSA in its request for comments. Most commenters agreed that NHTSA is correct to treat unsubstantiated concepts as requests for research and not to spend its resources responding to every signaling idea presented to the agency. For instance, the Truck Manufacturers Association (TMA) said: ''TMA believes the responsibility for developing the necessary objective data lies with the petitioners and that the agency should not grant petitions unless such data are provided.'' Toyota and AAMA made the same point, and both also asked that NHTSA consider harmonizing any new signals with other countries' signaling requirements. Baran and AlliedSignal, the parties that petitioned for ABWS, concurred with the agency's intended policy of putting the burden on petitioners to provide data demonstrating the effectiveness of new signaling ideas before the agency began any rulemaking to modify its lighting standard. In the words of the ABWS petitioners:

> Petitioners are sensitive to NHTSA's concerns about the agency being inundated with untested ideas by inventors who lack data to support their ideas. Clearly, the agency cannot, and should not, initiate a rulemaking on each such idea. By contrast, where the efficacy of a logically attractive concept has been demonstrated by objective data, and where there is actual experience with the concept, we believe that a rulemaking is warranted. NHTSA Docket 96–041–N01–014, at 15.

Given this general agreement by commenters on the policy that should be applied when considering new signaling concepts, it is not surprising that the primary issue in each of the four examples identified by the agency was the quality of the available data. ABWS was the concept that drew the most comments specifically addressing it.

Five commenters favored ABWS. These five included Volvo, who commented that ABWS might work, so the concept should be permitted but not required. The petitioners for ABWS commented:

> Support for the ABWS concept is based on more than speculation or testimonials as to the efficacy of these safety devices. The recent report of a comprehensive fleet study conducted for the Government of Israel demonstrates that vehicles equipped with ABWS incurred a statistically significant (at the 95% confidence level) 17.6% lower rate of rear-end crashes than did a control group of non-equipped vehicles. * * * Together with other available data, the fleet study results persuasively demonstrate that ABWS devices offer significant safety benefits to the driving public, and that such devices do *not* pose any safety hazard. NHTSA Docket 96–041–N01–014, at 2.

ABWS petitioners also sought to address the agency's concerns about the high rate of ''false alarms.'' NHTSA's 1994 denial expressed the agency's concern that 23 percent of the time ABWS activated the stop lamps, the driver never applied the brakes. ABWS petitioners included an Exhibit 9 to their comments. This exhibit was a study of six vehicles driven more than 61,000 kilometers. Table 1 of this study shows that ABWS activated the stop lamps 17.33 times per 1000 kilometers, and the driver never applied the brakes 2.57 of those times. Dividing these numbers gives an updated ''false alarm'' rate of 15 percent.

However, the ABWS petitioners contended that the agency had improperly calculated the ''false alarms'' for ABWS. NHTSA's calculations had been made by dividing the number of times ABWS activated the stop lamps with no subsequent braking by total number of times ABWS activated the stop lamps. The petitioners urged the agency to change the denominator and divide the number of times ABWS activated the stop lamps with no subsequent braking by the total number of times the stop lamps were activated. This change gives a much lower rate −2.57 is now divided by 1,564.33 (1,547 times stop lamps activated by brake application + 17.33 times stop lamps activated by ABWS). By making this change, the ''false alarm'' rate is reduced to 0.2 percent, which petitioners argue is so small as to have no impact on drivers' reactions to stop lamps.

Two other commenters, the American Trauma Society and the International Association of Chiefs of Police, also were aware of the Israeli field study. Both stated in their comments that the Israeli field study had demonstrated an 18% reduction in rear-end crashes, and that NHTSA should permit ABWS. The Insurance Institute for Highway Safety (IIHS) commented that, ''if the claims of Baran can be verified,'' then ABWS should not be a detriment to highway safety and may actually result in crash reductions. In that case, IIHS favored permitting ABWS. The American Automobile Association (AAA) did not comment specifically on ABWS, but did note in its comment that ABWS ''has been demonstrated in field trials to reduce the rear end crash experience of vehicles in which it has been installed.''

On the other hand, ten commenters stated that ABWS should not be permitted. These commenters included vehicle manufacturers (American Automobile Manufacturers Association (AAMA), as well as BMW, Mitsubishi, and Toyota), the American Trucking Association (ATA), and Advocates for Highway and Auto Safety (Advocates). Professor Mortimer commented that the brake signal is ''the most important signal presently displayed on motor vehicles and nothing should be done to increase its ambiguity.'' Most of these commenters were of the opinion that, as expressed by AAMA, ''research to date does not provide sufficient evidence that motor vehicle safety will be enhanced'' by ABWS. ATA commented that NHTSA's signaling standards should be changed *only* to correct a demonstrated deficiency or when a

proponent demonstrates significant, cost-effective safety improvements from the change. The Truck Manufacturers Association (TMA) commented that ABWS should not be permitted because it could result in continuous activation of stop lamps when the driver of a big truck shifts gears. However, TMA noted in its comment that there are likely to be situations in the future where it is appropriate for stop lamps to be activated without service brake application. TMA offered as examples automatic braking being explored as part of Intelligent Transportation Systems and ''differential braking'' for heavy trucks. TMA suggested that stop lamps then should probably be activated as a function of the rate of deceleration, instead of by brake application alone.

There were fewer comments on the other three signaling concepts. Only 11 commenters specifically addressed the idea of flashing CHMSLs to warn of hard braking. Three commenters supported the idea. Volvo, as per its overall policy view, believed NHTSA should permit flashing CHMSLs for hard braking, because the concept *might* work. In Volvo's opinion, NHTSA should not prohibit signaling concepts that might work. Mr. Chris Egger of Las Vegas, Nevada commented that the idea of flashing CHMSLs to warn of hard braking would allow following vehicles ''to take quick evasive action,'' and that this idea had merit. However, Mr. Egger believed flashing CHMSLs would only be beneficial if they were mandated on all vehicles, because the mandate would ''establish an understood signal and eliminate ambiguity.'' Finally, Mr. Hamid Kashefy of Montreal, Quebec commented that NHTSA should permit flashing CHMSLs to indicate hard braking.

The eight commenters, including Advocates, ATA, TMA, Professor Mortimer, and AAMA, that opposed this concept expressed the view that the public would get no benefits for the added costs of flashing CHMSLs to indicate hard braking. TMA referred to NHTSA's 1981 research showing no additional benefits from a flashing CHMSL for hard braking as compared with a steady-burning CHMSL. TMA suggested that, until new data are presented, there is no basis for changing the current requirements in this area. Both IIHS and Mitsubishi opposed the concept of flashing CHMSLs for hard braking because they were concerned this might not be a helpful signal for following drivers.

Nine commenters commented on the concept of flashing CHMSLs to indicate a stopped vehicle. The only commenter supporting this concept was Mitsubishi, which said it did not object to flashing CHMSLs as a stopped vehicle signal. The other eight commenters that addressed this concept opposed it. Professor Mortimer commented, ''There is no question that the single most important signal for the rear of motor vehicles to augment those presently provided would be a signal indicating that a vehicle is stopped or moving very slowly.'' However, Professor Mortimer asserted that a flashing CHMSL is not the way to provide a stopped vehicle signal because of confusion with the flashing lamps for turn and hazard signals. In the same vein, Advocates and IIHS commented that flashing CHMSLs could increase confusion and annoyance, especially in rush hour. Three other commenters, including ATA and Volvo, noted that 4-way hazard lamps are already on vehicles to serve exactly this purpose. Volvo stated its preference that flashing CHMSLs be reserved to indicate hard braking.

Eight commenters addressed the concept of front ''brake'' lamps. Volvo commented only that, at this time, NHTSA should not prohibit these signal lamps. The other seven commenters had less favorable views. Professor Mortimer commented that these signals should be prohibited because they can do more harm than good. Mr. Kashefy, an inventor of signal devices himself, also commented that front ''brake'' lamps should be expressly prohibited because there is a greater likelihood of safety losses than gains from this concept. However, Mr. Kashefy indicated that NHTSA should consider requiring front lamps that report when a vehicle is accelerating. TMA and IIHS, among others, commented that these front ''brake'' lamps might increase crashes and dilute the meaning of turn signals. ATA commented that front ''brake'' lamps would provide no benefits, while Advocates commented simply that, in that group's opinion, front ''brake'' lamps ''have no merit whatsoever.''

October 1997 Notice Reopening the Comment Period

Upon reviewing these comments, it was difficult to reconcile the general agreement about what policy NHTSA should apply to new signaling ideas with the widely divergent opinions about whether ABWS should be permitted. A closer look, however, readily explains the difference. With the exception of Volvo, the commenters agreed that new signaling concepts should be permitted when there are data demonstrating net safety gains from changing the current well-understood and effective signaling scheme. The commenters that favored ABWS had reviewed the Israeli field study cited by the ABWS petitioners in their comments and concluded that it was a convincing demonstration of safety gains from ABWS. None of the commenters that opposed ABWS referred to the Israeli study. Hence, this Israeli study of ABWS seemed to be a key factor for NHTSA in deciding whether to amend the current signaling requirements of Standard No. 108 to permit ABWS.

Unfortunately, the Israeli study had not been reviewed by many commenters because it became available to the public in NHTSA's docket on the day before the comment period closed. None of the commenters who indicated there was insufficient evidence that ABWS would offer safety benefits appeared to have reviewed the Israeli study. On the other hand, all of the parties that said ABWS had been shown to offer positive safety benefits based their statements on the Israeli study.

Given the importance of this study in commenters' views about whether ABWS should be permitted, NHTSA decided to reopen the comment period to make all commenters aware of the Israeli study and to get comments specifically directed to the merits of the study. NHTSA also decided it would be helpful to commenters for the agency to set forth its preliminary review of the Israeli study and ask for public comment on specific aspects of the Israeli study. Hence, NHTSA published an October 27, 1997 notice (62 FR 55562) reopening the comment period for an additional 30 days, with a request that commenters focus on the Israeli study and the other materials that were not previously available for public review.

The Israeli study of ABWS involved 764 Israeli government vehicles tracked over a two-year period. Half the vehicles were equipped with ABWS, the other half were not. The control group (those vehicles that did not have ABWS) were matched to the ABWS-equipped vehicles. That is, each vehicle in the control group was the same make, model, and model year as a vehicle in the ABWS group.

These 764 vehicles were in a total of 881 crashes, 78 of which were crashes in which the government vehicle was struck from the rear. Of these 78 rear-end crashes, 37 occurred in the vehicle fleet equipped with ABWS, while 41 crashes occurred in the control group. After adjusting for the distance driven by three particular vehicles, the study's authors concluded that the rear-end crash involvement rate of the ABWS equipped vehicles was 17.6 percent less than that of the control vehicles. In addition, these 78 crashes were then

sorted into ''relevant,'' defined in the report as ''crashes in which the government vehicle was struck from behind while braking or immediately after braking,'' and ''irrelevant,'' defined in the report as ''crashes in which the government vehicle was already stopped for a while, or the driver reported that (s)he decelerated or braked gradually rather than abruptly, and/or the driver of the striking vehicle testified that he failed to pay attention to the stopping or stopped vehicle ahead.'' Of the 78 rear-end crashes, 26 were classified as ''relevant'' and the other 52 were deemed ''irrelevant.'' The study concluded that the crash involvement rate of the ABWS-equipped vehicles in relevant rear end crashes was 64 percent less than that of the control group.

NHTSA identified some concerns about the study and the conclusions. The first concern was about how closely the ABWS group matched the control group. The Israeli study mentions that vehicle attributes (make, model, and year) were matched precisely in the ABWS group and the control group. However, no mention was made of matching important vehicle use patterns, such as the driving environment and the typical driver. It appeared that vehicle use patterns were not considered.

NHTSA next indicated in the October 27, 1997 notice that the analysis of the results appeared unusual. The data collected in the field study showed that there were 417 crashes for the ABWS-equipped vehicles and 464 crashes for the control group, or 9 percent fewer crashes for the ABWS group. This 9 percent reduction in crashes for the ABWS-equipped vehicles was found for:

- All crashes;
- Rear-end crashes; and
- Crashes other than rear-end crashes.

In other words, the ABWS-equipped vehicles in this field study were just as likely to avoid a frontal or side crash as they were to avoid a rear crash. Since ABWS would not be visible to the driver of the other vehicle in a frontal or side crash, there is no apparent reason to believe that ABWS would have any effect on those types of crashes. Thus, the data from this study do not appear to show any significant positive effect for ABWS. However, this simple analysis, which would be a conventional starting point for many analysts, was not reported in the study. NHTSA asked for comments on what significance should be given to the fact that one of the simplest uses of the data does not indicate any significant effect for ABWS in rear-end crashes relative to all other types of crashes.

The final major concern expressed by the agency in its October 1997 request for comments was that, as noted in the study, there was a large difference in the ''relevant'' rear-end crashes for the two groups—18 relevant rear-end crashes for the control group, but only eight relevant rear-end crashes for the ABWS group. However, the total rear-end crashes reported were substantially identical—41 for the control group and 37 for the ABWS group. The difference of four crashes in this sample size is not statistically significant. Thus, one interpretation of the data is that ABWS shifts rear-end crashes from the relevant to the irrelevant classification without reducing significantly the number of rear-end crashes. NHTSA asked for comments on the appropriate interpretation of the data.

In addition, the parties petitioning for ABWS had noted that several other countries permit the use of ABWS. The petitioners have identified Israel, Germany, Norway, the Czech Republic, and Austria, among others, as countries that currently permit ABWS on vehicles. NHTSA concurs with the petitioners that the practices in other countries ought to be given careful consideration. NHTSA has participated as the United States Delegate to the United Nations-sponsored Meetings of Experts on Lighting and Light Signaling in Geneva, Switzerland for more than 15 years. To bring insights and knowledge from lighting experts around the world, NHTSA sent a letter to each of the other 32 delegates, enclosing a copy of the Israeli field study and a copy of the October 27, 1997 notice reopening the comment period on this subject. These delegates to the Meeting of Experts on Lighting and Light Signaling were invited to review the documents and share any comments they might have.

Comments on the October 1997 Notice

Twelve parties responded to the reopening of the comment period with additional comments. Three commenters (the ABWS petitioners, the National Association of State Directors of Pupil Transportation Services, and Data Link, Inc.) said ABWS should be permitted because of its potential safety benefits, unless there were data showing a safety detriment from ABWS. Since there are no such data for ABWS, these commenters urged ABWS be permitted.

NHTSA notes that these comments argue for a different standard than those commenters favoring ABWS had urged in response to the December 1996 notice. In the previous notice, commenters had indicated that the Israeli study ''persuasively demonstrate that ABWS devices offer significant safety benefits to the driving public,'' in the words of the ABWS petitioners. No such assertions were made on behalf of the Israeli study in response to the reopening of the comment period. The position now advocated was that ''the intuitive appeal of ABWS benefits is so strong as to render unnecessary the conduct of a fleet study to prove benefits,'' in the words of Data Link (NHTSA Docket No. 96–041–N02–006). Instead, ''the key question NHTSA should be asking in this proceeding is whether there is a demonstrable safety disbenefit associated with ABWS,'' according to the ABWS petitioners (NHTSA Docket No. 96–041–N02–005, at p.3). Stated in a broader policy perspective, ABWS advocates believe that a signaling concept that is ''intuitively appealing'' should be permitted unless there are data demonstrating that this concept will negatively affect safety.

Three commenters (Nebraska Motor Carriers Association, Advocates, and AAMA) said that, for the reasons identified in the agency's October 27 notice, the Israeli field study was inadequate to serve as the basis for any change to current signaling requirements. In its comments, AAMA agreed with the ABWS petitioners that ''the concept of advanced brake warning is intuitively appealing and worthy of further research.'' (NHTSA Docket 96–041–N02–007). AAMA recommended that a controlled fleet study be undertaken in the United States.

The remaining six commenters were Delegates to the United Nations-sponsored ''Meetings of Experts on Lighting and Light Signaling'' in Geneva, Switzerland. These six international experts said that the Israeli study was not conclusive and was an insufficient basis for a change to current signaling. The Society of Motor Manufacturers and Traders (SMMT), the United Kingdom vehicle manufacturers' group, commented that ''if all vehicles were fitted with ABWS and gave 23% false signals, the value of the stop signal would be greatly debased.'' (NHTSA Docket No. 96–041–N02–008). SMMT also commented that the issue of signaling and ABWS ought to be considered in a world-wide context, not just by the United States.

The second of the international commenters was Mr. Hanno Westermann, the chair of a Safety and Visual Performance (SVP) working group that has been asked by the UN-sponsored ''Meetings of Experts on Lighting and Light Signaling'' to study the subject of signaling, including ABWS, and to report the findings back to the Experts. Mr. Westermann

commented that the current signaling system has evolved continuously and is well understood. The Israeli study of ABWS ''shows possible benefits,'' but those benefits do not appear to be significant, according to Mr. Westermann. In addition, the study shows that ABWS ''exhibits a number of negative aspects.'' Specifically, Mr. Westermann referred to the instances when the stop lamp is illuminated but the brake is never applied (NHTSA Docket 96–041–N02–009). Mr. Westermann also noted that the 100 millisecond earlier warning of braking that is achieved with ABWS can also be achieved by means of light-emitting diodes (LEDs) or neon lamps in stop lamps (because they have a faster rise time than conventional incandescent lamps), without illuminating the stop lamps in situations where the brakes are never applied.

The third international commenter was Dr. Karl Manz, a consultant to the German Delegate to the Meeting of Experts. Dr. Manz stated that the Israeli field study is not sufficient to demonstrate the safety benefits claimed for ABWS.

The fourth international commenter was Mr. Hans Ammerlan, the Netherlands Delegate to the Meeting of Experts. Mr. Ammerlan stated that ''false alarms,'' i.e., activation of the stop lamps when the brakes are never applied, are inherent in the design of ABWS because the assumption that rapid removal of the foot from the accelerator pedal will be followed by braking may be true most of the time, but will not be true 100% of the time. Mr. Ammerlan commented, ''We consider such false alarms as a degradation of the brake signal.'' (NHTSA Docket No. 96–041–N02–012). Mr. Ammerlan also commented that if earlier warning of braking is useful, one would begin by addressing the rise times of current stop lamps since that has no possibility of degrading the brake signal.

The fifth international commenter was Mr. Kari Saari, Finland's Delegate to the Meeting of Experts. Mr. Saari commented that Finland follows the European Commission's lighting regulations, so it does not allow ABWS on vehicles.

The sixth international commenter was Mr. I. Ajtós, Hungary's Delegate to the Meeting of Experts. Mr. Ajtós commented that he agreed with NHTSA's observations about the shortcomings of the Israeli study. Mr. Ajtós also commented that human factors should have been studied, and specifically asked whether more frequent illuminations of stop lamps would not adversely affect the response of following drivers to those lamps. Mr. Ajtós concluded by stating that Hungary specifically rejected a petition to allow ABWS in that country in 1995 for two reasons. First, the 1968 Vienna Convention on Road Traffic, which Hungary has ratified, defines a ''stop lamp'' as ''the lamp used to indicate to other road users to the rear of the vehicle that *the driver is applying the service brake.*'' (Emphasis in Mr. Ajtós' comment—NHTSA Docket No. 96–041–N02–013, at page 5). According to Mr. Ajtós, Hungary interprets this language as precluding the use of ABWS. Second, Mr. Ajtós commented that Hungary denied the ABWS petition because it agreed with the reasoning in NHTSA's 1994 ABWS petition denial.

September 1998 Withdrawal of ABWS Petition

On September 16, 1998, the ABWS petitioners withdrew their petition for rulemaking to permit ABWS. The petitioners explained the withdrawal as follows:

> Given that NHTSA now seems to be applying a higher standard than that which should be applied for optional safety devices, and in spite of the considerable evidence of the safety benefits of ABWS that Petitioners have presented to date, Petitioners have decided that they cannot at this time move forward with their Petition. Other nations have approved the use of ABWS based on the considerable volume of data showing that it is a proven crash avoidance device, and additional nations are in the process of considering ABWS technology. In light of NHTSA's current views, resources at this time will be focused on these nations.

NHTSA's Conclusions and Decisions

After considering all the comments and the other information that is available on the subject of signals for braking, the agency has reached the following conclusions.

1. Current NHTSA Signaling Requirements Are the Norm Internationally, Not the Exception

The current signaling requirements for braking in NHTSA's lighting standard (stop lamps come on when service brakes are applied, stop lamps are steady-burning, not flashing, and stop lamps do not give a different signal for hard braking than lighter braking) are all consistent with the prevailing international practice. Indeed, the 1968 Vienna Convention on Road Traffic, signed by the United States and many other countries, sets forth an international consensus on what signal lamps should mean. Suggested changes to the prevailing international consensus on signaling requirements may of course be considered by individual countries to respond to particular needs, but such changes should also be considered internationally at an international forum.

2. Current Information Provided by Signal Lamps That Conform With NHTSA's Signaling Requirements is Standardized and Well Understood by the Driving Public

The information currently provided by signal lamps that conform with the requirements of NHTSA's lighting standard is well understood by the driving public. The information that is provided by signals (driver has applied brakes, has shifted into reverse, etc.) is instantly recognized and unambiguously informative. Even the ABWS petitioners expressly acknowledge the importance of uniform, unambiguous signals. Petitioners said, ''The October 27 notice recognizes, quite properly, that there is a benefit associated with a uniform, unambiguous signal system;'' NHTSA Docket No. 96–41–N02–005, at page 6. Given the benefits of the current standardized signaling system, it is reasonable and appropriate to require parties asking for a change to the current system to bear the burden of demonstrating that the benefits that will be lost by changing from the current uniform, unambiguous signals will be more than offset by new safety benefits from the signaling change.

3. It Is Appropriate for NHTSA and Other Countries To Re-Examine the Current Signaling Requirements To See If They Can Be Improved

The Vienna Convention set forth the international consensus about the state of the art of signaling information in 1968. There have been significant advances in electronics and sensors in vehicles over the past 30 years. Those advances make it appropriate to reexamine the information provided by signal lamps to see if the information can be improved.

NHTSA understands that the total information that can be provided by signal lamps is limited. It is clear that drivers won't respond instinctively to 100 different lights on the rear of vehicles. Likewise, illumination of a lamp can't mean ten different things. However, much human factors work needs to be done to understand these limits and other areas such as how many signals will produce ''information overload,'' dilution of the intended message, and the risk that activation of one signal lamp will mask information from other signal lamps. In addition,

NHTSA understands that much work needs to be done on crash data analysis to determine what new functions that could be served by signal lamps in 1998 would provide the biggest added safety gains. The goal of this work would not be to have vehicles provide more and more signals, but to assure that vehicles have clear signals that provide the most important information to other drivers.

In addition, NHTSA believes that any decision about what additional or improved information can or should be provided by signal lamps should be made after a comprehensive look at all the possibilities for enhancement, instead of as a piecemeal response to individual concepts. For instance, a decision to permit stop lamps to perform the ABWS function may limit those lamps' suitability for performing other functions, such as signaling onset of rapid deceleration or following too closely. While that may ultimately be the right decision, it should be made after considering the significance of those other functions.

In accordance with these conclusions, NHTSA is taking the following actions.

1. NHTSA Will Participate in the Efforts To Try To Develop an International Consensus on How To Handle New Signaling Ideas

The SVP Group has been asked by the UN-sponsored Experts on Lighting to study the subject of signaling and to report recommendations back to the Experts Group. The need to reexamine signaling ideas as we enter the 21st Century is an international concern. It seems appropriate to try to address that concern internationally. For example, according to the ABWS petitioners, Israel, Germany, Norway, and the Czech Republic currently permit the installation of ABWS on vehicles. The United States and Hungary have previously said no to ABWS. It would seem to be better for everyone, including the driving public, the governments, and vehicle and lighting manufacturers, if there were clear standardized meanings for signal lamps in all six of these countries.

Moreover, there is an international need to address this concern. All 16 of the countries that regularly participate in the U.N. Meeting of Experts on Lighting and Light Signaling report that they have been approached by people who believe they have devised improvements to the current signaling. It would be preferable to develop a global means for considering such changes to signaling, instead of having each nation consider the changes in isolation from the rest of the world.

NHTSA has already had a representative, the same person who is the United States Delegate to the Meeting of Experts on Lighting and Light Signaling, attend three meetings and participate in two video conferences of the SVP to participate in the effort to develop recommendations for signaling to be presented to the Meeting of Experts on Lighting and Light Signaling. NHTSA will make every effort to assure that an agency representative is actively involved in the SVP work and any other efforts of the Meeting of Experts to forge an international consensus on updating light signaling.

2. Until a New International Consensus Emerges, NHTSA Will Follow the Policies for Evaluating New Signaling Concepts Described in the December 1996 Request for Comments

NHTSA recognizes that it often takes years to arrive at an international consensus. It would be inappropriate for the agency to refuse to take any action on the subject of improved signaling until an international consensus is reached and the agency evaluates that consensus to see if some or all of it can be implemented by NHTSA, consistent with its safety mission and applicable legal requirements. Accordingly, NHTSA is announcing the policy it will follow for evaluating requests for changes to current signaling requirements for lamps. This policy is the same approach that was set forth in the December 1996 request for comments, which was supported by the vast majority of commenters to that notice.

The first question NHTSA must address in considering a new signal lighting idea is whether it requires a change in the standardized operation or appearance of a required lamp or piece of lighting equipment. As indicated above, the agency reiterates that there is a positive benefit to the motoring public from standardizing signals. NHTSA has always tried to tailor its signal lamp requirements to assure the public of the benefits of standardization, while at the same time allowing as much design freedom as possible for the location, shape, styling, and light source designs for those lamps. In the December 1996 request for comments, NHTSA noted that the intensity ranges of taillamps and stop lamps are regulated so that a following driver can distinguish a red stop lamp from a red taillamp as soon as the stop lamp is actuated by braking, without having to notice the transition. However, the size and shape of stop lamps and taillamps are left to the designer of the lamps. Likewise, stop lamps are required to be steady-burning to distinguish them from the required flashing of turn signals and hazard warning signal lamps of the same brightness and color.

In keeping with this approach, NHTSA also allows for lighting equipment beyond what is required by the lighting standard, called ''auxiliary'' lighting, provided that this auxiliary lighting does not ''impair the effectiveness'' of the required lamps and reflectors. Thus, when NHTSA is asked about a new signal lighting idea, the agency's first question is whether the new signal lighting would require a change to the standardized operation of required lighting equipment. If the new idea does not require a change to the standardized operation of required lighting equipment, the only question left for the agency is whether the new lighting would impair the effectiveness of required lighting. If it would impair the effectiveness of required lighting (e.g., by masking the operation of required lighting or introducing ambiguity into the meaning of required lighting), the idea is expressly prohibited by S5.1.3 of Standard No. 108 and it may not be installed on vehicles. That is because this lighting would undermine the safety benefits that NHTSA has determined are associated with the required lighting.

If, however, NHTSA determines the new signal lighting would not impair the effectiveness of required lighting, it may be installed on vehicles consistent with the existing requirements of the lighting standard. This is true even if there is no safety value for such auxiliary lighting. In these circumstances, the public is not losing any of the safety benefits from the required lighting. Thus, even if the public gains nothing of value from such auxiliary lighting, the result is safety-neutral.

Many new signal lighting ideas, however, would require a change in the standardized operation of required lamps or lighting equipment. In these instances, the hurdle that these ideas must clear is higher. This is because the public would be losing the safety benefits of the current standardized operation of required lighting that result from the broad public and international acceptance of the standardized operation. In these cases, NHTSA has long said that it is certainly possible that a new idea for the operation of signal lighting *might* improve safety. However, given the safety benefits associated with the standardized operation and meaning of required lighting, the burden is on the proponents of the new signal lighting idea to demonstrate that the use of the

new signal lighting idea would yield a positive safety benefit large enough to more than offset the adverse safety effects of giving up the standardized operation and meaning of signal lights.

Some commenters to the October 1997 notice reopening the comment period argued that this standard is too demanding. Instead, they urged that the appropriate standard should be that lighting will be permitted that necessitates changes to the standardized operation and meaning of required lighting *unless* there are data available showing adverse safety consequences from the new signal lighting. In other words, one should not have to demonstrate that new signal lighting offers the public any safety gains, just that it would not cause the public any safety harm.

NHTSA is not adopting this position as its policy. As noted above, the currently standardized operation and meaning of required lighting gives safety benefits because it enjoys broad public and international recognition and acceptance. NHTSA has made findings of benefits for the current standardized approach and discussed its current standardized approach with lighting experts from other nations at a United Nations-sponsored forum. Given this background, it seems reasonable and appropriate to require advocates of change to the current standardized approach to say more than that different decisions could have been made to achieve the same results from standardization. Even if that is true, it results in nothing of value for the American driving public. NHTSA concludes that it is more appropriate to require advocates of change to demonstrate that different decisions would have achieved better safety.

But, those advocates may ask, why is it acceptable for auxiliary lighting that does not impair the effectiveness of required lighting to merely be safety-neutral, while changes to the standardized approach for required lighting must be shown to be affirmatively safety-beneficial? The answer is that whatever happens with such auxiliary lighting does not effect the core safety functions performed by the required lighting, whereas changes to the standardized operation of required lighting directly impacts the core safety functions performed by those lamps. NHTSA believes a higher standard is appropriate for changes to the core safety functions of required lamps and signals than for changes to peripheral, non-required lamps that do not affect any of the core safety functions of required lamps and signals.

Required lighting cannot achieve its intended safety purpose unless the message of the lighting is instantly and unambiguously recognized by other drivers. The only way to achieve that level of clear recognition is to standardize the operation and meaning of required lamps—in other words, NHTSA must pick a single approach. When NHTSA changes the single standardized approach, it must specify a different single standardized approach for required lamps and lighting equipment. Such a change requires the public to adapt to new meaning and/or operation for required lamps and vehicle and lighting manufacturers to make any needed changes to their products. Something of this magnitude should not be undertaken lightly and should be justified by a greater good for all at the end, such as enhanced safety for the driving public.

In the case of auxiliary lighting that does not impair the effectiveness of required lighting, NHTSA has not recognized any safety purpose for that auxiliary lighting. It does not matter whether the public recognizes the message of the auxiliary lighting, as long as this lighting does not detract from the required lighting. There are hundreds of possible approaches for this type of lighting and NHTSA has no reason to pick any single approach over the others. In this situation, all that is required is that the auxiliary lighting not do harm to the required lighting.

NHTSA's regulations currently set forth at 49 CFR Part 552 the requirements for the agency to treat a request as a petition for rulemaking. Section 552.4 provides:

Each petition filed under this part must:

(a) Be written in the English language;

(b) Have, preceding its text, a heading that includes the word ''Petition'';

(c) Set forth facts which it is claimed establish that an order is necessary;

(d) Set forth a brief description of the substance of the order which it is claimed should be issued; and

(e) Contain the name and address of the petitioner.

The pertinent requirement for this discussion is the one in § 552.4(c) that a petition must ''set forth facts'' to support the contention that a rulemaking change is needed. In the case of signal lighting ideas, NHTSA has, as noted, made findings of benefits for the current standardized approach and discussed this approach at least twice a year with lighting experts from other nations at a United Nations-sponsored forum on lighting. In this context, NHTSA interprets its regulation as requiring that a request for a change to signal lighting must provide more than assertions of an unaddressed need, speculations about how to address that need, and testimonials about the efficacy of the requested approach, and the like. Those are not ''facts'' within the meaning of 49 CFR 552.4(c); they are simply opinions.

Thus, when NHTSA is requested to alter the current standardized operation and meaning for signal lighting, the agency determines whether the request provides data purporting to show positive safety benefits sufficient to more than offset the benefits lost from eroding standardization. If the request contains no such data, NHTSA interprets its regulations as providing that such a request will not be treated as a petition for rulemaking. Instead, the request will be treated as a suggestion for research to try to gather the necessary data. The request will be forwarded to a public docket that will collect information describing all proposed new signal lighting ideas and systems. The docket will be available for review by NHTSA and others who may wish to plan future research based on the ideas and inventions collected in the docket.

If the request provides data, NHTSA will treat it as a petition for rulemaking asking for changes to the current standardized meaning and operation for signal lighting. The agency will evaluate the data to determine if they show persuasive evidence of a positive safety impact. If that evaluation does not permit a determination of positive safety from the requested change, NHTSA will not change its lighting standard to permit the new signal lighting idea. If the evaluation of the data leads the agency to the conclusion that positive safety effects are likely from the requested change, NHTSA will propose to amend its lighting standard to either permit or require the new signal lighting idea.

NHTSA intends to apply this policy to any requests it receives for new signal lighting ideas. Because this notice explains how the agency will analyze requests and what sort of data is needed to support requests for changes in the standardized operation and meaning of required lighting, people with ideas for new signal lighting should now have a better understanding of what supporting information is needed when they request changes to standardized signal lighting. The agency will reexamine this policy periodically to assure that it continues to be appropriate. NHTSA will carefully consider the work in this area of SVP and the United Nations-sponsored Meeting of Experts on Lighting and Light Signal when such

work becomes available. To repeat, the agency will actively participate in the international effort in this area.

3. Results of Applying These Policies To the Four New Signaling Concepts Described in the December 1996 Request for Comments

a. ABWS. ABWS requires a change in the standardized operation of required lamps (the stop lamps). Those lamps are currently required to be activated only when the service brakes are applied. ABWS would also activate those lamps if the driver rapidly removes his or her foot from the accelerator pedal. The next question for NHTSA's determination is whether the ABWS request to alter the activation of stop lamps presents data purporting to show positive safety benefits. Again the answer to this question is yes. The Israeli field study that was the subject of NHTSA's October 27, 1997 reopening of the comment period concluded that the rear-end crash involvement rate of ABWS-equipped vehicles was 17.6 percent less than the rear-end crash involvement rate of the control vehicles. Thus, NHTSA would treat the ABWS request as a petition for rulemaking under this policy.[2]

The next step under this policy would be for the agency to evaluate the Israeli study to determine if it shows persuasive evidence of a positive safety impact. After its evaluation, NHTSA has concluded that the Israeli study does not demonstrate any significant positive effect for ABWS. As noted in the October 27, 1997 request for comments, the data collected in the field study showed that there were 417 crashes for the ABWS-equipped vehicles and 464 crashes for the control, or 9 percent fewer crashes for the ABWS group. However, this 9 percent reduction in crashes for the ABWS-equipped vehicles was found for:

- All crashes;
- Rear-end crashes, and
- Crashes other than rear-end crashes.

In other words, the ABWS-equipped vehicles in this field study were just as likely to avoid a frontal or side crash as they were to avoid a rear crash. Since ABWS would not be visible to the driver of the other vehicle in a frontal or side crash, there is no reason to believe it would have any effect on these types of crashes. Thus, the data from this study do not appear to show any positive effect for ABWS.

In addition, the Israeli study did not show any significant effect on the total number of rear end crashes for ABWS-equipped vehicles. As noted in the October 27, 1997 request for comments, the authors of the field study sorted the rear-end crashes into a ''relevant'' and an ''irrelevant'' category, and claimed a major reduction of ''relevant'' rear-end crashes for ABWS—there were 18 relevant rear end crashes for the control vehicles, as compared with 8 relevant rear end crashes for the ABWS-equipped vehicles. However, the total rear end crashes for the ABWS vehicles and the control vehicles were substantially identical—41 rear-end crashes for the control group and 37 for the ABWS group. Whatever the merits of ABWS at shifting rear-end crashes from the ''relevant'' to the ''irrelevant'' category, the crashes still occurred. The data from the Israeli field study do not demonstrate any substantial reduction in total rear-end crashes for vehicles with ABWS compared with vehicles with conventional activation of stop lamps.

After evaluating the data from the Israeli study, NHTSA concludes that these data do not demonstrate any significant positive safety impact for ABWS, so there would be nothing gained for the American public to more than offset the safety lost by changing the current standardized approach to stop lamps. It seems that the ABWS petitioners came to the same conclusion after reviewing the Israeli study. In March 1997, when the ABWS petitioners submitted the Israeli study to NHTSA, they said that ''the fleet study results persuasively demonstrate that ABWS devices offer significant safety benefits to the driving public.'' NHTSA Docket 96–041–N01–014, at 2. However, eight months later in November 1997, when they responded to the reopening of the comment period to allow public review of the Israeli study, the ABWS petitioners made no such claims. Instead, they now asserted, ''In sum, all of the real-world evidence drawn from actual crash statistics, and all of the available studies, point in the same direction—there is no safety disbenefit associated with ABWS.'' NHTSA Docket No. 96–041–N02–005, at p.9. The agency also notes that none of the other commenters whose March 1997 comments indicated that they believed the Israeli study demonstrated significant benefits for ABWS (AAA, International Association of Chiefs of Police, and the American Trauma Society) responded to the agency's reopening of the comment period and preliminary evaluation of the Israeli study.

The Israeli study is an insufficient demonstration of positive safety impacts from ABWS. Accordingly, NHTSA's rulemaking action on ABWS is hereby withdrawn.

b. Flashing CHMSLs to warn of hard braking.

c. Flashing CHMSLs to warn that the vehicle is stopped. Flashing CHMSLs to warn of hard braking or that the vehicle is stopped would require a change in the standardized operation of required lamps (the stop lamps). Those lamps are currently required to be steady-burning. As noted above, the requirement for stop lamps to be steady-burning is intended to assure that drivers can instantly distinguish stop lamps from turn signals and hazard warning lamps, which flash when activated. The next question NHTSA must answer then is whether the requests to alter the activation of stop lamps to permit flashing CHMSLs for hard braking or a stopped vehicle have presented data purporting to show positive safety benefits sufficient to more than offset the safety losses from changing standardization. The answer to this is no. As noted by TMA in its comments, the only data in this area indicates no significant improvement from flashing CHMSLs (NHTSA's large scale field study in 1981). Accordingly, NHTSA would not treat these requests as petitions for rulemaking. Instead, the requests would be treated as suggestions for research to try to gather the necessary data. The requests would be forwarded to a public docket that will collect information describing all proposed new signal lighting ideas and systems. The docket will be available for review by NHTSA and others who may wish to plan future research based on the ideas and inventions collected in the docket. NHTSA notes that since it has already researched the merits of flashing CHMSLs, it is unlikely that the agency will research the same area again until there is some reason (such as new data in this area) to believe the 1981 study may no longer be valid.

d. Front ''Brake'' lamps to alert oncoming vehicles the subject vehicle is braking. Front ''brake'' lamp systems to alert oncoming vehicles that the subject vehicle was braking would not require any change in the standardized operation of required lamps. Thus, this idea has a much lower hurdle to clear than ideas that would require changes in the standardized operation of required lamps. The only issue for these front ''brake'' lamps is whether they would impair the effectiveness of required lighting. Assuming NHTSA determines that the front ''brake'' lamps are designed so as not to impair the effectiveness of the required lighting on the front of the vehicle, NHTSA's

[2] Under its policies in place at that time, NHTSA treated the ABWS request as a petition and granted it on July 26, 1996.

lighting standard already permits these front ''brake'' lamps to be installed on vehicles.

Of course, petitions to *require* front brake lamps or any other motor vehicle equipment are evaluated according to NHTSA's normal approach—will the American public get its money's worth from this requirement? In other words, are the safety benefits for the new equipment sufficient to justify the costs that will be imposed on the American people by a new requirement for this equipment? In the case of front brake lamps, NHTSA concluded in 1996 (61 FR 10556; March 14, 1996) that the answer was no, and denied a petition to require front ''brake'' lamps. Any future petitions to require front ''brake'' lamps will need to demonstrate greater safety benefits (which can most readily be done with testing and other data) to perhaps get a different result than the denial NHTSA announced in 1996.

In the December 1996 request for comments, NHTSA asked for comments on whether the agency should expressly prohibit front ''brake'' lamps because of the lack of data to show any positive safety effects for these lamps and the likely negative safety consequences of the widespread use of these lamps. After consideration of this possibility, NHTSA has decided not to take this action. These lamps do not necessarily affect the standardized operation, or impair the effectiveness, of any required lighting. NHTSA has traditionally had no regulations for such lamps, because they had no impact on the core safety functions of lighting. The agency will reexamine this approach if it has some testing or other indication that this approach may need to be changed. At this time, NHTSA has no such data. If front ''brake'' lamps are installed more widely and the agency's concerns remain, NHTSA will carefully consider a research effort to get more information about the safety impact of such lamps.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on October 30, 1998.

James R. Hackney,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 98–29520 Filed 11–3–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 101998A]

Fisheries of the Northeastern United States; Summer Flounder Fisheries; Readjustment to the 1998 Commercial State Quota for New York

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

ACTION: Commercial quota adjustment.

SUMMARY: NMFS issues this notification announcing an adjustment to the 1998 summer flounder commercial state quota for New York. This adjustment complies with regulations implementing the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP), which require that landings in excess of a state's annual summer flounder commercial quota be deducted from a state's respective quota the following year. The public is advised that the quota adjustment has been made, and is informed of the revised quota.

DATES: Effective October 30, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fisheries Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: Regulations implementing summer flounder management measures are found at 50 CFR part 648, subparts A and G. The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100. Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year.

The final specifications for the 1998 summer flounder fishery (62 FR 66304, December 18, 1997), adopted to ensure achievement of a fishing mortality rate (F) of 0.24 for 1998, set a total commercial quota equal to 11,105,636 lb (5.0 million kg). In the preamble to the rule implementing these specifications, NMFS noted that associated adjustments to states' 1998 quotas would be required as a result of any landings in excess of 1997 quota. Two adjustments were made to the 1998 state commercial quotas, effective January 16, 1998 (63 FR 3478, January 23, 1998) and April 23, 1998 (63 FR 23227, April 28, 1998) to reflect updated 1997 landings. In addition, NMFS adjusted the North Carolina commercial quota to comply with a court order setting aside the 1997 overage, which had been deducted from the 1998 quota earlier this year. This adjustment was effective on October 20, 1998 (63 FR 56867, October 23, 1998).

In the April 28, 1998, notification announcing readjustments to the 1998 summer flounder commercial quotas, it was noted that further law enforcement investigations were ongoing, and a resulting quota adjustment from those investigations would be published, if necessary. The conclusion of such investigations resulted in an increase of 24,863 lb (11,277.8 kg) to the amount of summer flounder landed in New York in 1997 so that the 1997 overage for New York is revised from 61,398 lb (27,850 kg) to 86,261 lb (39,127.9 kg). Therefore, the final readjusted quota for New York in 1998 is 24,863 lb (11,277.8 kg) less than the adjusted quota published in the April 28 notification for a final 1998 quota for that state of 763,419 lb (346,286.8 kg). The final readjusted 1998 statewide quota is revised from 10,958,734 lb (4,972,102 kg) to 10,933,871 lb (4,959,603 kg). Also, commercial landings for New York for 1997 are revised from 815,741 lb (370,014 kg) to 840,604 lb (381,297.9 kg) and total coastwide commercial landings for summer flounder are revised from 8,887,783 lb (4,031,431 kg) to 8,912,646 lb (4,042,776.2 kg). Table 1. displays the current 1998 quotas resulting from these readjustments.

TABLE 1.—SUMMER FLOUNDER FINAL READJUSTED 1998 QUOTAS

State	Unadjusted 1998 quota [1]		Adjusted 1998 quota [2]		Final readjusted 1998 quota	
	lb	(kg) [3]	lb	(kg)	lb	(kg)
ME	5,284	2,397	4,791	2,173	4,791	2,173
NH	51	23	51	23	51	23
MA	757,841	343,751	721,889	327,448	721,899	327,448

TABLE 1.—SUMMER FLOUNDER FINAL READJUSTED 1998 QUOTAS—Continued

State	Unadjusted 1998 quota [1]		Adjusted 1998 quota [2]		Final readjusted 1998 quota	
	lb	(kg) [3]	lb	(kg)	lb	(kg)
RI	1,742,583	790,422	1,742,583	790,422	1,742,583	790,422
CT	250,791	113,757	250,791	113,757	250,457	113,605
NY	849,680	385,408	788,282	357,559	763,419	346,286
NJ	1,858,363	842,939	1,858,363	842,939	1,858,363	842,940
DE	[4] (3,685)	(1,671)	(14,534)	(6,593)	(14,534)	(6,593)
MD	226,570	102,770	199,876	90,662	199,876	90,662
VA	2,368,569	1,074,365	2,357,377	1,069,288	2,357,377	1,069,288
NC	3,049,589	1,383,270	2,649,849	1,201,951	3,049,589	1,383,270
Total	11,105,636	5,037,432	10,558,994	4,789,479	10,933,871	4,959,603

[1] As published on December 18, 1997 (62 FR 6304).
[2] As published on April 28, 1998 (63 FR 23227).
[3] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[4] Parentheses indicate a negative number.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: October 29, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–29521 Filed 10–30–98; 3:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 63, No. 213
Wednesday, November 4, 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 Parts 91, 121 and 135

Terrain Awareness and Warning System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on proposed Technical Standard Order (TSO) C151, Terrain Awareness and Warning System (TAWS). The proposed TSO prescribes the minimum operational performance standards that a TAWS must meet to be identified with the applicable TSO marking.

DATES: Comments submitted must identify the TSO file number and be received on or before January 26, 1999.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Michelle Swearingen, Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591, *Telephone:* (202) 267–3817, *FAX:* (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested person are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. Comments received on the proposed technical standard order may be examined, before the closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

The Federal Aviation Administration (FAA) has proposed issuing operating rules that would prohibit operation of turbine-powered U.S. registered airplanes type certificated to have six or more passenger seats, exclusive of pilot and copilot seating, unless that airplane is equipped with an FAA-approved terrain awareness and warning system (also referred to as an enhanced ground proximity warning system) (63 FR 45628, August 26, 1998). That proposal would affect aircraft operated under parts 91, 121 and 135. Because operators under part 125 and operators of U.S. registered airplanes under part 129 must comply with part 91, they would also have to meet this proposed requirement.

The change is needed because there have been several accident investigations and studies that have shown a need to expand the safety benefits of ground proximity warning systems to certain additional operations. In addition, the investigations and studies have shown that there is a need to increase the warning times and situational awareness of flight crews to decrease the risk of controlled flight into terrain accidents.

Currently, the FAA approves the manufacture and installation of Ground Proximity Warning Systems (GPWS) through Technical Standard Orders. Section 121.360 of 14 CFR requires the use of a GPWS meeting TSO-C92, which has been reissued as TSO–C92a, TSO–C92b, and TSO–C92c. The FAA does not intend to revise TSO–C92c to include TAWS requirements.

Instead, the FAA is developing and plans to issue a new and separate TSO for TAWS. The new TSO–C151, TAWS, is being developed through the FAA TSO process that allows for public comments. Any person desiring to review and comment on the draft TSO–C151 may obtain a copy of the draft TSO–C151 from the person mentioned in the section entitled **FOR FURTHER INFORMATION CONTACT**. This TSO would be the means to obtain FAA approval of the TAWS product.

The standards of the TSO apply to equipment intended to provide the flight crew with both aural and visual alerts and terrain information on a display to aid in preventing an inadvertent controlled flight into terrain (CFIT) event. The TAWS includes: (a) a terrain display, (b) terrain awareness and alerting functions which use position information provided by either a suitable internal position sensor or an on-board area navigational system and an on-board terrain database, and (c) ground proximity detection and alerting functions that are described in the TSO as modes 1–6.

Comments submitted in response to this TSO notice will also be included in the docket for the TAWS NPRM. A preliminary review of comments submitted in response to the NPRM indicates that several commenters are very interested in the provisions of the proposed TAWS TSO. Accordingly, to the extent that commenters want to clarify or supplement their comments submitted to the NPRM docket, they should so identify those clarifying and supplementary comments submitted to the TSO–C151 docket.

How To Obtain Copies

A copy of the proposed TSO–C151 may be obtained via Internet (http://www.faa.gov/avr/air/100home.htm) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT.** RTCA Document No. DO–161A, ''Minimum Performance Standards—Airborne Ground Proximity Warning Equipment,'' dated May 27, 1976; DO–160D, ''Environmental Conditions and Test Procedures for Airborne Equipment,'' dated July 29, 1997; DO–178B, ''Software Considerations in Airborne Systems and Equipment Certification,'' dated 1992; and DO–200, ''Preparation, Verification and Distribution of User-Selectable Navigation Data Bases,'' dated November 28, 1988, may be purchased from the RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 22036. Copies of the RTCA documents may be inspected at the **ADDRESSES** listed above. However, those documents are copyrighted and may not

be copied without the written consent of RTCA, Inc.

Issued in Washington, DC, on October 26, 1998.

James C. Jones,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 98–29492 Filed 11–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AI93

Recognition of Organizations and Accreditation of Representatives, Attorneys, and Agents

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise existing procedures and requirements regarding recognition of service organizations and accreditation of their representatives and agents, attorneys, and individuals seeking to represent claimants for benefits administered by VA. These amendments are necessary to improve clarity and to enhance VA's ability to assure high quality representation of claimants.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI93.'' All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Martin J. Sendek, Staff Attorney, Office of the General Counsel (022C), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273–6330.

SUPPLEMENTARY INFORMATION: We are proposing to make numerous minor changes in the provisions governing recognition of organizations and accreditation of representatives, agents, attorneys, and individuals for purposes of updating, clarification, and conformity and to enhance VA's ability to protect the interests of claimants.

New definitions of ''complete claims service,'' ''cross-accreditation,'' and ''facilities'' would be added to § 14.627 to assist in implementation of other provisions discussed below. The definition of ''facilities'' would reflect General Counsel opinions interpreting that term. The definition of ''claimant'' in § 14.627 would be amended to reflect that representation may begin before a claim is filed.

In § 14.628, minor changes would be made in provisions governing recognition of ''national,'' ''state,'' and ''other organizations.'' In order to meet the diversification requirement for recognition as a ''national'' organization, an organization would be required to have a sizable number of chapters or offices in more than one region of the country, rather than merely in more than one state, as is currently required. This would provide better evidence that an organization is truly ''national'' in the scope of its operations. In the case of ''state'' organizations, the regulation would be amended to require that the organization not only be created by a state government, as is currently required, but that it also be funded by the state government. This change would assure that the organization is in fact affiliated with and supported by the state government. Also, provisions currently designated as relating to ''other'' organizations would be given the more descriptive heading of ''regional or local organization.'' Provisions in § 14.628 pertaining to the qualification of service organizations for recognition would be condensed and simplified. The requirements for recognition would be revised to make clear that an organization seeking recognition must establish that it has adequate funding to fulfill the representational responsibilities it wishes to assume. Requirements relating to the provision of complete claims service would be modified to reflect that certain organizations may not choose to represent every claimant seeking their assistance and to assure that the interests of claimants are protected in such cases. Rules governing the decision to grant or deny recognition would be simplified and would be revised to make clear that only the Secretary of Veterans Affairs may grant recognition and that the General Counsel may deny recognition, subject to appeal to the Secretary.

Provisions pertaining to the accreditation of service organization representatives in § 14.629(a) would be amended to delete certain obsolete material relating to the qualifications of representatives. Provisions pertaining to the accreditation of agents in § 14.629(b) would be amended to require that applicants for accreditation as agents use VA Form 21a prescribed by VA for that purpose. The information required to be submitted on this form would be set forth in the regulation at proposed § 14.629(b). The information required to be included on the form is necessary to establish that statutory eligibility requirements, i.e., good character and reputation, are met. This change is intended to assure that all necessary information will be supplied with the application. Section 14.629(b) would also be simplified by omission of certain provisions pertaining to internal VA procedures. Further, § 14.629(b) would provide that an applicant must achieve a score of 75 percent or more on a written examination administered by VA. We believe this will ensure sufficient proficiency to represent claimants before this Department.

Provisions in §§ 14.629 and 14.631 concerning authorization of representation by attorneys and use of legal interns, law students, and paralegals would be consolidated and clarified. Provisions governing attorneys' access to records would be removed from § 14.629(c). Rules governing access to records are stated in part 1 of title 38, Code of Federal Regulations, and their duplication in this part is unnecessary.

Proposed amendments to § 14.630 would incorporate VA's long-standing interpretation that the authorization to represent a claimant under that section is available on a one-time-only basis and may not be used to represent a series of claimants one at a time. The revised provisions would also specify factors which may be considered by the General Counsel in determining whether to grant an exception to this limitation.

The provisions pertaining to powers of attorney in § 14.631 would be modified to reflect a change in the law made by section 508 of Pub. L. 104–275. Under the revised provision, when a claimant executes a power of attorney in favor of a representative of a recognized service organization, unless the claimant indicates otherwise in the specific manner prescribed in the regulations, the power of attorney would be considered as designating the whole organization as the claimant's representative. Also, the regulation would be amended to reflect that a claimant may select an individual service organization representative as his or her representative if prescribed procedures are followed. A provision would be added to make clear that a representative designated in a power of attorney can decline to accept the

appointment and to assure that the claimant and VA are notified of that action. Current § 14.631(e), dealing with the continuation of the authority of a power of attorney upon a claimant's death, would be removed to reflect recent court decisions.

Section 14.632 would be amended to revise obsolete terminology and to delete provisions relating to internal VA procedures.

Section 14.633(a), regarding termination of accreditation, would be modified to make clear that accreditation shall be canceled immediately upon receipt of a request for cancellation from an agent, attorney, representative, or certifying organization and that cross-accreditation shall be canceled immediately once the accreditation on which the cross-accreditation is based is canceled. In order to better inform representatives of VA's expectations regarding their responsibilities to claimants, § 14.633(c) would be amended to add failure to keep a claimant informed of actions taken concerning a claim as an additional example of conduct warranting disciplinary action. VA regulations are not intended to define or affect any professional responsibilities of attorneys as members of the bar.

Section 14.633(e) would be amended to allow a Regional Counsel to suspend an agent's or attorney's accreditation for misconduct or incompetence, after an inquiry, pending a decision on termination of accreditation by the General Counsel. This change would make procedures applicable to agents and attorneys consistent with those applicable to representatives and would permit the Department to better protect the interests of claimants. In recognition of the national practice of certain claimants' representatives, § 14.633(e) would also be amended to make clear that a Regional Counsel undertaking an inquiry concerning the conduct of an agent, attorney, or service organization representative may request the assistance of another Regional Counsel as to matters within the latter's area of jurisdiction. Section 14.633(g) would be amended to clarify the actions, including suspension of accreditation and the issuance of a formal reprimand, which the General Counsel may take with respect to disciplinary proceedings and to state procedures for reinstatement of accreditation following cancellation.

Section 14.635 would be amended to incorporate VA's long-standing interpretation that free space and facilities may only be provided to the accredited representatives of recognized national organizations in buildings owned or occupied by VA. Certain inappropriate cross references erroneously included after §§ 14.634 and 14.635 would be deleted.

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has determined that proposed 38 CFR 14.629(b) would contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection 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 proposed 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 mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AI93.''

Title: Application for Accreditation as a Claims Agent.

Summary of collection of information: Under the provisions of proposed § 14.629(b), an individual who wishes to be accredited as a claims agent to represent claimants before VA would be required to submit a completed VA Form 21a to VA's Office of General Counsel (022A), 810 Vermont Ave., NW, Washington, DC 20420. The information requested on VA Form 21a is set forth at proposed § 14.629(b).

Description of the need for information and proposed use of information: This information is needed to determine whether an individual would be eligible to be accredited as a claims agent to represent claimants before VA.

Description of likely respondents: Individuals who wish to be accredited as a claims agent to represent claimants before VA.

Estimated number of respondents: 20 per year.

Estimated frequency of responses: 1.

Estimated total annual reporting and recordkeeping burden: 15 hours.

Estimated annual burden per collection: 45 minutes.

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 responses 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 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.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The adoption of the proposed changes would not cause significant changes for those affected by the proposal. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Approved: July 24, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 14 is proposed to be amended as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL

1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 5502, 5902–5905, unless otherwise noted.

2. Section 14.626 is revised to read as follows:

§ 14.626 Purpose.

The purpose of the regulation of representatives is to assure that claimants for Department of Veterans Affairs benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

3. In § 14.627, paragraphs (h), (i), (j), and (k) are redesignated as paragraphs (k), (l), (m), and (n), respectively; and paragraph (g) is revised and new paragraphs (h), (i), and (j) are added; and an authority citation is added at the end of the section, to read as follows:

§ 14.627 Definitions.

* * * * *

(g) *Claimant* means a person who has filed or intends to file a written application for determination of entitlement to benefits provided under title 38, United States Code, and implementing directives.

(h) *Complete claims service* means representation of each claimant requesting assistance, from the initiation of a claim until the completion of any potential administrative appeal.

(i) *Cross-accreditation* means an accreditation based on the status of a representative as an accredited and functioning representative of another organization.

(j) *Facilities* means equipment and furnishings which promote the efficient operation of an office and adjacent accommodations use of which is needed in order to promote access to office space.

* * * * *

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

4. In § 14.628, paragraph (e) is removed; paragraphs (f) and (g) are redesignated as paragraphs (e) and (f), respectively; and paragraphs (a)(2), (b), (d), and newly redesignated (e), and the heading of paragraph (c) are revised to read as follows:

§ 14.628 Recognition of organizations.

* * * * *

(a) * * *

(2) It satisfies the following requirements:

(i) Requirements set forth in paragraph (d) of this section, including information required to be submitted under that paragraph;

(ii) In the case of a membership organization, membership of 2,000 or more persons, as certified by the head of the organization;

(iii) Capability and resources to provide representation to a sizable number of claimants;

(iv) Capability to represent claimants before the Board of Veterans' Appeals in Washington, D.C.; and

(v) Geographic diversification, i.e., sizable number of chapters or offices in more than one region of the country.

(b) *State organization.* An organization created and funded by a State government for the purpose of serving the needs of veterans of that State may be recognized. Only one such organization may be recognized in each State.

(c) *Regional or local organization.*

* * *

(d) *Requirements for recognition.* (1) In order to be recognized under this section, an organization shall meet the following requirements:

(i) Have as a primary purpose serving veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit a statement outlining the purpose of the organization.

(ii) Demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of veterans' services to a sizable number of veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) The number of members and number of posts, chapters, or offices and their addresses; and

(B) A copy of the articles of incorporation, constitution, charter, and bylaws of the organization, as appropriate; and

(C) A description of the services performed or to be performed in connection with programs administered by the Department of Veterans Affairs, with an approximation of the number of veterans, survivors, and dependents served or to be served by the organization in each type of service designated; and

(D) A description of the type of services, if any, performed in connection with other Federal and State programs which are designed to assist former armed forces personnel and their dependents, with an approximation of the number of veterans, survivors, and dependents served by the organization under each program designated.

(iii) Commit a significant portion of its assets to veterans' services and have adequate funding to properly perform those services. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) A copy of the last financial statement of the organization indicating the amount of funds allocated for conducting particular veterans' services; and

(B) A statement indicating that use of the organization's funding is not subject to limitations imposed under any Federal grant or law which would prevent it from representing claimants before the Department of Veterans Affairs.

(iv) Provide complete claims service to each veteran requesting representation or give written notice of any limitation in its claims service with advice concerning the availability of alternative sources of claims service. Except as provided in paragraphs (d)(l)(iv)(A) and (B) of this section, in establishing that it meets this requirement, an organization requesting recognition shall submit evidence of capability to represent claimants before Department of Veterans Affairs regional offices and before the Board of Veterans' Appeals.

(A) If an organization does not intend to represent claimants before the Board of Veterans' Appeals, the organization shall submit evidence of an association or agreement with a recognized service organization for the purpose of representation before the Board of Veterans' Appeals, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning the availability of alternative sources of claims service.

(B) If an organization does not intend to represent each claimant requesting assistance, the organization shall submit a statement of its policy concerning the selection of claimants and the proposed method of informing claimants of this policy, with advice concerning the availability of alternative sources of claims service.

(v) Take affirmative action, including training and monitoring of accredited representatives, to ensure proper handling of claims. In establishing that it meets this requirement, an

organization requesting recognition shall submit:

(A) A statement of the skills, training, and other qualifications of current paid or volunteer staff personnel for handling veterans' claims; and

(B) A plan for recruiting and training qualified claim representatives, including the number of hours of formal classroom instruction, the subjects to be taught, the period of on-the-job training, a schedule or timetable for training, the projected number of trainees for the first year, and the name(s) and qualifications of the individual(s) primarily responsible for the training.

(2) In addition, the organization requesting recognition shall supply:

(i) A statement that neither the organization nor its accredited representatives will charge or accept a fee or gratuity for service to a claimant and that the organization will not represent to the public that Department of Veterans Affairs recognition of the organization is for any purpose other than claimant representation; and

(ii) The names, titles, and addresses of officers and the official(s) authorized to certify representatives.

(e) *Recognition or denial.* A notice of the determination on a request for recognition will be sent to an organization within 90 days of receipt of all information to be supplied.

(i) Only the Secretary is authorized to recognize organizations.

(ii) The General Counsel is authorized to deny recognition of organizations. If the General Counsel denies recognition, the General Counsel will provide the organization with a notice of that decision, setting forth an explanation of the reasons for denial of recognition. A denial of recognition may be appealed to the Secretary within 90 days of mailing of notice of the denial.

* * * * *

5. In § 14.629, paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) are removed; the section heading and introductory text; paragraphs (a) introductory text, (a)(I), (a)(2)(ii) and the section authority citation; and paragraphs (b) and (c) are revised, to read as follows:

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.

The Regional Counsel will resolve any question of current qualifications of a service organization representative, agent, or attorney. The claimant, the service organization representative, agent, or attorney, or an official of the organization for which such person acts, or a concerned Department of Veterans Affairs official may appeal such determination to the General Counsel.

(a) *Service Organization Representatives.* A recognized organization shall file with the Office of the General Counsel VA Form 21 (Application for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. In recommending a person, the organization shall certify that the designee:

(1) Is of good character and reputation and has demonstrated an ability to represent claimants before the Department of Veterans Affairs;

* * * * *

(2) * * *

(ii) Has successfully completed a course of training and an examination which have been approved by a VA Regional Counsel with jurisdiction for the State; and

* * * * *

(Authority: 38 U.S.C. 501(a), 5902)

(b) *Agents.* (1) An individual desiring accreditation as an agent must establish that he or she is of good character and reputation and is qualified to render assistance to claimants in the presentation of their claim(s). An individual desiring accreditation as an agent must file a completed application with the Office of the General Counsel on VA Form 21a on which the applicant submits the following:

(i) His or her full name and business address;

(ii) Information concerning the applicant's military and civilian employment history (including character of military discharge, if applicable);

(iii) Information concerning representation provided by the applicant before any department, agency, or bureau of the Federal government.

(iv) Information concerning any criminal background of the applicant;

(v) Information concerning whether the applicant has ever been determined mentally incompetent or hospitalized as a result of a mental disease or disability, or is currently under treatment for a mental disease or disability;

(vi) Information concerning whether the applicant was previously accredited as a representative of a veterans service organization and, if so, whether that accreditation was terminated or suspended by or at the request of that organization;

(vii) The names, addresses, and phone numbers of three character references; and

(viii) Information relevant to whether or not the applicant has any physical limitations which would interfere with the completion of a comprehensive written examination administered under the supervision of a VA regional counsel.

(2) Applicant's must achieve a score of 75 percent or more on a written examination administered by VA as a prerequisite to accreditation. No applicant shall be allowed to sit for the examination more than twice in any 6 month period.

(Authority: 38 U.S.C. 501(a), 5904)

(c) *Attorneys.* (1) An attorney may represent a claimant upon submission of authorization as described in § 14.631(a) or (b).

(2) If the claimant consents in writing, an attorney associated or affiliated with the claimant's attorney of record or employed by the same legal services office as the attorney of record may assist in the representation of the claimant.

(3) A legal intern, law student, or paralegal may not be independently accredited to represent claimants under this paragraph. A legal intern, law student, or certified paralegal may assist in the preparation, presentation, or prosecution of a claim, under the direct supervision of an attorney of record designated under § 14.631(a) or (b), if the claimant's written consent is furnished to the Department of Veterans Affairs. Such consent must specifically state that participation in all aspects of the claim by a legal intern, law student, or paralegal furnishing written authorization from the attorney of record is authorized. In addition, suitable authorization for access to the claimant's records must be provided in order for such an individual to participate. The supervising attorney must be present at any hearing in which a legal intern, law student, or paralegal participates. (See § 20.606).

(4) Unless revoked by the claimant, consent provided under paragraph (c)(2) or paragraph (c)(3) of this section shall remain effective in the event the claimant's original attorney is replaced as attorney of record by another member of the same law firm or an attorney employed by the same legal services office.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0018)

(Authority: 38 U.S.C. 501(a), 5904)

6. Section 14.630 is revised to read as follows:

§ 14.630 Authorization for a particular claim.

(a) Any person may be authorized to prepare, present, and prosecute one

claim. A proper power of attorney, and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the office where the claim is presented. A signed writing, which may be in letter form, identifying the claimant and the type of benefit or relief sought, specifically authorizing a named individual to act as the claimant's representative, and further authorizing direct access to records pertinent to the claim, will be accepted as a power of attorney.

(b) Representation may be provided by an individual pursuant to this section one time only. An exception to this limitation may be granted by the General Counsel in unusual circumstances. Among the factors which may be considered in determining whether an exception will be granted are:

(1) The number of accredited representatives and claims agents operating in the claimant's geographic region;

(2) Whether the claimant has unsuccessfully sought representation from other sources;

(3) The nature and status of the claim; and

(4) Whether there exist unique circumstances which would render alternative representation inadequate.

(Authority: 38 U.S.C. 501(a), 5903)

7. In § 14.631, paragraphs (c)(3) and (e) are removed; paragraphs (b), (c), and (d) are redesignated as paragraphs (e), (f), and (g), respectively; and paragraph (a), introductory text, (a)(2), and newly redesignated paragraphs (e), (f)(1), and (g) are revised; and paragraphs (b), (c), and (d) are added, to read as follows:

§ 14.631 Powers of attorney.

(a) A power of attorney, executed on either Department of Veterans Affairs Form 21–22 (Appointment of Veterans Service Organization as Claimant's Representative) or Department of Veterans Affairs Form 22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant, except when representation is by an attorney who complies with paragraph (b) of this section or when representation by an individual is authorized under § 14.630. The power of attorney shall meet the following requirements:

* * * * *

(2) Shall be presented to the Department of Veterans Affairs regional office that has jurisdiction over the claim for filing in the claimant's claims folder.

(b) An attorney engaged by a client may state in writing on his or her letterhead that the attorney is authorized to represent the claimant. This evidence of authorization shall be equivalent to an executed power of attorney and shall be presented to the Department of Veterans Affairs regional office that has jurisdiction over the claim for filing in the claimant's claims folder.

(c) The Secretary may, for any purpose, treat a power of attorney naming as a claimant's representative an organization recognized under § 14.628, a particular office of such an organization, or an individual representative of such an organization as an appointment of the entire organization as the claimant's representative, unless the claimant specifically indicates in the power of attorney a desire to appoint only the individual representative. Such specific indication must be made in the space on the power-of-attorney form for designation of the representative and must use the word ''only'' with reference to the individual representative.

(d) An organization, representative, agent, or attorney named in a power of attorney executed pursuant to paragraph (a) of this section may decline to accept appointment as a claimant's representative by so notifying the claimant and the agency of original jurisdiction in writing prior to taking any action on the claimant's behalf before the Department of Veterans Affairs after execution of the power of attorney by the claimant.

(e) Questions concerning the validity or effect of powers of attorney shall be referred to the Regional Counsel of jurisdiction for initial determination. This determination may be appealed to the General Counsel.

(f)(1) Only one organization, representative, agent, or attorney will be recognized at one time in the prosecution of a particular claim. Except as provided in § 14.629(c) and paragraph (f)(2) of this section, all transactions concerning the claim will be conducted exclusively with the recognized organization, representative, agent, or attorney of record until notice of a change, if any, is received by the appropriate office of the Department of Veterans Affairs.

* * * * *

(g)(1) A power of attorney may be revoked at any time, and an attorney may be discharged at any time. Unless a claimant specifically indicates otherwise, the receipt of a new power of attorney shall constitute a revocation of an existing power of attorney.

(2) If an attorney submits a letter concerning representation under paragraph (b) of this section regarding a particular claim, or a claimant authorizes a person to provide representation in a particular claim under § 14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

8. Section 14.632 is revised to read as follows:

§ 14.632 Determination of qualifications.

If challenged, the qualifications of prospective representatives or agents shall be verified by the Regional Counsel of jurisdiction. The report of the Regional Counsel, if any, including any recommendation of the Department of Veterans Affairs facility director, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, notification of accreditation will be issued by the General Counsel or the General Counsel's designee and will constitute authority to prepare, present, and prosecute claims in all Department of Veterans Affairs installations.

(Authority: 38 U.S.C. 501(a), 5902, 5904)

9. In § 14.633, paragraph (e)(2)(ii) is removed; paragraph (e)(2)(iii) is redesignated as new paragraph (e)(2)(ii); and paragraphs (a), (b), (c) introductory text, (c)(3), (c)(4), (e) introductory text, (e)(2)(i) and (g) are revised, to read as follows:

§ 14.633 Termination of accreditation of agents, attorneys, and representatives.

(a)(1) Accreditation shall be canceled at the request of an agent, attorney, representative, or certifying organization. If an organization requests cancellation of the accreditation of a representative it has certified, the organization shall notify the representative of the request, unless the representative is deceased.

(2) Cross-accreditation shall be canceled when a representative ceases to be accredited through the organization whose accreditation created the basis for the cross-accreditation, unless information has

been provided to the General Counsel indicating that the representative is independently qualified for accreditation by reason of membership or employment with the organization through which he or she is cross-accredited.

(b) Accreditation shall be canceled when the General Counsel finds that an agent, attorney, or representative no longer meets a requirement of § 14.629.

(c) Accreditation shall be canceled when the General Counsel finds, by clear and convincing evidence, one of the following on the part of an agent, attorney, or representative:

* * * * *

(3) Demanding or accepting unlawful compensation or gratuity for preparing, presenting, or prosecuting a claim or advising or consulting a claimant concerning a claim;

(4) Any other unlawful, unprofessional, or unethical practice. (Unlawful, unprofessional, or unethical practice shall include but not be limited to the following—deceiving, misleading, or threatening a claimant; neglecting to prosecute a claim for 6 months or more; failing to furnish a reasonable response within 90 days of a request for evidence by the Department of Veterans Affairs; failing to keep a claimant informed of actions taken concerning his or her claim; or willfully withholding an application for benefits.)

* * * * *

(e) As to cancellation of accreditation under paragraphs (b), (c), or (d) of this section, upon receipt of information from any source indicating failure to meet the requirements of § 14.629, improper conduct, or incompetence, the Regional Counsel of jurisdiction shall initiate an inquiry into the matter. If the matter involves an accredited representative of a recognized organization, this inquiry shall include contact with the representative's organization. The Regional Counsel of jurisdiction may request the assistance of another Regional Counsel as to matters occurring within the latter's area of jurisdiction.

* * * * *

(2) * * *

(i) Suspend accreditation immediately and notify the agent, attorney, or representative, and in the case of a representative, the representative's organization, of the suspension and of an intent to cancel accreditation. The notice will also state the reason(s) for the suspension and impending cancellation and inform the party of a right to request a hearing on the matter or to submit additional evidence within 10 working days of receipt of such notice. Such time may be extended for a reasonable period upon showing of sufficient cause.

* * * * *

(g)(1) The General Counsel may cancel accreditation, continue the existing suspension of accreditation for a specified period, dissolve the existing suspension, and/or issue a formal reprimand. The decision of the General Counsel is final. The effective date of cancellation or suspension of accreditation is the date a final decision is rendered by the General Counsel. The records of the case will be maintained in the General Counsel's office for ten years from the date of a final decision.

(2) A person whose accreditation has been canceled may apply for reinstatement at any time following the expiration of two years from the date of cancellation by filing a written request for reinstatement with the General Counsel.

(i) In the case of an individual seeking reinstatement as a service organization representative, a recognized organization must file on his or her behalf VA Form 21 (Application for Accreditation as a Service Organization Representative). Such an application will be evaluated subject to the same criteria as are applicable to new applications for accreditation as a service organization representative, except that satisfactory proof of good character and reputation will be required in addition to certification by the service organization.

(ii) An individual requesting reinstatement as a claims agent must do so by submitting VA Form 21a ''Application for Accreditation as a Claims Agent.'' Such an application will be evaluated subject to the same criteria as are applicable to new applications for accreditation as a claims agent.

(iii) An attorney requesting reinstatement must demonstrate, to the satisfaction of the General Counsel, that he or she is a licensed attorney in good standing, is of good character and reputation, is sufficiently competent to handle VA cases, and will follow the statutes and regulations applicable to the adjudication of claims and the representation of claimants before VA.

(3) Reinstatement to full accreditation following cancellation is subject to a two-year probationary period.

(i) During the probationary period, the accreditation of an attorney, agent, or representative may be canceled upon a finding by a Regional Counsel that a preponderance of evidence supports a determination that the agent, attorney, or representative has engaged in conduct described in paragraph (c)(1), (2), (3), or (4) of this section.

(ii) In a proceeding to cancel accreditation during a probationary period, procedures concerning notice, hearing, and submission of additional evidence shall be as described in paragraphs (e)(2)(i) and (f) of this section. The decision by the Regional Counsel is final. The effective date for cancellation of accreditation shall be the date a decision is issued by the Regional Counsel. The records of the case will be forwarded to the General Counsel's office and will be maintained in that office for ten years from the date of the decision.

* * * * *

§ 14.634 [Amended]

10. In § 14.634, the cross references immediately following the authority citation are removed.

11. In § 14.635, the cross references immediately following the authority citation are removed; the section introductory text and paragraph (b), are revised to read as follows:

§ 14.635 Office space and facilities.

The Secretary may furnish office space and facilities, if available, in buildings owned or occupied by the Department of Veterans Affairs, for the use of paid full-time representatives of recognized national organizations, and for employees of recognized State organizations who are accredited to national organizations, for purposes of assisting claimants in the preparation, presentation, and prosecution of claims for Department of Veterans Affairs benefits.

* * * * *

(b) When in the judgment of the Director office space and facilities previously granted could be better used by the Department of Veterans Affairs, or would receive more effective use or serve more claimants if allocated to another recognized national organization, the Director may withdraw such space or reassign such space to another organization. In the case of a facility under the control of the Veterans Benefits Administration, the final decision on such matters will be made by the Under Secretary for Benefits.

(Authority: 38 U.S.C. 501(a), 5902)

[FR Doc. 98–29490 Filed 11–3–98; 8:45 am]

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

U.S. Agency for International Development

48 CFR Parts 712, 727, 742, 752, and Chapter 7, Appendix I

[AIDAR Notice 98–2]

RIN 0412–AA30

Miscellaneous Amendments to Acquisition Regulations

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Proposed rule.

SUMMARY: The U.S. Agency for International Development seeks public comment on a proposed rule that would revise the USAID Acquisition Regulation (AIDAR), 48 CFR Chapter 7. These revisions are being proposed to address current AIDAR deficiencies, some of which result from changes in the Federal Acquisition Regulation (FAR, 48 CFR Ch. 1).

DATES: Comments must be received no later than January 4, 1998.

ADDRESSES: Comments on the proposed rule should be addressed to: Ms. Diane Howard, Procurement Analyst, Policy Division, Office of Procurement (M/OP/P), Room 7.08–082U, 1300 Pennsylvania Ave. (RRB), U.S. Agency for International Development, Washington, DC 20523–7801. Electronic mail comments are encouraged and may be submitted via Internet to dhoward@usaid.gov. Please include the full body of electronic mail comments in the text and not as an attachment, as well as the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: M/OP/P, Ms. Diane M. Howard, (202) 712–0206.

SUPPLEMENTARY INFORMATION: USAID is seeking comments on the proposed rule as described below:

A. The FAR was significantly revised as a result of the Federal Acquisition Streamlining Act of 1994 (FASA) and the Federal Acquisition Reform Act of 1996, now known as the Clinger-Cohen Act of 1996, particularly in how it covers the procurement of commercial items. An existing AIDAR clause, 752.7008 ''Use of Government Facilities or Personnel (APR 1984)'', requires that the unauthorized use of U.S. Government facilities (such as office space or equipment), or U.S. Government clerical or technical personnel in the performance of the services specified in the contract shall result in an offset in the amount payable under the contract by an amount equal to the value of the U.S. Government facilities or personnel. Although USAID does not procure many commercial items, we envision a possible situation in which this policy may be in conflict with customary commercial practice, if there is a commercial practice of providing the purchaser's facilities or personnel to the vendor for use in the normal performance of the contract. A new section 712.101 ''Policy'' is proposed to address this potential concern; while we believe that the situation would rarely arise, the proposed language is intended to clarify how it is to be handled, should it arise. We are especially interested in receiving comments from vendors, particularly of commercial services, who would be in a better position to inform us whether our concerns have any basis.

B. For years before the Federal Acquisition Regulation covered Rights in Data and Copyrights (48 CFR Subpart 27.4), AIDAR Appendix I contained USAID's policy on academic publication or release to parties other than those specifically authorized, of unclassified materials gathered or developed under contracts with academic institutions. The policy stated in Appendix I is not fully consistent with comparable coverage in FAR Subpart 27.4 and the clause at FAR 52.227–14, and USAID has determined that the Appendix, which is more restrictive than the FAR coverage, should be removed, as we propose to do in this Rule. However, some of the concerns addressed in the Appendix still exist, so a new Part 727 is proposed to address these concerns by authorizing the contracting officer to reserve the right to review data prior to publication. Since this proposed rule will not require the contracting officer's approval for the manuscript's publication, we do not believe that it is contrary to FAR 27.4 or the Rights in Data—General clause at FAR 52.227–14. Rather, it will serve to establish the Agency's policy regarding publication of material that may have national security implications serious enough to adversely affect the conduct of U.S. assistance programs and that may have potential repercussions on the successful execution of development and other cooperative programs in which the United States and foreign countries are involved.

In addition, the proposed Part 727 includes language to make the clause at FAR 52.227–14 applicable to USAID's contracts performed overseas and awarded to U.S. organizations, to provide an alternate paragraph to add to this clause to reserve USAID's right to restrict release of data when release may negatively impact the Government's development or diplomatic relationship with the cooperating country, and to provide guidance on Rights in Data coverage for overseas contracts with non-US entities.

C. Over the past several years as part of the Agency's reengineering efforts under the NPR, we have been trying to standardize reporting requirements under our technical assistance contracts. Several versions of a ''Reports'' clause have been implemented in our contracts since 1994, in lieu of the 1989 version of the clause that currently is found at (48 CFR) AIDAR 752.7026. However, these standardized ''Reports'' clauses have been found to be inadequate as contractor performance monitoring tools. Many times, contractors have not been reporting substantive information that is useful to the cognizant technical officer (CTO)'s monitoring of the contractor's performance, or the CTO has not been making effective use of the information being provided, or the reports were submitted too late for the information they contained to be of any benefit in improving or correcting the contractor's performance.

We are proposing to add a new section 742.1170 to the AIDAR, as well as a new clause as 752.242–70. Although we considered just making use of (48 CFR) FAR Subpart 42.11, after conducting an informal internal review, we concluded that developing a parallel but stand-alone AIDAR section would be more effective since we would then be able to use terminology and concepts more familiar to USAID program experts, who would then be more likely to fully use it. The intent of the proposed section is to allow the CTO to be specific about what information should be reported and when, so we expect that the reporting will be more efficient and timely, and therefore more effective. Along with the rest of the Government, USAID has a renewed focus on obtaining results in our programs, and we believe that the proposed clause, AIDAR 752.242–70 entitled ''Periodic Progress Reports'', will provide USAID with a mechanism to tailor the reporting requirements to obtain the best information to ensure that we achieve the results we need from our contractors. In addition, the optional withholding provision in paragraph (b) of the clause provides the Agency with an enforcement tool that will reduce the contractors to comply. Supplementary guidance on how to tailor the reporting requirements and circumstances that may warrant exercising the withholding will be

issued to contracting officers and CTOs in a Contract Information Bulletin.

D. USAID has always extensively used indefinite delivery contracts which combine features from different contract types; rather than use the fixed-price or cost-reimbursement payment clauses in the FAR for these hybrid contracts, the AIDAR allowed for the use of FAR 52.232–7 with an amended preamble, per AIDAR 752.232–7, in those indefinite quantity contracts which use a fixed daily rate pricing structure for services and reimbursement of other direct costs at cost. However, the preamble to the FAR clause in AIDAR 752.232–7 leads to an ambiguity regarding how much the Agency is to withhold. Our first step to remove this ambiguity is to clarity our terminology by specifying that ''contract'' in this context includes ''task order'' or ''delivery order''.

We also propose to modify paragraph (a)(2) of FAR 52.232–7, which states that the amount to be withheld is ''5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000''. The ambiguity arises because 5 percent is being withheld under each task order, many of which are issued from different Agency contracting activities and paid from different paying offices around the world. The result has been withholdings under the basic contract which exceed $50,000, even though this is inconsistent with the FAR's capping the withholdings at $50,000 per contract. USAID's use of these types of contracts has increased in recent years, and the size and duration of task orders under these contracts has gown to the point where there are frequent orders over $1,000,000 and for a year or longer. Under these circumstances, for some contractors, withholding $50,000 for each of possibly three or four task orders is a significant financial burden. However, limiting to $50,000 per basic contract the amount withheld for some contracts having as much as $10 million in task orders outstanding at any one time would not sufficiently protect the Agency, as intended by the FAR clause. Because of the difficulties that would arise in trying to coordinate cumulative withholdings per contract when payments are being made from so many different paying offices, we are proposing to modify the AIDAR implementation of the FAR clause by reducing the withholding percentage to one percent per task order, up to a maximum of $50,000 per task order, and have no limit specified for the basic contract. While we believe this is a reasonable compromise between not unduly burdening contractors with excessive withholdings and still protecting the Agency's interests by making the cap per task order, we are very interested in the pubic's opinion and comments. A modification of this nature will require a deviation to the FAR clause, which we intend to seek prior to formulating the final rule, after considering comments received in response to this proposed rule.

The changes in this proposed rule are not considered significant under FAR 1.301 or FAR 1.501. The proposed rule does not establish a new collection of information as contemplated by the Paperwork Reduction Act nor will it have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the proposed changes affecting withholdings under indefinite quantity contracts may result in cumulative withholdings over $50,000 per basic contract, the limit specified in the FAR, we do not anticipate that this will have a negative impact on small businesses, since, overall, the withholdings will be less than they are now. We conducted a survey of existing task orders with small businesses and found that none of the orders currently being implemented would reach the $50,000 cap per task order using a one percent withholding. In addition, using the reduced withholding, a task order would have to have $5,000,000 worth of burdened labor costs before this threshold is reached, which is an unusually large order for the small businesses with whom USAID typically contracts. Finally, since $5,000,000 is the maximum in annual receipts for qualifying as a small business in the typical SIC codes under which USAID's services contracts usually fall, a firm may no longer be considered a small business if it were to receive orders of this size. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments or questions may be addressed as specified in the **FOR FURTHER INFORMATION CONTACT** section of the Preamble.

List of Subjects in 48 CFR Parts 712, 727, 742, and 752

Government procurement.

Therefore, it is proposed that 48 CFR Chapter 7 be amended as set forth below:

1. The authority citations in Parts 742 and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

2. A new Part 712 is added to subchapter B to read as follows:

PART 712—ACQUISITION OF COMMERCIAL ITEMS

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

712.101 Policy.

USAID policy regarding the acquisition of commercial items prohibits the use of Government facilities or personnel in the performance of such contracts, unless customary commercial practice for the item or service being acquired involves the use of the purchaser's facilities or personnel. In the latter case, USAID shall comply with customary commercial practice but shall ensure that the contract terms, including price, reflect this practice, unless a waiver is obtained in accordance with FAR 12.302. If a waiver is approved, then the contracting officer shall include the clause at 752.7008 in the contract.

3. A new part 727 is added to subchapter E to read as follows:

PART 727—PATENTS, DATA, AND COPYRIGHTS

Subpart 727.4—Rights in Data and Copyrights

Sec.
727.401 Definitions.
727.409 Solicitation provisions and contract clauses.
727.470 USAID policy on academic publications.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 727.4—Rights in Data and Copyrights

727.401 Definitions.

Contract manuscript means a report or other data [as defined in FAR 27.401] which is prepared and delivered to the Agency under the terms of the contract.

Non-contract manuscript means an article, book or other data compilation based upon experience and information gained under a USAID contract but not prepared or delivered under the contract.

727.409 Solicitation provisions and contract clauses.

(a) Notwithstanding the exception in FAR 27.409(a)(1)(iii), and as provided for in paragraph (n) of the same section, USAID procedures are to include the clause at FAR 52.227.14 in contracts with U.S. entities, regardless of place of performance, and in contracts with non-

U.S. entities for performance in the U.S., to the same extent that the clause would be included in contracts with U.S. entities for performance in the U.S. In contracts performed overseas, where the release or publication of data first produced in the performance of the contract may be sensitive to U.S. Government relations with the cooperating country, the contracting officer shall also use the clause at 752.227–14.

(b) For contracts with non-U.S. entities involving performance overseas, contracting officers shall include the substance of the clause at FAR 52.227–14 but adapted as necessary to comply with applicable laws in the country of performance. Legal advice shall be obtained to the extent necessary in adapting the clause. A deviation is not required.

727.470 USAID policy on academic publications.

(a) USAID policy favors and encourages the publication of scholarly research as well as the maximum availability, distribution, and use of knowledge developed in its programs and will not require an academic institution to obtain permission to publish the written work produced under a contract. USAID does, however, ask for the opportunity to review the manuscript, for comment only, prior to publication.

(1) In the case of a contract manuscript as defined in section 727.401 of this subpart, USAID reserves the right to disclaim endorsement of the opinions expressed.

(2) In the case of a non-contract manuscript as defined in section 727.401 of this subpart, USAID reserves the right to dissociate itself from sponsorship or publication.

(b)(1) To implement the policy stated in paragraph (a) of this section, the contracting officer may reserve the right to review all manuscripts prior to release for publication in those exceptional cases where conditions exist making its reasonably foreseeable, in light of the contract's scope of work and the manner and place of performance, that the written work to be prepared and delivered under the contract may have adverse repercussions on the relations and programs of the United States. Where this right is reserved, it must be so specified in the contract in accordance with paragraph (c) of this section.

(2) When deciding whether to reserve the right of review prior to release, the contracting officer shall consult with other USAID technical offices (such as the strategic objective/results package team, LPA, GC, etc.), as appropriate, and shall carefully consider all relevant factors of the specific contract, including:

(i) The extent to which prompt and full performance of the contract will require access, facilitated by reason of the contract, to information not generally available to scholars;

(ii) The extent to which the work involves matters of political concern to foreign countries, particularly where any substantial part of the work is to be performed therein;

(iii) The extent to which, by reason of USAID's close involvement and cooperation in the performance of the contract, the work product may be so identified with USAID itself as to prevent effective disclaimer of USAID endorsement thereof;

(iv) The extent to which the objective of the contract is to provide advice to USAID or to a foreign government of immediate operational significance in the conduct of the USAID program or the implementation of governmental programs in the host country;

(v) The desires of the host country.

(c) The actual contractual language reserving to the contracting officer the right to review a manuscript prior to release for publication must be worded to reflect the agreement reached in the contract negotiations. In order to allow enough time for USAID to adequately review and then determine its position regarding the manuscript, the contractual language shall provide for at least a two week (10 business days) timeframe for the USAID review to take place prior to the manuscript being submitted to the publisher.

PART 742—CONTRACT ADMINISTRATION

742.1170 [Added]

4. A new section 742.1170 and subsections 742.1170–1 through 742.1170–4 are added to read as follows:

742.1170 Performance monitoring and progress reporting.

742.1170 General.

Performance monitoring is a function of contract administration used to determine contractor progress towards achieving the goals and objectives of the contract and to identify any factors that may delay or prevent the accomplishment of those goals and objectives. Performance monitoring requires USAID personnel, particularly the Cognizant Technical Officer, to maintain adequate knowledge of the contractor's activities and progress in order to ensure that USAID's objectives, as stated in the contract's Statement of Work, will be achieved.

742.1170–2 Applicability.

(a) This section applies to USAID non-personal, professional/technical services contracts exceeding the simplified acquisition threshold, but may be applied to other USAID contracts (except personal services contracts awarded in accordance with Appendices D and J), if the contracting officer and requiring office determine that doing so is in the best interests of the Agency. This determination shall be documented in the contract file.

(b) The underlying principles of FAR Subpart 42.11 apply to USAID contracts and are inherent to this section. However, not all of the specific requirements and terminology in FAR 42.11 are compatible with the types of technical assistance contracts usually awarded by USAID. Therefore, this section 742.1170 shall apply in lieu of the requirements of FAR Subpart 42.11.

(c) The progress reports discussed in this section are separate from the performance evaluation reports prepared in accordance with FAR 42.15 and internal Agency procedures, although they may be used by USAID personnel or their authorized representatives when evaluating the contractor's performance. Furthermore, the policies, procedures and limitations of this section do not apply to technical reports, studies, papers, etc., the acquisition of which may be part of or even the sole purpose of the contract.

742.1170–3 Policy.

(a) The contractor is responsible for timely contract performance. Performance monitoring by USAID does not obviate this responsibility.

(b) The Strategic Objective Team (SOT), particularly the Cognizant Technical Officer and the Contracting Officer, will determined how to monitor the contractor's performance to protect the Government's interests, by considering:

(1) The contract requirements for reporting progress;

(2) The contract performance schedule;

(3) The contractor's implementation plan or workplan;

(4) The contractor's history of contract performance;

(5) The contractor's experience with the services or supplies being provided under the contract;

(6) The contractor's financial capability;

(7) Any other factors the SOT considers appropriate and necessary to adequately monitor contractor

performance (for example, the day-to-day working proximity of the SOT, CTO, or contracting officer to the contractor's place of performance).

(c) In monitoring contractor performance, the SOT (particularly the cognizant technical officer and contracting officer) shall utilize any of the contractor's existing systems or processes for monitoring progress, provided that doing so is not contrary to the terms of the contract. The SOT shall not require anything from the contractor that is outside the claims of waivers, of changes, or of other contract modifications. Further, progress reports shall not require information already available from other sources.

742.1170–4 Progress reporting requirements and contract clause.

(a) When information on contract performance status is needed, the contract may include a requirement for the contractor to submit periodic progress reports, tailored to address specific contract requirements but limited to only that information essential to USAID's needs in monitoring the contractor's progress.

(b) Because the cognizant technical officer (CTO) is the individual most familiar with the contractor's performance, the progress reports shall be directed to the CTO, who shall review the reports and advise the contracting officer of any required action, including any action needed to address potential or actual delays in performance. Such advice shall be in writing and provided in sufficient time for the contracting officer to take necessary action, and shall provide a definite recommendation, if action is appropriate. The requirements of this paragraph do not relieve the contractor of notification requirements identified elsewhere in the contract.

(c) The contracting officer shall insert the clause at 752.242–70, Periodic Progress Reports, in solicitations and contracts when progress reporting is required, as specified in this section. When this clause is used, the contract shall specify appropriate reporting instructions in Section G of the contract.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

752.227–14 [Added]

5. A new section 752.227–14 is added to read as follows:

752.227–14 Rights in data—General (overseas).

As prescribed in 727.409(a), the following paragraph (d) shall be used in lieu of paragraph (d) in FAR 52.227–14 in all contracts requiring performance overseas:

Rights in Data—General (Overseas) (XXXX 1998)

(d)(1) For all data first produced or specifically used by the Contractor in the performance of this contract in the United States, its territories, or Puerto Rico, the Contractor shall have the right to use, release to others, reproduce, distribute, or publish such data, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) For all data first produced or specifically used by the Contractor in the overseas performance of this contract, the Contractor shall not release, reproduce, distribute, or publish such data without the written permission of the Contracting Officer.

(3) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

752.232–7 [Revised]

5. Section 752.232–7 is revised to read as follows:

752.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.

USAID uses the payment clause contained in FAR 52.232–7, PAYMENT UNDER THE TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS, in indefinite delivery (task order) contracts for professional services, modified as follows:

Payment Under Time-and-Materials and Labor-Hour Contracts (XXXX 1998)

(a) The following preamble will be included:

Certain terms used in this clause shall be interpreted as follows:

The term ''contract(s)'' includes ''delivery order(s)'' and ''task orders''; ''hour(s)'', or ''hourly'' may be calculated in terms of ''day(s)'' or ''daily (8 hours)''; and ''materials'' includes ''other direct costs''.

(b) Paragraph (a)(2) of the FAR clause is revised to read as follows:

Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold one (1) percent of the amount due under each task order, but the total amount withheld per task order shall not exceed $50,000. Amounts withheld under an individual task order shall be retained until the execution and delivery of a release for each task order by the Contractor as provided in paragraph (f) below.

752.242–70 [Added]

6. A new section 752.242–70 is added to read as follows:

752.242–70 Periodic progress reports.

As prescribed in 742.1170–3(c), insert the following clause in contracts for which periodic progress reports are required from the contractor. The term ''contract'' shall be interpreted as ''task order'' or ''delivery order'' when this clause is used in an indefinite-delivery contract.

Periodic Progress Reports (August 1998)

(a) The contractor shall prepare and submit progress reports as specified in the Schedule of this contract. These reports are separate from the interim and final performance evaluation reports prepared by USAID in accordance with FAR 42.15 and internal Agency procedures, but they may be used by USAID personnel or their authorized representatives when evaluating the contractor's performance.

(b) During any delay in furnishing a progress report required under this contract, the contracting officer may withhold from payment an amount not to exceed US$25,000 (or local currency equivalent) or 5 percent of the amount of this contract, whichever is less, until such time as the contracting officer determines that the delay no longer has a detrimental effect on the Government's ability to monitor the contractor's progress.

752.7008 [Amended]

7. Section 752.7008 is amended by adding ‘‘, and in commercial contracts when required in 712.101'' after ''contracts'' in the introductory paragraph.

752.7026 [Removed]

8. Section 752.7026 is removed and reserved.

Appendix I to Chapter 7—[Removed]

9. Under the authority of Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435, Chapter 7 is amended by removing Appendix I and reserving it.

Dated: September 21, 1998.

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 98–28804 Filed 11–3–98; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 177, 178, 180

[Docket No. RSPA–97–2718 (HM–225A)]

RIN 2137–AD07

Hazardous Materials: Safety Standards for Preventing and Mitigating Unintentional Releases During the Unloading of Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Negotiated Rulemaking Committee Meetings.

SUMMARY: On August 20, 1998, RSPA published in the **Federal Register** a document announcing dates and locations for its negotiated rulemaking advisory committee meetings. However, in the document, RSPA did not announce the locations for the December 1–2 meeting and the January 6–7 meeting. The purpose of this document is to announce the location of these meetings. This document is in accordance with the Federal Advisory Committee Act. The purpose of these meetings is to negotiate recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles in liquefied compressed gas service. The public is invited to attend; an opportunity for members of the public to make oral presentations will be provided if time permits.

DATES: Meetings of the advisory committee will be from 8:30 a.m. to 4:00 p.m. on December 1–2, 1998, and January 6–7, 1999.

ADDRESSES: The meetings will take place at the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. The December 1–2 meeting is in Room 3200 and the January 6–7 meeting is in Room 2230.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim or Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation. *Facilitator:* Philip J. Harter, The Mediation Consortium, (202) 887–1033.

SUPPLEMENTARY INFORMATION: The Negotiated Rulemaking Committee has been established to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles in liquefied compressed gas service. Meeting summaries and other relevant materials will be placed in the public docket and can be accessed through (*http://dms.dot.gov*). Persons wishing to submit written comments should identify the docket number and submit one copy to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20001. The Dockets Management System (DMS) is on the Plaza level of the Nassif Building at the U.S. Department of Transportation at the above address. Persons wishing to receive confirmation of receipt of their written comments should include a self-addressed, stamped postcard.

Comments may also be submitted by e-mail to the following address: ''rules@rspa.dot.gov''. Public dockets may be reviewed at the DMS facility between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 29, 1998, under authority delegated in 49 CFR Part 1.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards, Research and Special Programs Administration.

[FR Doc. 98–29485 Filed 11–3–98; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 63, No. 213
Wednesday, November 4, 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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—Food Stamp Program: Federal Collection of State Plan of Operations, Operating Guidelines and Forms

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is an extension of a collection currently approved under OMB No. 0584–0083.

DATES: Comments on this notice must be received by January 4, 1999, to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Joseph H. Pinto, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Copies of the estimate of the information collection can be obtained by contacting Mr. Pinto.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Joseph H. Pinto, telephone number (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Operating Guidelines, Forms and Waivers.

OMB Number: 0584–0083.

Expiration Date: December, 1998.

Type of Request: Extension of a currently approved collection.

Abstract: In accordance with section 11(e) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2020(e), State agencies are required to submit a Plan of Operation specifying the manner in which the Food Stamp Program will be conducted. The State Plan of Operations, in accordance with current rules at 7 CFR 272.2, consists of a Federal/State Agreement, annual budget and activity statements, and specific attachments (such as plans if the State elects to conduct program information activities or provide nutrition educational services). State Plans of Operation are a one-time effort with updates that are provided as necessary.

Under section 16 of the Act, 7 U.S.C. 2025, the Secretary is authorized to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the Food Stamp Program. Under corresponding Food Stamp Program regulations at 7 CFR 272.2, the State agencies must submit annually to FNS for approval, a Budget Projection Statement (Form FNS–366A), which projects the total costs for major areas of Food Stamp Program operations, and a Program Activity Statement (Form FNS–366B), which provides a summary of Food Stamp Program operations during the preceding fiscal year. The reports are required to substantiate the costs the State agency expects to incur during the next fiscal year. Form FNS–366A is submitted annually by August 15 for the upcoming fiscal year and Form FNS–366B must be submitted no later than 45 days after the end of each State agency's fiscal year.

Beginning July 1997, State agencies were allowed to submit the FNS–366B data electronically to the national database files stored in FNS' Food Stamp Program Integrated Information System in lieu of a paper report. The voluntary changeover from paper to electronic reporting of FNS–366B data by States was done as part of FNS' State Cooperative Data Exchange (SCDEX) Project. This project is being expanded over time as more FNS forms are transformed to electronic formats for State data entry. For FY 1997, the first year of FNS–366B electronic reporting, 5 State agencies submitted the FNS–366B data electronically and 48 State agencies submitted paper reports.

Under section 11(o) of the Act, 7 U.S.C. 2020(o), each State agency was required to develop a plan, no later than October 1, 1987, for implementing an automated data processing (ADP) and information retrieval system to administer the Food Stamp Program. Corresponding Food Stamp Program regulations at 7 CFR 277.18 require that a written plan of action, called an Advance Planning Document (APD), be prepared to acquire proposed ADP services, systems or equipment. The frequency of the APD submissions is at the discretion of the State agencies.

Under section 7(i) of the Act, 7 U.S.C. 2016(i), the Secretary is authorized to permit State agencies to implement on-line electronic benefit transfer (EBT) systems. The Secretary is authorized to establish standards for the required testing prior to implementation of any EBT system and analysis of the results of implementation in a limited pilot project area before expansion of the system. Any State requesting funding for an EBT system must submit an APD.

Respondents: State agencies that administer the Food Stamp Program.

Number of Respondents: 53.

Estimated Number of Responses per Respondent

Plan of Operation Updates: 53 State agencies once a year.

Form FNS–366A: 53 State agencies once a year.

Form FNS–366B: 53 State agencies once a year.

Advance Planning Documents: 25 State agencies once a year.

Advance Planning Documents for EBT Systems: 10 State agencies once a year.

EBT Reporting: 41 State agencies reporting four times a year.

Estimate of Burden

Plan of Operation Updates: The State agencies submit Plan updates at an estimate of 10 hours per respondent, or 530 total hours.

Form FNS–366A: The State agencies submit Form FNS–366A at an estimate of 13 hours per respondent, or 689 total hours.

Form FNS–366B: The total burden for the collection of information for Form FNS–366B is 1,526 hours. Forty-two State agencies submit Form FNS–366B automatically at an estimate of 18 hours per respondent, or 756 total hours. Eleven State agencies submit Form FNS–366B manually at an estimate of 70 hours per respondent or 770 hours.

Outreach Plans: FNS is planning an initiative to encourage States to do outreach to hard-to-serve population groups. Up to 25 States may submit an Outreach plan over the next year at an estimate of 1 hour per respondent or 25 total hours.

Advance Planning Documents: Approximately 25 State agencies submit an APD each year at an estimate of 15 hours per respondent or 375 total hours.

Advance Planning Documents for EBT Systems: Approximately 10 State agencies submit an APD each year for an EBT system at an estimate of 45 hours per respondent, or 450 total hours.

EBT Reporting: We estimate that approximately 41 State agencies with operational EBT systems will provide additional information about their EBT systems during the next burden period. The State agencies submit a report approximately 4 times a year at an estimate of one hour per response, or 164 total hours.

Estimated Total Annual Burden on Respondents

The total annual reporting and recordkeeping burden for OMB No. 0584–0083 is estimated to be 3,759, a decrease of 972 hours from the previous estimate and currently approved burden of 4,731 hours. Since the last notice on this burden in 1996, the number of States with operational EBT systems has increased to 35 States, leaving fewer States who will need to submit an Advance Planning Document for an EBT system. The decrease in the burden is due primarily to a decrease in the estimate of the number of States each year who may submit an Advance Planning Document for an EBT system.

Dated: October 26, 1998.

Samuel Chambers, Jr.,

Acting Administrator.

[FR Doc. 98–29487 Filed 11–3–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Committee of Scientists will hold a public teleconference call on Thursday, November 19, 1998. The teleconference call will begin at 2:30 p.m. and end at 5:00 p.m. (eastern standard time). The purpose of the telephone conference call is for the Committee of Scientists to continue discussion of its report and recommendations to the Secretary of Agriculture and the Chief of the Forest Service. The public is invited to attend this teleconference call and may be provided an opportunity to comment on the Committee of Scientists' deliberations during the teleconference, only at the request of the Committee.

DATES: The teleconference call will be held Thursday, November 19, 1998, from 2:30 p.m. to 5:00 p.m. (eastern standard time).

ADDRESSES: The teleconference will be held at the USDA Forest Service headquarters, Auditor's Building, 201 14th Street, S.W., Washington, D.C., in the Roosevelt Conference Room and at all Regional Offices of the Forest Service, which are listed in the table under **SUPPLEMENTARY INFORMATION.**

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339. Also, the Committee may be accessed via the Internet at www.cof.orst.edu./org/scicomm/.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the teleconferences, contact Bob Cunningham, Designated Federal Official to the Committee of Scientists, by telephone (202) 205–1523.

SUPPLEMENTARY INFORMATION:

The public may attend the teleconference at the following field locations:

USDA Forest Service Regional Office Locations

Region 1—Northern Region: Federal Building, 200 E Broadway, Missoula, MT
Region 2—Rocky Mountain Region: 740 Simms St., Golden, CO
Region 3—Southwestern Region: Federal Building, 517 Gold Ave., SW, Albuquerque, NM
Region 4—Intermountain Region: Federal Building, 324 25th St., Ogden, UT
Region 5—Pacific Southwest Region: 630 Sansome St., San Francisco, CA
Region 6—Pacific Northwest Region: 333 SW 1st Ave., Portland, OR
Region 8—Southern Region: 1720 Peach Road NW, Atlanta, GA
Region 9—Eastern Region: 310 W. Wisconsin Ave., Room 500, Milwaukee, WI
Region 10—Alaska Region (office will open early): Federal Office Building, 709 W. 9th St., Juneau, AK

The Committee of Scientists is chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997 (62 FR 65795).

Dated: October 28, 1998.

Donald L. Meyer,

Acting Deputy Chief, National Forest System.

[FR Doc. 98–29491 Filed 11–3–98; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire 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 Hampshire Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 4:30 p.m. on November 19, 1998, at the Rivier Collage, Dion Center Conference Room, 420 Main Street, Nashua, New Hampshire 03060. The Committee will hold the first of three planned briefings based on its project, ''A Biennial Report on the Status of Civil Rights in New Hampshire.''

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Nury Marquez, 603–627–5127, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 23, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–29463 Filed 11–3–98; 8:45 am]

BILLING CODE 6335–01–P

UNITED STATES COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, November 13, 1998, 8:00 a.m.

PLACE: Washington Plaza Hotel, 10 Thomas Circle, N.W., in the Washington Room, Washington, DC 20005.

STATUS:

Agenda

I. Approval of Agenda

II. Approval of Minutes of October 16, 1998 Meeting

III. Announcements

IV. Staff Director's Report

V. State Advisory Committee Appointments for Michigan

VI. Future Agenda Items

Americans With Disabilities Act Hearing to follow the Commission Meeting.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–29638 Filed 11–2–98; 2:19 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Office of the Secretary Senior Executive Service (SES) Performance Appraisal System:

K. David Holmes, Jr.
Sonya G. Stewart
Suellen P. Hamby
Ellen M. Bloom
John S. Gray, III
Douglas K. Day
Kathleen J. Taylor
Mark T. Jurkovich
Bernadette McGuire-Rivera

Vicki G. Brooks,

Executive Secretary, Office of the Secretary, Performance Review Board.

[FR Doc. 98–29559 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

Charles R. Sawyer
Chester J. Straub, Jr.
Pedro Garza
William J. Day, Jr.
Stephen C. Browning

Vicki G. Brooks,

Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 98–29557 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet November 19, 1998, 10:30 a.m., Herbert C. Hoover Building, Room 1617M–2, 14th Street between Constitution & Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

AGENDA

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers and comments by the public.
3. Discussion on current rolling text of the Biological Weapons Convention (BWC) protocol.
4. Discussion of a country proposal on clarification visits presented at the most recent BWC conference.
5. Discussion of other papers presented at the most recent BWC conference.

Executive Session

6. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Commission members, the materials should be forwarded prior to the meeting to the address below:

Ms. Lee Ann Carpenter, BXA/EAD MS:3886C, U.S. Department of Commerce, 15 St. & Pennsylvania Ave., N.W., Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 24, 1998, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meeting or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination of close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information call Ms. Lee Ann Carpenter at (202) 482–2583.

Dated: October 30, 1998.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 98–29554 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Encryption (PECSENC) will meet on November 20, 1998, at the U.S. Department of

Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The meeting will begin in closed session at 9:45 a.m. The open session will begin at 12:00 p.m. and is scheduled to adjourn at 4:15 p.m. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Closed Session: 9:45 a.m.–12:00 p.m.

1. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

Open Session: 12:00 p.m.–4:15 p.m.

2. Opening remarks by the Acting Chairman.
3. Presentation of papers or comments by the public.
4. Update on Bureau of Export Administration initiatives.
5. Issue briefings.
6. Briefings by working groups.
7. Open discussion.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved May 7, 1998, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: October 30, 1998.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–29555 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–008]

Color Television Receivers from the Republic of Korea: Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On May 29, 1998, the Department of Commerce initiated an administrative review of the antidumping duty order on color television receivers from the Republic of Korea for three manufacturers/exporters; Daewoo Electronics Co., Ltd., LG Electronics Inc., and Samsung Electronics Co., Ltd. This review was requested by the International Brotherhood of Electrical Workers and the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, AFL–CIO (collectively the petitioners), and covered the period April 1, 1997, through March 31, 1998. The Department of Commerce is rescinding the review after receiving a withdrawal of its request for review from the petitioners.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel or Mark Manning, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5849 and (202) 482–3936, 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. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR Part 351 (1998).

Background

On April 30, 1998, the International Brotherhood of Electrical Workers and the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, AFL–CIO (''the Unions''), requested that the Department of Commerce (''the Department'') conduct an administrative review of color television receivers from the Republic of Korea (''Korea'') for the period April 1, 1997 through March 31, 1998. No other interested party requested that the Department conduct an administrative review.

On May 29, 1998, the Department published in the **Federal Register** (63 FR 29370) a notice of initiation of administrative review with respect to three Korean manufacturers/exporters of the subject merchandise; Daewoo Electronics Co., Ltd., LG Electronics Inc., and Samsung Electronics Co., Ltd. On October 16, 1998, the Unions filed a letter with the Department requesting withdrawal of its request for the Department to conduct an administrative review. Ordinarily, parties have 90 days from the publication of the notice of initiation of review in which to withdraw a request for review. See 19 CFR 351.213(d). We did not receive petitioner's withdrawal request until October 16, 1998, after the 90-day period had elapsed. Given that the review has not progressed substantially and there would be no undue burden on the parties or the Department, the Department has determined that it would be reasonable to grant the withdrawal at this time. Therefore, in accordance with section 351.213(d) of the Department's regulations, the Department is rescinding this administrative review.

This notice is in accordance with section 751 of the Act and section 351.213(d) of the Department's regulations.

Dated: October 27, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–29549 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–827]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil

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

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or John Maloney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2613 or (202) 482–1503, respectively.

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 of Commerce's (the Department's) regulations are to the

regulations at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Preliminary D etermination

We preliminarily determine that emulsion styrene-butadiene rubber (ESBR) from Brazil is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, and Mexico* (63 FR 20575, April 27, 1998)), the following events have occurred:

On May 18, 1998, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–794–796).

In May 1998, the Department obtained information from the U.S. Embassy in Brazil identifying Petroflex Industria e Comercio S.A. (Petroflex) as the only producer and/or exporter of the subject merchandise to the United States. Based on this information, the Department issued the antidumping questionnaire to Petroflex in May 1998.

On May 22, 1998, Petroflex requested that it be permitted to use calendar year 1997 (*i.e.,* its fiscal year) as its cost calculation period rather than the period of investigation (*i.e.,* April 1, 1997, through March 31, 1998). We granted Petroflex's request on May 26, 1998. We note, however, that Petroflex subsequently submitted cost information for the period of investigation in its Section D questionnaire response. Also, on May 26, 1998, Petroflex requested that the Department not require Petroflex to report resales of ESBR made by its affiliated customers in Brazil because such sales represent less than five percent of Petroflex's total sales in the home market. On May 27, 1998, pursuant to 19 CFR 351.403(d), the Department granted Petroflex's request.

In June 1998, the Department received a response to Section A of the questionnaire from Petroflex. Petroflex submitted its response to Sections B and C of the questionnaire in July 1998.

On July 21, 1998, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination. The petitioners filed an explanatory amendment to that request on July 23, 1998. We granted this request and, on July 28, 1998, postponed the preliminary determination until no later than October 28, 1998 (*see Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Brazil, the Republic of Korea, and Mexico* (63 FR 41544, August 4, 1998)).

On July 27, 1998, the petitioners submitted a timely allegation pursuant to section 773(b) of the Act that Petroflex had made sales in the home market at less than the cost of production (COP). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Petroflex sold ESBR in the home market at less than the COP. Accordingly, we initiated a COP investigation with respect to Petroflex pursuant to section 773(b) of the Act (*see* Memorandum from Team to Louis Apple, Office Director, dated August 21, 1998).

We issued supplemental questionnaires for Sections A, B, and C to Petroflex in August 1998 and received responses to these questionnaires along with revised U.S. and home market sales listings in August and September 1998. We received Petroflex's response to Section D of the questionnaire in September 1998. We issued a supplemental questionnaire for Section D in October 1998, but the response to the supplemental questionnaire was not received in time to be considered for purposes of the preliminary determination. We will consider it, however, for purposes of the final determination.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on October 13, 1998, Petroflex requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the publication of this notice in the **Federal Register**. On October 16, 1998, Petroflex amended its request to include a request to extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because: (1) Our preliminary determination is affirmative; (2) Petroflex accounts for a significant proportion of exports of the subject merchandise; (3) no compelling reasons for denial exist; and (4) Petroflex has requested an extension of provisional measures, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the product covered is ESBR. ESBR is a synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil extended non-pigmented rubbers that contain at least one percent of organic acids from the emulsion polymerization process.

ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to this investigation are grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as ''Clear'' or ''White Rubber.'' The 1700 grades are oil-extended and thus darker in color, and are often called ''Brown Rubber.'' ESBR is used primarily in the production of tires. It is also used in a variety of other products, including conveyor belts, shoe soles, some kinds of hoses, roller coverings, and flooring.

Products manufactured by blending ESBR with other polymers, high styrene resin master batch, carbon black master batch (*i.e.,* IISRP 1600 series and 1800 series) and latex (an intermediate product) are not included within the scope of this investigation.

The products under investigation are currently classifiable under subheading 4002.19.0010 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1997, through March 31, 1998.

Fair Value Comparisons

To determine whether sales of ESBR from Brazil to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the Normal Value (NV), as described in the ''Export Price and Constructed Export

Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *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 NV 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.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV 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 Investigation'' section of this notice, above, 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, 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.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

Petroflex reported two customer categories (*i.e.,* end users and distributors) and two channels of distribution corresponding to each customer category for its home market sales. In its response, Petroflex claims that its sales to the end users are at a different LOT than its sales to the distributors, arguing that it provides significantly different selling services to its end-user customers than its distributors. In the U.S. market, Petroflex reported both EP and CEP sales. For EP sales, Petroflex reported one channel of distribution and one customer category (*i.e.,* direct sales to unaffiliated end users) and claims that sales to this customer category are at the same level of trade as its sales to end users in the home market. For CEP sales, Petroflex reported one channel of distribution and one customer category (*i.e.,* sales to small end-users through its U.S. affiliate). Petroflex claims that these sales constitute a separate level of trade from its EP sales and the same level of trade as its home market sales to distributors.

In determining whether separate levels of trade actually existed in the home market, we examined whether Petroflex's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories and selling functions. As noted above, Petroflex made sales to two different customer categories (*i.e.,* end users and distributors). With respect to selling activities, Petroflex identified the following selling services it provides to its end users: (1) freight and delivery; (2) pre-and post-sale technical services; (3) warranty services; and (4) market research. For sales to distributors, Petroflex stated that it does not perform any of the services it performs for its sales to end users except for post-sale technical services. With respect to technical services, however, Petroflex further stated that such services are provided infrequently to distributors, whereas they are provided frequently to end users. Based upon this information, we have determined that Petroflex's sales to end users differ significantly from its sales to distributors with respect to selling activities and, therefore, constitute a different level of trade than its sales to distributors.

In analyzing Petroflex's selling activities for its EP sales (*i.e.,* sales to end users), we noted that the sales involved basically the same selling functions associated with the home market sales to end users described above. Therefore, we determine that Petroflex's EP sales and its home market sales to end users are made at the same level of trade.

The CEP sales were based on sales made by Petroflex to its U.S. affiliate, which then sold the merchandise to unaffiliated purchasers in the United States. Based on our analysis, we find that the selling functions performed at the CEP level do not significantly differ from those performed in the home market for sales to distributors. Specifically, after making deductions pursuant to section 772(d) of the Act, we determined that there were two selling activities performed by Petroflex associated with its sales to its U.S. affiliate: (1) Freight; and (2) post-sale technical services, which, according to Petroflex, are offered infrequently. Based on this information, we determined that Petroflex's CEP sales and its home market sales to distributors are made at the same level of trade.

To the extent possible, we determined NV based on sales in the home market at the same LOT as the EP or CEP transactions. When we were unable to find sales of the foreign like product in the home market at the same LOT as the U.S. sale, we determined whether a LOT adjustment was warranted. To make that determination, we examined whether there was a pattern of consistent price differences between the two levels of trade in the home market by comparing, for each model sold at both levels, the average net price of sales made in the ordinary course of trade at the two

levels of trade. We examined whether average prices were higher at one of the levels of trade for a preponderance of the models, so as to demonstrate a pattern of consistent price differences. We also considered whether the average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each model sold, in making this determination. Based on our analysis, we did not find that there existed a pattern of consistent price differences between the two levels of trade in the home market. Therefore, we did not make level of trade adjustments in our calculation. Since there was no pattern of consistent price differences between sales at the different levels of trade, we also did not make a CEP offset adjustment to NV. *See* Calculation Memorandum from Case Analyst dated October 28, 1998, for further discussion.

Export Price and Constructed Export Price

Petroflex reported as EP transactions its sales of subject merchandise sold to unaffiliated U.S. customers prior to importation through its affiliated company, Nemotrade Corporation (Nemotrade). Petroflex reported as CEP transactions its sales of subject merchandise sold to Nemotrade for its own account. Nemotrade then resold the subject merchandise after importation to unaffiliated customers in the United States.

With respect to sales made through Nemotrade prior to importation, Petroflex claims that these sales are properly classified as EP sales because Nemotrade acted only as a sales-document processor and communication link to facilitate Petroflex's U.S. sales to unaffiliated customers. Specifically, Petroflex states the following: (1) Nemotrade does not take physical possession of the merchandise; (2) the merchandise is shipped directly from Petroflex to the customer; (3) Nemotrade does not have independent authority to establish prices; and (4) the essential terms of sales are set and approved by Petroflex in Brazil.

We examine several factors to determine whether sales made prior to importation through an affiliated sales agent to an unaffiliated customer in the United States are EP sales, such as: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether the sales follow customary commercial channels between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. affiliate is substantially involved in the sales process (*e.g.*, negotiating prices), we treat the transactions as CEP sales.

Based on our review of the selling activities of Petroflex's U.S. affiliate, we preliminarily determine that EP is appropriate for Petroflex's sales made to the first unaffiliated customers in the United States through Nemotrade prior to importation. The customary commercial channel between Petroflex and its unaffiliated customers is that Petroflex ships the EP merchandise directly to the unaffiliated U.S. customers without having the merchandise enter into the inventory of the U.S. affiliate and that the U.S. affiliate's activities are limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unaffiliated U.S. buyers. Information on the record reflects that Nemotrade does no more than relay to Petroflex purchase orders received from U.S. customers and does not solicit such orders or negotiate terms with the customers. Accordingly, for purposes of the preliminary determination, we are treating the sales in question as EP transactions. We will examine this issue further at verification.

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the packed CIF or C&F price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, ocean freight and marine insurance.

We calculated CEP, in accordance with subsections 772(b) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed FOB or delivered prices to unaffiliated purchasers in the United States. We made adjustments for price-billing errors, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, ocean freight, marine insurance, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and warranty expenses), inventory carrying costs, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina* (58 FR 37062, 37077 (July 9, 1993)). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Petroflex's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Petroflex's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Petroflex.

Based on the information contained in the cost allegation submitted by the petitioners, the Department found reasonable grounds to believe or suspect that Petroflex made sales in the home market at prices below their COPs, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether Petroflex made home market sales at prices below their COPs during the POI, within the meaning of section 773(b) of the Act. *See* Memorandum from the Team to Louis Apple, Director, Office 5, dated August 21, 1998. Before making any fair value comparisons, we conducted the COP analysis described below.

We calculated the COP based on the sum of Petroflex's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, financial expenses and packing costs, in accordance with section 773(b)(3) of the Act. Petroflex purchased a major input, butadiene, for ESBR from both unaffiliated and affiliated parties. At the time of this determination, no information was available on the affiliated party's cost to produce the input. Therefore, in accordance with section 773(f)(2) of the Act, we valued butadiene that Petroflex purchased from its affiliated producer by applying the higher of the transfer price or the market price of the input. We intend to consider the affiliate's cost of production in our analysis for the final determination. In addition, we adjusted Petroflex's G&A and financial expense ratio calculation using fiscal year, rather that POI data, as set out in the Cost Calculation Adjustment Memorandum from William Jones to Neal Halper, Acting Director, Office of Accounting, dated October 28, 1998.

We compared Petroflex's weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below their COPs. On a product-specific basis, we compared the COP to home market price, less any applicable movement charges, discounts, direct selling expenses and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, pursuant to section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Petroflex's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of Petroflex's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. For those U.S. sales of ESBR for which there were no comparable home market sales in the ordinary course of trade, we compared the CEP to CV in accordance with section 773(a)(4) of the Act.

We found that, for certain models of ESBR, more than 20 percent of Petroflex's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Petroflex's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. For Petroflex, in accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Petroflex in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

We calculated NV for Petroflex as noted in the ''Price to Price Comparisons'' and ''Price to CV Comparisons'' sections of this notice, below.

Price-to-Price Comparisons

We calculated NV based on FOB or delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments for price billing errors, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773 (a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

To the extent practicable, we based NV on sales at the same level of trade as the EP or CEP transactions. In cases where NV was calculated at a different LOT, we did not make any LOT adjustment, as discussed further in the Level of Trade section, above.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to EP, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses in accordance with section 773(a)(6)(C)(iii) of the Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency*

Conversions (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Brazilian Real did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-Average Margin Percentage
Petroflex Industria e Comercio S.A.	61.71
All Others	61.71

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 5, 1998, and rebuttal briefs no later than February 12, 1998. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 16, 1998, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(d) and 777(i) of the Act.

Dated: October 28, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–29551 Filed 11–3–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–833]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber From the Republic of Korea

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

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or James Nunno, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2613 or (202) 482–0783, respectively.

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 of Commerce's (the Department's) regulations are references to 19 CFR part 351 (April 1, 1998).

Preliminary Determination

We preliminarily determine that emulsion styrene-butadiene rubber (ESBR) from the Republic of Korea is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice, below.

Case History

Since the initiation of this investigation (*see Notice of Initiation of Antidumping Investigations: Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, and Mexico* (63 FR 20575, April 27, 1998), ''*Notice of Initiation*''), the following events have occurred:

On May 8, 1998, the Department obtained a request from Hyundai Petrochemical Co., Ltd. (''Hyundai'') to be excluded from participation as a mandatory respondent in this investigation. On May 12, 1998, the petitioner submitted a letter to the Department opposing Hyundai's exclusion from this proceeding. On May 13, 1998, the Department notified Hyundai that it was selected as a mandatory respondent. In August 1998, Hyundai submitted a letter stating that it is unable to participate in this investigation, and is not responding to our questionnaires.

On May 18, 1998, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (*see* ITC Investigation Nos. 731–TA–794–796).

On May 21, 1998, the Department of Commerce (the Department) issued the antidumping duty questionnaire to Kumho and Hyundai, the only two producers, and/or exporters of the subject merchandise to the United States identified in the petition. In June of 1998 the Department received Kumho's response to Section A of the questionnaire. Kumho submitted its response to Sections B and C of the questionnaire in July of 1998.

On July 21, 1998, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination. The petitioners filed an explanatory amendment to that request on July 23, 1998. We granted this request and, on July 28, 1998, postponed the

preliminary determination until no later than October 28, 1998 (*see Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Brazil, the Republic of Korea, and Mexico* (63 FR 41544, August 4, 1998)).

On July 27, 1998, pursuant to section 773(b) of the Act, the petitioners submitted a timely allegation, that Kumho had made sales in the home market below the cost of production (COP). Our analysis of that allegation indicated that there were reasonable grounds to believe or suspect that Kumho sold ESBR in the home market at prices at less than the COP. Accordingly, on August 21, 1998, we initiated a COP investigation with respect to Kumho pursuant to section 773(b) of the Act (*see* Memorandum from Team to Louis Apple, Director, Office 5, dated August 21, 1998).

We issued supplemental questionnaires for Sections A, B, and C to Kumho in August 1998 and received responses to these supplemental questionnaires, along with revised U.S. and home market sales listings, in September 1998.

We received Kumho's response to Section D of the questionnaire in September 1998. We issued a supplemental questionnaire for Section D on October 13, 1998, but the response to the supplemental questionnaire was not received in time to be considered for purposes of the preliminary determination. We will consider it, however, for the final determination.

On September 24, 1998, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of ESBR from Korea. We requested shipment data from Kumho on September 28, 1998, and received this information on October 13, 1998. The critical circumstances analysis for the preliminary determination is discussed below under ''Critical Circumstances.''

Postponement of Final Determination and Extension of Provisional Measures

On October 21, 1998, Kumho requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until no later than 135 days after the publication of this notice in the **Federal Register**, pursuant to section 735(a)(2)(A) of the Act. In addition, Kumho requested that the Department extend provisional measures pursuant to section 733(d) of the Act from four months to not more than six months. In accordance with 19 CFR 351.210(e), because: (1) Our preliminary determination is affirmative; (2) Kumho accounts for a significant proportion of exports of the subject merchandise; (3) no compelling reasons for denial exist; and (4) Kumho has requested an extension of provisional measures, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the product covered is ESBR. ESBR is a synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil extended non-pigmented rubbers that contain at least one percent of organic acids from the emulsion polymerization process.

ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to this investigation are grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as ''Clear'' or ''White Rubber.'' The 1700 grades are oil-extended and thus darker in color, and are often called ''Brown Rubber.'' ESBR is used primarily in the production of tires. It is also used in a variety of other products, including conveyor belts, shoe soles, some kinds of hoses, roller coverings, and flooring.

Products manufactured by blending ESBR with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product) are not included within the scope of this investigation.

The products under investigation are currently classifiable under subheading 4002.19.0010 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1997, through March 31, 1998.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e), use facts otherwise available in reaching the applicable determination. Because Hyundai failed to respond to the Department's questionnaire and because that failure is not overcome by the application of subsections (c)(1) and (e) of section 782, we must use facts otherwise available to calculate the dumping margins for this company.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (1994) (SAA). Hyundai's decision not to reply to the Department's antidumping questionnaire demonstrates that it has failed to act to the best of its ability to comply with a request for information under section 776 of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted.

Consistent with Department practice, as adverse facts available, the Department is assigning to Hyundai the higher of: (1) The highest margin stated in the petition; or (2) the highest margin calculated for any respondent in this investigation. In this case, this margin is 118.88 percent, which is the highest margin alleged in the petition for any Korean producer (*see Initiation Checklist* and the *Notice of Initiation* for a discussion of the margin calculations in the petition).

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See* also SAA at 829–831. Section 776(c) provides that, when the Department relies on secondary information (*e.g.*, the petition) as the facts otherwise available, it must, to the extent practicable, corroborate that

information from independent sources that are reasonably at its disposal. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, call reports, and data from business contacts). *See Notice of Initiation* and April 21, 1998, ''Office of Antidumping Investigations Initiation Checklist'' (''*Initiation Checklist*'').

For purposes of the preliminary determination, we were only able to reexamine part of the information in the petition. We reexamined the export price data provided in the petition in light of information obtained during the investigation and, to the extent that it could be corroborated, found that it continues to be of probative value. However, the Department was provided no other useful information by the respondents or other interested parties, and is aware of no other independent sources of information, that would enable it to further corroborate the remaining components of the margin calculation in the petition. *See* the October 27, 1998, Memorandum to Louis Apple on *The Facts Available Rate and Corroboration of Secondary Information: Preliminary Determination of Emulsion Styrene-Butadiene Rubber from the Republic of Korea.* We note that the SAA at 870 specifically states that, where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference.

Fair Value Comparisons

To determine whether sales of ESBR from Korea to the United States were made at less than fair value, we compared the export price (EP) to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *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 NV 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.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV 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 Investigation'' section of this notice, above, 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.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or constructed export price (CEP) transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting-price sale, usually the price of the exporter to the importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home market sales are at a different LOT than sales made to the United States, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales at different levels of trade in the home market, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

With respect to home market sales, Kumho reported two customer categories (*i.e.*, end users and distributors) and two channels of distribution corresponding to each customer category. For its sales to the United States, it also reported two customer categories (*i.e.*, end users and distributors) and two channels of distribution corresponding to each customer category. Kumho reported only EP sales in the U.S. market, and claimed that the selling functions that it performs in connection with its home market and U.S. sales do not vary by customer category or by distribution channel. In addition, Kumho considers all home market and U.S. sales to be at the same level of trade.

Based on our analysis of the selling functions in the home market, we found the selling functions to end users to be similar to the selling functions to distributors. In addition, we noted that the two U.S. channels of distribution did not differ with respect to selling activities. Similar services, such as sales administration, billing, warranties, and freight & delivery arrangement, where applicable, were offered to all or some portion of customers in each channel. Furthermore, we noted that EP sales involved basically the same selling functions associated with the home market sales. Therefore, based upon this information, we determined that the level of trade for all EP sales is the same as that of the home market sales and to consider them as constituting the same LOT in the two markets. Accordingly, all comparisons are at the same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

Export Price

In accordance with sections 772(a) and (c) of the Act, we calculated EP for all of Kumho's sales, since the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record.

We calculated EP based on the packed delivered price to unaffiliated

purchasers in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Korea. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign domestic inland freight, foreign brokerage and handling, international freight, and marine insurance.

Affiliated-Party Transactions and Arm's-Length Test

Kumho reported that it made sales in the home market to affiliated end users. Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102 (1998). To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) (1998). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina* (58 FR 37062, 37077 (July 9, 1993)). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Kumho's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Kumho's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Kumho.

Based on the information contained in the cost allegation submitted by the petitioners, the Department found reasonable grounds to believe or suspect that Kumho made sales in the home market at prices below their COPs, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether Kumho made home market sales at prices below their COPs during the POI, within the meaning of section 773(b) of the Act. *See* Memorandum from the Team to Louis Apple, Director, Office 5, dated August 21, 1998. Before making any fair value comparisons, we conducted the COP analysis described below.

We calculated the COP based on the sum of Kumho's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A expenses, financial expenses, and packing costs, in accordance with section 773(b)(3) of the Act. In addition, we made the following adjustments to Kumho's reported COP as follows: (1) we recalculated Kumho's interest expense factor on a consolidated basis, and (2) we adjusted the direct labor costs reported in the COP and CV databases to reflect Kumho's weighted-average direct labor costs (*see* Memorandum to the File from Stan Bowen, dated October 28, 1998).

We compared Kumho's weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below their COPs. On a product-specific basis, we compared the COP to home market price, less any applicable movement charges, direct and indirect selling expenses, and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, pursuant to section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Kumho's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of Kumho's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of ESBR, more than 20 percent of Kumho's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of ESBR for which there were no comparable home market sales in the ordinary course of trade, we compared the EP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Kumho's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Kumho in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in Korea. As noted above, we recalculated Kumho's interest expense factor on a consolidated basis, and we adjusted the direct labor costs reported in the COP and CV databases to reconcile with amounts reported in the Section D response.

We calculated NV for Kumho as noted in the ''Price to Price Comparisons'' and ''Price to CV Comparisons'' sections of this notice, below.

Price-to-Price Comparisons

We calculated NV based on packed, FOB or delivered prices to home market unaffiliated customers and prices to affiliated customers that we determined to be at arm's length. We made deductions, where appropriate, for movement expenses consistent with section 773(a)(6)(B) of the Act; these included inland freight and warehousing expenses. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in

accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses, bank charges and commissions. We made no adjustment for imputed credit expenses related to the pre-payment of value-added taxes (VAT), in accordance with our long-standing practice. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom,* 58 FR 3253 (Jan. 8, 1993), *Notice of Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy,* 59 FR 66921 (Dec. 28, 1994), *Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review,* 61 FR 59407 (Nov. 22, 1996), and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod From Italy,* 63 FR 10831 (March 5, 1998). In those instances where Kumho had not reported payment dates, we recalculated reported credit expenses using the date of the preliminary determination as the payment date. Because Kumho paid commissions to an unaffiliated agent on sales to the United States, in calculating NV, we offset these commissions using the weighted-average amount of indirect selling expenses, including inventory carrying costs, incurred on the home market sales for the comparison product, up to the amount of the U.S. commissions, in accordance with 19 CFR 351.410(e). Finally, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to EP, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses (*i.e.,* credit expenses, bank charges, and commissions) in accordance with section 773(a)(6)(C)(iii) of the Act. We offset U.S. commissions using the weighted-average amount of indirect selling expenses and inventory carrying costs incurred on the home market sales for the comparison product, up to the amount of the U.S. commissions, in accordance with 19 CFR 351.410(e).

Currency Conversion

Our preliminary analysis of Federal Reserve dollar-won exchange rate data shows that the won declined rapidly at the end of 1997, losing over 40% of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have been inclined to view the won's decline at the end of 1997 as nothing more than a sudden, but only momentary drop, despite the magnitude of that drop. As it was, however, there was no significant rebound. Therefore, we have preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, i.e., as having experienced only a momentary drop in value. Therefore, in making this preliminary determination, the Department used daily rates exclusively for currency conversion purposes for home market sales matched to U.S. sales occurring between November 1 and December 31, 1997.

In the recently completed preliminary determination of *Mushrooms from Indonesia,* an issue was raised regarding the use of two averaging periods in the margin calculations to account for the effect of the devaluation of the Indonesian rupiah. *See, Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Preserved Mushrooms from Indonesia (Mushrooms from Indonesia)* 63 FR 41783 (August 5, 1998). The petitioners in *Mushrooms from Indonesia* argued that the Department should calculate the weighted-average export price for two averaging periods—January through June 1997 and July through December 1997—in order to avoid a distortion of the dumping margins caused by the rapid devaluation of the rupiah. The Department did not calculate two averaging periods in the preliminary determination in *Mushrooms from Indonesia,* but we are continuing to evaluate this issue. Although the issue of using two different averaging periods has not been raised in the instant investigation, the Korean won experienced a precipitous drop in value during the POI. Therefore, in both this investigation and *Mushrooms from Indonesia,* we will continue to examine this issue for the final determinations. We invite the interested parties to comment on this issue.

Critical Circumstances

On September 24, 1998, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of ESBR from Korea. In accordance with 19 CFR 351.206(c)(2)(i), since this allegation was filed 20 days prior to the Department's preliminary determination, we must issue our preliminary critical circumstances determination not later than the preliminary determination.

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) There have been massive imports of the subject merchandise over a relatively short period.

To determine that there is a history of dumping of the subject merchandise, the Department normally considers evidence of an existing antidumping duty order on ESBR in the United States or elsewhere to be sufficient. The petitioner did not provide any information indicating a ''history of dumping'' of ESBR from Korea. Furthermore, we investigated the existence of antidumping duty orders on ESBR from Korea in the United States or elsewhere, and did not find any. We were also unable to find other information that would have indicated a ''history of dumping'' of ESBR.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value and thereby causing material injury, the Department normally considers margins over 15 percent for CEP sales and 25 percent for EP sales to impute knowledge of dumping and of resultant material injury. In this investigation, Kumho does not have a margin over 25 percent for EP sales, and there are no CEP sales. Based on these facts, we determine that the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we have not analyzed the shipment data for this company to examine whether imports of ESBR have been massive over a relatively short period. Thus, we preliminarily determine that there is no reasonable basis to believe or suspect that critical

circumstances exist with respect to exports of ESBR from Korea by Kumho (*see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails From Korea*, 62 FR 25895, 25898 (May 12, 1997)). Regarding all other exporters, because we do not find that critical circumstances exist for Kumho, we determine that critical circumstances do not exist for Hyundai, or for companies covered by the ''All Others'' rate. We will make a final determination concerning critical circumstances when we make our final determination in this investigation, if that final determination is affirmative.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Korea Kumho Petrochemical Co., Ltd.	13.91
Hyundai Petrochemical Co., Ltd.	118.88
All Others	13.91

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act, from the calculation of the ''All Others Rate.''

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 5, 1999, and rebuttal briefs no later than February 12, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 15, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 773(d) and 777(i) of the Act.

Dated: October 28, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–29552 Filed 11–3–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–821]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Mexico

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

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or John Maloney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2613 or (202) 482–1503, respectively.

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 of Commerce's (the Department's) regulations are references to 19 CFR part 351 (62 FR 27296, May 19, 1997).

Preliminary Determination

We preliminarily determine that emulsion styrene-butadiene rubber (ESBR) from Mexico is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the ''Suspension of Liquidation'' section of this notice, below.

Case History

Since the initiation of this investigation (*see Notice of Initiation of Antidumping Investigations: Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, and Mexico* (63 FR 20575, April 27, 1998)), the following events have occurred:

On May 18, 1998, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (*see* ITC Investigation Nos. 731–TA–794–796).

In May and June 1998, the Department obtained information from the U.S. Embassy in Mexico identifying Industrias Negromex, S.A. de C.V. (Negromex) as the only producer and/or exporter of the subject merchandise to the United States. Based on this

information, the Department issued the antidumping questionnaire to Negromex in May 1998.

In June 1998, the Department received a response from Negromex to Section A of the questionnaire. Negromex submitted its response to Sections B and C of the questionnaire in July 1998.

On July 21, 1998, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination. The petitioners filed an explanatory amendment to that request on July 23, 1998. We granted this request and, on July 28, 1998, postponed the preliminary determination until no later than October 28, 1998 (*see Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Brazil, the Republic of Korea, and Mexico* (63 FR 41544, August 4, 1998)).

On July 27, 1998, the petitioners submitted a timely allegation, pursuant to section 773(b) of the Act, that Negromex had made sales in the home market at less than the cost of production (COP). Our analysis of that allegation indicated that there were reasonable grounds to believe or suspect that Negromex sold ESBR in the home market at prices less than the COP. Accordingly, on August 21, 1998, we initiated a COP investigation with respect to ESBR pursuant to section 773(b) of the Act (*see* Memorandum from Team to Louis Apple, Director, Office 5, dated August 21, 1998).

We issued a supplemental questionnaire for Sections A, B, and C to Negromex in August 1998 and received a response to that supplemental questionnaire, along with revised U.S. and home market sales listings, in September 1998. In those revised sales listings, Negromex included, at the request of the Department, one ''sample'' U.S. sale for which Negromex received payment and transferred ownership to the customer. We received Negromex's response to Section D of the questionnaire in September 1998. In October 1998, we issued a supplemental questionnaire for Section D to Negromex, but the response to that supplemental questionnaire, submitted on October 23, 1998, was not considered for purposes of the preliminary determination because of a lack of time to properly analyze the response. We will consider it, however, for purposes of the final determination.

Postponement of Final Determination and Extension of Provisional Measures

On October 14, 1998, Negromex requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until no later than 135 days after the publication of this notice in the **Federal Register**, pursuant to section 735(a)(2)(A) of the Act. Negromex also requested that the Department extend provisional measures pursuant to section 733(d) of the Act from four months to not more than six months. In accordance with 19 CFR 351.210(e), because: (1) Our preliminary determination is affirmative; (2) Negromex accounts for a significant proportion of exports of the subject merchandise; (3) no compelling reasons for denial exist; and (4) Negromex has requested an extension of provisional measures, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the product covered is ESBR. ESBR is a synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil extended non-pigmented rubbers that contain at least one percent of organic acids from the emulsion polymerization process.

ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to this investigation are grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as ''Clear'' or ''White Rubber.'' The 1700 grades are oil-extended and thus darker in color, and are often called ''Brown Rubber.'' ESBR is used primarily in the production of tires. It is also used in a variety of other products, including conveyor belts, shoe soles, some kinds of hoses, roller coverings, and flooring.

Products manufactured by blending ESBR with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product) are not included within the scope of this investigation.

The products under investigation are currently classifiable under subheading 4002.19.0010 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1997, through March 31, 1998.

Fair Value Comparisons

To determine whether sales of ESBR from Mexico to the United States were made at less than fair value, we compared the constructed export price (CEP) to the Normal Value (NV) for Negromex, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX, S.A.* v. *United States*, 133 F. 3d 897 (Fed. Cir. 1998). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *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 NV 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.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV 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 Investigation'' section of this notice, above, 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.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the LOT is also that of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison market. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

For its home market sales, Negromex reported: (1) Four customer categories—large purchaser end users, other end users, unaffiliated distributors, and small footwear manufacturers; and (2) three channels of distribution—direct sales to large purchaser/other end users, direct sales to unaffiliated distributors, and direct sales to small footwear manufacturers through its Guadalajara warehouse. Negromex claimed two levels of trade in the home market: (1) Direct sales to large purchasers and other end users; and (2) direct sales to unaffiliated distributors and small footwear manufacturers through Guadalajara. For its U.S. sales, Negromex reported that its affiliated importer, GIRSA, Inc. (GIRSA), made sales to: (1) Two customer categories—large purchaser end users and other end users; and (2) through one channel of distribution. Negromex claimed one level of trade in the U.S. market (the CEP sale to GIRSA).

According to Negromex, there is no level of trade in the home market that is comparable to the CEP level of trade (Negromex's sales to GIRSA). Negromex asserts that its CEP level of trade involves few selling activities while, in contrast, its NV levels of trade (home market sales to the four classes of customers) involve significantly greater selling activities. Thus, Negromex contends that each of its proffered NV levels of trade occurs at a different, and more advanced, marketing stage than its CEP level of trade. Based on that contention, Negromex requests that the Department apply a CEP offset by adjusting NV under section 773(a)(7)(B) of the Act (the CEP offset provision). Accordingly, we have performed an analysis of the information on the record to determine whether a LOT adjustment, or in the alternative, a CEP offset, is warranted.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between Negromex and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, exclusive of economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade.

Based on an analysis of the information on the record, we found that Negromex made sales in the home market at two distinct levels of trade, the end user level of trade and the unaffiliated distributor level of trade, each representing different marketing stages and tiers of selling functions and services. In addition, we found that one of the levels of trade in the home market, sales to unaffiliated distributors, was comparable to the CEP level of trade because of the similarities between the class of customer and distribution channel. Our analysis of the chains of distribution and selling functions performed for sales to unaffiliated distributors in the home market and CEP sales in the U.S. market indicated that both are made at the same stage in the marketing process and involve analogous levels of selling functions. For a detailed explanation of this analysis, see the memorandum to The File through James Maeder from The Team, issued for the preliminary determination of this investigation, dated October 28, 1998.

To the extent possible, we have used home market sales at the unaffiliated distributor level of trade for comparison purposes in our analysis without making a LOT adjustment. When we were unable to find sales of the foreign like product in the home market at the same LOT as the U.S. sales, we determined whether a LOT adjustment was warranted. To make that determination, pursuant to section 773(a)(7)(A)(ii) of the Act, we performed an analysis to ascertain whether there was a pattern of consistent price differences between the end user level of trade in the home market and the unaffiliated distributor level of trade in the home market, which is analogous to the CEP level of trade. To accomplish this, we compared the weighted-average of Negromex's NV prices of sales made at both home market levels of trade for products sold at both levels. We base our findings on whether the weighted-average prices are higher for a preponderance of sales concerning the quantities of each product sold. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et. al.: Preliminary Results of Antidumping Duty Administrative Reviews* (61 FR 35713, July 8, 1996). Because the weighted-average prices were higher at the end user level of trade for a preponderance of the products and quantities sold, we found that there was a pattern of consistent price differences between the products sold at the two levels of trade in the home market. Thus, we made an adjustment to NV for the difference in levels of trade when we made our comparison of CEP sales to home market sales at the end user level of trade.

Negromex requested a CEP offset in this investigation. Section 773(a)(7)(B) of the Act establishes that a CEP ''offset'' may be made when two conditions exist: (1) NV 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 to determine a level-of-trade adjustment. In this investigation, we made a level of trade adjustment to NV in accordance with section 773(a)(7)(A) of the Act.

Therefore, we have not made a CEP offset.

Date of Sale

For U.S. sales made pursuant to the terms of two long-term contracts, Negromex has reported the contract date as the date of sale for all sales made under these contracts. Both contracts are year-long contracts that establish a minimum annual quantity of merchandise that is required to be purchased. Negromex reported that amounts of merchandise in addition to the minimum requirement could be purchased upon the agreement of both parties. Prices for the minimum annual quantity are fixed under the contracts and are based upon a mathematical formula that incorporates published monthly monomer prices and prices of butadiene and styrene—the major inputs of ESBR.

Pursuant to 19 CFR 351.401(i), the date of sale is normally the date of invoice unless satisfactory evidence is presented that the material terms of sale, price and quantity, are established on some other date. *See also Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan,* 61 FR 14067 (March 29, 1996). The Department has determined that, for a long-term contract, the price term is fixed if it is established by a published source outside of the control of either party to the contract, such that there is nothing more that the parties need to negotiate concerning the price of the goods sold. *See Final Determination of Sales of Less Than Fair Value: Brass Sheet and Strip From France,* 52 FR 812, 814 (January 9, 1987). In addition, the Department has decided that, for a long-term contract with a minimum quantity requirement, the date of the contract is the date of sale as to the minimum quantity specified in the contract. However, if the customer has not yet agreed to purchase any quantities above the minimum, then, for any amount sold in excess of the minimum, the Department will use the date of invoice as the date of sale. *See Titanium Sponge From Japan; Final Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part*, 54 FR 13403, 13404 (April 3, 1989); *see also Toho Titanium Co., Ltd.* v. *U.S.*, 743 F. Supp. 888, 890–91 (CIT 1990).

Under the long-term contracts in this investigation, the price term is fixed on the contract date, based on a set formula of published monthly prices for major inputs which are outside the control of either party to the contract. A minimum quantity requirement is also fixed on the contract date, but the parties made no agreement to purchase quantities greater than the minimum. Given these facts and the Department's practice, for Negromex's long-term contracts in the U.S. market we have used the contract date as the date of sale for sales equaling the minimum quantity agreed to in the contract. For any quantity sold above the minimum under these contracts, we used the reported invoice date as the date of sale.

Addition of Product Characteristics by Negromex

Negromex reported five additional product characteristics (ash content, free soap content, styrene content, mooney viscosity, and vulcanization time tolerance) not specified in the Department's questionnaire as matching criteria. Negromex alleged that these characteristics are commercially relevant because its customers have differing requirements for these characteristics and Negromex records the levels of these five characteristics for the ESBR it produces. Negromex referenced *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 30326 (June 14, 1996) (Pasta from Italy) to support its addition of these product characteristics as matching criteria.

The Department has not accepted these additional product characteristics as matching criteria for purposes of the preliminary determination. The product characteristics included in our questionnaire define standard grades of ESBR according to the generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers. These characteristics sufficiently define the product for matching purposes and Negromex has not provided adequate information on the record to establish that their additional product characteristics would result in more appropriate product matches. Moreover, in *Pasta from Italy,* we accepted the addition of wheat quality as a product matching criterion because we found that the level of wheat quality materially affected pasta input costs and, ultimately, pasta prices. *See Pasta from Italy* at 30346. In this investigation, Negromex's cost information on the record does not provide evidence of any difference in ESBR production costs relating to any of the additional five physical characteristics. Therefore, we preliminarily determine that ESBR is sufficiently defined for matching purposes by the ten criteria included in the questionnaire.

Constructed Export Price

We used CEP methodology for all sales by Negromex, in accordance with section 772(b) of the Act, because sales to the first unaffiliated purchaser took place after importation into the United States.

We calculated CEP based on the packed, FOB Brownsville, Texas warehouse starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Mexico. We made deductions from the starting price, where appropriate, for foreign inland freight, transport and storage insurance, foreign brokerage and handling, U.S. brokerage and handling (including U.S. Customs Service processing fees), and U.S. warehousing expenses, pursuant to section 772(c)(2)(A) of the Act.

We made additional deductions from the starting price, in accordance with section 772(d)(1) of the Act, for selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and technical service expenses), indirect selling expenses, and inventory carrying costs. In those instances where Negromex did not report payment dates, we calculated credit expenses using the date of the preliminary determination as the payment date. Additionally, in the instance where Negromex did not report a shipment date, we computed the average number of days between shipment and payment on Negromex's U.S. sales and assigned the shipment date for that sale to be the date of the average number of credit days prior to the preliminary determination. Pursuant to section 772(d)(3) of the Act, the starting price was further reduced by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Negromex and GIRSA on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Negromex's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Negromex's aggregate volume of home market sales of the foreign like product

was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Negromex.

Based on the information contained in the cost allegation submitted by the petitioners, the Department found reasonable grounds to believe or suspect that Negromex made sales in the home market at prices below their COPs, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether Negromex made home market sales at prices below their COPs during the POI, within the meaning of section 773(b) of the Act. *See* Memorandum from the Team to Louis Apple, Director, Office 5, dated August 21, 1998. Before making any fair value comparisons, we conducted the COP analysis described below.

We calculated the COP based on the sum of Negromex's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A and financial expenses and packing costs, in accordance with section 773(b)(3) of the Act. In addition, we adjusted Negromex's G&A expense ratio and finance expense ratio calculations as set out in the Preliminary Determination Cost Calculation Memo from Sunkyu Kim to the File, dated October 28, 1998.

We compared Negromex's weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below their COPs. On a product-specific basis, we compared the COP to home market price, less any applicable movement charges, discounts, direct selling expenses and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, pursuant to section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Negromex's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of Negromex's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. For those U.S. sales of ESBR for which there were no comparable home market sales in the ordinary course of trade, we compared the CEP to CV in accordance with section 773(a)(4) of the Act.

We found that, for certain models of ESBR, more than 20 percent of Negromex's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Negromex's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. For Negromex, in accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Negromex in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

We calculated NV for Negromex as noted in the ''Price to Price Comparisons'' and ''Price to CV Comparisons'' sections of this notice, below.

Price to Price Comparisons

We calculated NV based on packed, delivered prices to unaffiliated home market customers. We made deductions from the starting price, where appropriate, for price correction and customer pickup billing adjustments, volume rebates, and export rebates. We also made deductions, where appropriate, for foreign inland freight, warehousing, and foreign inland insurance expenses, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, and technical service expenses. In those instances where Negromex did not report payment dates, we calculated credit expenses using the date of the preliminary determination as the payment date. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6) (A) and (B) of the Act.

To the extent practicable, we based NV on sales at the same level of trade as the CEP sales. In cases where NV was calculated at a different LOT, we made an adjustment, pursuant to section 773(a)(7) of the Act. This adjustment is discussed further in the Level of Trade section, above.

Price to CV Comparisons

For price to CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. In addition, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Mexican Peso did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the constructed export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Industrias Negromex, S.A. de C.V.	29.57
All Others	29.57

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 5, 1999, and rebuttal briefs no later than February 12, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 16, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 773(d) and 777(i) of the Act.

Dated: October 28, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–29553 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan

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

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Joanna Gabryszewski, Rebecca Trainor, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0780, (202) 482–0666 or (202) 482–3020, respectively.

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. In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations are to the regulations at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel plate in coils (''SSPC'') from Taiwan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On April 20, 1998, the Department initiated antidumping duty investigations of imports of stainless steel plate in coils from Belgium, Canada, Italy, South Africa, South Korea, and Taiwan (*Notice of Initiation of Antidumping Investigations: Stainless Steel Plate in Coils From Belgium, Canada, Italy, South Africa, South Korea and Taiwan* (63 FR 20580, April 27, 1998)). Since the initiation of this investigation the following events have occurred:

The Department set aside a period for all interested parties to raise issues regarding product coverage. On May 8, 1998, Armco, Inc.; J&L Specialty Steel, Inc.; Lukens, Inc.; North American Stainless; the United Steelworkers of America, AFL–CIO/CLC; the Butler Armco Independent Union; and the Zanesville Armco Independent Organization, Inc. (''petitioners'') submitted comments stating that, while they believed the scope of the investigations was accurate, they wished to clarify certain issues concerning product coverage. The Department has determined that the parties' comments do not warrant a change in the scope language.

During the month of May 1998, the Department requested information from the American Institute in Taiwan (AIT) to identify producers/exporters of the subject merchandise. The AIT identified seven companies in Taiwan as exporters of subject merchandise. Three companies, Chang Mien Industries Co., Ltd., Tang Eng Iron Works Co., Ltd., and Chia Far Industrial Factory Co., Ltd., informed the Department that they did not export the subject merchandise to the United States during the POI. In May 1998, the Department also requested and received comments from petitioners and potential respondents in these investigations regarding the model matching criteria.

On May 15, 1998, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary injury determination in this case.

On May 27, 1998, the Department issued antidumping duty questionnaires to Yieh United Steel Corporation (''YUSCO''), Chien Shing Stainless Steel Co., Ltd. (''Chien Shing''), Ta Chen Stainless Steel Pipe, Ltd. (''Ta Chen''), and Tung Mung Development Co. Ltd. (''Tung Mung'').

On June 4, 1998, Tung Mung stated in a letter to the Department that it did not export subject merchandise to the United States during the POI.

Chien Shing sent a letter in response to the Department's questionnaire on June 24, 1998. Based on that letter, it is unclear whether Chien Shing had sales of subject merchandise to the United States during the POI. We are in the process of investigating whether Chien Shing sold SSPC to the United States, or to third parties for export to the United States, during the POI.

On June 24, 1998, the Department received a response to Section A of the questionnaire from YUSCO. The Department received YUSCO's response to Sections B and C of the questionnaire on July 21, 1998 and the Section D response on September 25, 1998. Petitioners filed comments on YUSCO's questionnaire responses in July, August, and September 1998. The Department issued supplemental questionnaires for Sections A, B, C and D to YUSCO in July, August, September, and October 1998 and received responses to these questionnaires in August, September, and October 1998.

Ta Chen responded to Section A of the questionnaire on June 24, 1998. On July 14, 1998, Ta Chen submitted a letter to the Department indicating that Ta Chen, TCI, and their affiliates (hereafter, collectively ''Ta Chen'') did not sell subject merchandise during the POI which was produced by any Taiwan manufacturer other than YUSCO. YUSCO reported in its Section A questionnaire response that it knew at the time of sale that the merchandise it sold to Ta Chen was destined for the United States. Based on the above, the Department rescinded its request for Ta Chen to respond to Sections B and C of the questionnaire. *See* letter from Edward Yang to Peter Koenig, Ablondi, Foster, Sobin & Davidow, P.C., dated July 22, 1998.

On July 28, 1998, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determinations for thirty days. The Department determined that these investigations are extraordinarily complicated and that additional time is necessary beyond the thirty days requested by petitioners for the Department to make its preliminary determinations. On August 14, 1998, the Department postponed the preliminary determinations until no later than October 27, 1998. (*See Stainless Steel Plate in Coils from Belgium, Canada, Italy, South Africa, South Korea, and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations,* 63 FR 44840, (August 21, 1998)).

On August 11, 1998, petitioners alleged that Ta Chen and/or its affiliated U.S. importer, Ta Chen International (TCI), are reselling subject merchandise in the United States at prices less than Ta Chen's cost of acquisition and related selling and movement expenses. After considering the merits of petitioners' allegation, the Department initiated a middleman dumping investigation on August 28, 1998. (*See* Memorandum to Joseph Spetrini, *Stainless Steel Plate In Coils From Taiwan: Whether to Initiate a Middleman Dumping Investigation,* August 28, 1998, on file in room B–099 of the Commerce Department.) Also on this day, the Department issued a questionnaire to Ta Chen. We received Ta Chen's questionnaire response on October 7, 1998, too late to issue a supplemental questionnaire and incorporate the results thereof in these preliminary results. For further details, see the ''Middleman Dumping'' section below.

On August 20, 1998, petitioners amended the antidumping petitions to include Allegheny Ludlum Corporation as an additional petitioner.

Scope of Investigation

For purposes of these investigations, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

Chien Shing

As noted above, we are in the process of investigating whether Chien Shing sold SSPC to the United States, or to third parties for export to the United States, during the POI. For this preliminary determination, we are treating Chien Shing as a non-shipper; therefore, it falls within the ''all others'' duty rate.

Middleman Dumping

Normally a determination of whether there are sales at less than fair value focuses on the price at which merchandise is first sold in the United States or for export to the United States. However, where a trading company (middleman) purchases for export to the United States, that trading company can, in turn, be the cause of, or contribute to, less-than-fair-value sales. Congress, in the legislative reports to the Trade Agreements Act of 1979, left to this agency the task of establishing a methodology which would accurately capture this ''middleman dumping.'' *See Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value,* 51 FR 5572, 5573 (February 14, 1986). Based on the allegation that Ta Chen was selling subject merchandise to the United States at a loss (*i.e.* at prices which were, after the deduction of all costs incurred in selling the merchandise in the United States, lower than its costs of acquisition from unrelated suppliers), we analyzed Ta Chen's prices and costs relative to all sales to the United States during the POI.

In accordance with the methodology discussed in our *Final Results of Redetermination Pursuant to Court Remand; Prestressed Concrete Strand from Japan,* filed in *Mitsui & Co., Ltd.* v. *the United States,* Slip Op. 97–49 (April 22, 1997), we determined whether a substantial portion of Ta Chen's sales were below acquisition costs by comparing the total value of SSPC sales below acquisition costs to the total value of SSPC sales. We first

identified sales below acquisition cost by comparing Ta Chen's resale price for SSPC to its acquisition cost for SSPC. We used the supplier's invoice price to Ta Chen as the acquisition cost. We based the U.S. resale prices on Ta Chen's sales to unaffiliated customers in the United States. From that starting price we deducted movement expenses and selling expenses incurred by Ta Chen (freight, insurance, commissions, warehousing charges, discounts, U.S. duties, brokerage and handling fees, and indirect selling expenses), where applicable. We then compared that price, after deductions, to the acquisition cost. Based on these results, we determine that Ta Chen did not make a substantial portion of its sales below acquisition cost. Because, at this preliminary stage, our findings indicate that the portion of below-acquisition-cost sales was not substantial, an examination of whether prices were substantially below acquisition cost is unnecessary at this time. *See Memorandum to the File: Analysis for the Preliminary Determination of SSPC from Taiwan: Middleman Dumping Investigation: Ta Chen,* dated October 27, 1998.

We note that this preliminary finding of no middleman dumping is based upon the information available to us at the time of this preliminary determination. Because Ta Chen's responses were received on October 7 and 14, 1998, we have not been able to issue a supplemental questionnaire and incorporate the answers thereto in our analysis. We intend to revisit this issue after issuing a supplemental questionnaire, incorporating the revised data into our analysis, and verifying the accuracy of that data.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the *Scope of Investigation* section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire and the May 27, 1998 reporting instructions.

Fair Value Comparisons

To determine whether sales of SSPC from Taiwan to the United States were made at less than fair value, we compared export price (''EP'') or constructed export price (''CEP'') to the Normal Value (''NV'') , as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1) of the Act, we calculated weighted-average prices for NV and compared these to individual U.S. transactions.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* (62 FR 61731, November 19, 1997).

YUSCO claimed that there was only one level of trade of customers in its home market. Although YUSCO sold to both en-users and distributors, it provided virtually the same services to both types of customers. Based on our analysis, we agree that YUSCO had one level of trade in its home market.

In the United States, YUSCO sold through unaffiliated distributors only. We found that YUSCO provided more services to the home market customers than to U.S. customers. YUSCO stated that it could not quantify the price difference attributable to differences in level of trade. Therefore, YUSCO did not make any claim for an LOT adjustment or demonstrate that any price differentials were due to differences in LOT and not any other factors. Therefore, we compared all U.S. sales to home market sales at that one home market level, and have not made an LOT adjustment. *See Memorandum to the File: Preliminary Determination of Sales at Less Than Fair Value: Yieh United Steel Corporation (''YUSCO''),* dated October 27, 1998.

United States Price

In calculating the United States Price (USP), we used EP, in accordance with sections 772 (a) and (c) of the Act, because YUSCO's sales to the first unaffiliated purchaser occurred before importation into the United States, and because CEP methodology was not otherwise indicated. We based EP on the packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, container handling fees, certification fees, and brokerage and handling expenses. No other adjustments were claimed or allowed.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared YUSCO's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Since YUSCO's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales.

Cost of Production Analysis

On August 10, 1998, petitioners in this investigation filed a timely sales-below-cost allegation against YUSCO. Petitioners filed revisions to their allegation on August 20, 1998. On August 25, 1998, the Department initiated a cost of production (''COP'') investigation of YUSCO to determine whether sales were made at prices less than the COP. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of YUSCO's cost of materials, labor, overhead, and general expenses. On October 15, 1998, the Department issued a supplemental section D questionnaire to YUSCO. The supplemental questionnaire response

was not received in time to use in calculating COP for this preliminary determination. This information will be included in the Department's final determination.

B. Test of Home Market Prices

We compared YUSCO's reported weighted-average COP to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP, less direct and indirect selling expenses, to home market prices, less any applicable movement charges, quantity discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's home market sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because such below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are made at prices less than the COP, we determine such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determine that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act, and we disregard the below-cost sales. Where all sales of a specific product are made at prices below the COP, we disregard all sales of that product.

Price-to-Price Comparisons

Because all of YUSCO's home market sales were above COP, we based NV on prices to home market customers. We did not make adjustments for physical differences in the merchandise, as all of YUSCO's sales to the United States were identical to sales in the home market.

We calculated NV based on prices to unaffiliated home market customers. We made deductions for quantity discounts and inland freight. In addition, we made circumstance-of-sale adjustments for differences in credit and warranty expenses, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A of the Act.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
YUSCO	67.68
All Others	67.68

ITC Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the publication of the preliminary determination, and rebuttal briefs, limited to issues raised in case briefs, no later than 55 days after the publication of the preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 7, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by January 10, 1999.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: October 27, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–29543 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–830]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Canada

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

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig or Helen Kramer, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3833 or (202) 482–0405, respectively.

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 of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that Stainless Steel Plate in Coils (''SSPC'') from Canada is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On April 20, 1998, the Department initiated antidumping duty investigations of imports of stainless steel plate in coils from Belgium, Canada, Italy, South Africa, South Korea, and Taiwan (Notice of Initiation of Antidumping Investigations: Stainless Steel Plate in Coils From Belgium, Canada, Italy, South Africa, South Korea and Taiwan (63 FR 20580, April 27, 1998)). Since the initiation of this investigation the following events have occurred:

The Department set aside a period for all interested parties to raise issues regarding product coverage. Petitioners (Armco, Inc., J&L Specialty Steel, Inc., Lukens, Inc., and North American Stainless) filed comments on May 8, 1998, stating that while they believed the scope of the investigations was accurate, they wished to clarify certain issues regarding product coverage. These comments did not affect the product coverage. On May 15, 1998, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary injury determination in this case. During May 1998, the Department requested information from the U.S. Embassy in Canada to identify producers/exporters of the subject merchandise. During May 1998, the Department also requested and received comments from petitioners and two potential respondents, Atlas Stainless Steels, a division of Sammi Atlas, Inc. of Canada (''Atlas''), and ALZ, N.V. of Belgium, regarding the model matching criteria. On May 27, 1998, the Department issued an antidumping duty questionnaire to Atlas.

On June 24, 1998, the Department received Atlas's response to Section A of the questionnaire. We received Atlas's responses to Sections B and C of the questionnaire on July 10, 1998. Petitioners filed comments on Atlas's responses to Section A on July 7, 1998, and to Sections B and C on July 24, 1998. On July 29, 1998, petitioners made a timely request that the Department initiate a cost investigation to determine whether respondent made home market sales at prices below the cost of production during the POI. We issued a supplemental questionnaire for Sections A, B, and C on August 5, 1998 and received a response on August 19, 1998. On August 14, 1998, the Department notified Atlas of its determination under section 773(b) of the Act that there are reasonable grounds to believe or suspect that it made sales of the subject merchandise in Canada at prices below its cost of production (COP), and gave Atlas until September 4, 1998, to respond to section D (the cost questionnaire), which was included in the Department's questionnaire issued on May 27, 1998. On September 4, 1998, Atlas declined to respond to section D, citing as reasons the effort, time and expense required.

On July 28, 1998, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination for thirty days. The Department determined that these investigations are extraordinarily complicated and that additional time is necessary beyond the thirty days requested by petitioners for the Department to make its preliminary determination. The decision to postpone the preliminary determination until October 27, 1998 was made on August 14, and published on August 21, 1998. (See Stainless Steel Plate in Coils from Belgium, Canada, Italy, South Africa, South Korea and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations, 63 FR 44840). On August 20, 1998, petitioners amended the antidumping duty petition to include Allegheny Ludlum Corporation as an additional petitioner.

Scope of Investigation

For purposes of these investigations, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner, or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Although Atlas did not indicate any inability to respond to the Department's COP questionnaire, it chose not to do so. Because Atlas has refused to provide cost information, we must base its margin entirely on the facts otherwise available.

Atlas submitted responses to sections A, B, and C of the questionnaire, and to a supplemental questionnaire, but declined to respond to the section D (cost) questionnaire on the grounds of time, effort and expense. As a result, the Department is unable to determine whether Atlas's sales in Canada were at prices above COP and provide an appropriate basis for determining normal values. Without accurate COP

and constructed value (CV) data, we cannot perform a reliable sales-below-cost test and LTFV analysis. Consequently, under section 776(a) of the Act, the Department must use facts otherwise available in making its determination.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See the Statement of Administrative Action (SAA) at 870. Such adverse inference may include reliance on information derived from the petition. To determine whether the respondent ''cooperated'' by ''acting to the best of its ability'' under section 776(b), the Department considers, among other facts, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See, e.g., Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819–53820 (October 16, 1997); Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review, 63 FR 42823–42824 (August 11, 1998).

Atlas's refusal to reply to the Department's requests for cost information demonstrates that Atlas has failed to act to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted with regard to Atlas. Consistent with Department practice in cases in which a respondent fails to cooperate to the best of its ability by refusing to respond to an entire section of the questionnaire, and pursuant to section 776(b)(1) of the Act, as adverse facts available we have applied a margin based on the highest margin alleged in the petition. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey, 62 FR 9737–9738 (March 4, 1997).

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is described in the SAA (at 870) as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.''

The SAA further provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). Thus, to corroborate secondary information, to the extent practicable, the Department will examine the reliability and relevance of the information used.

During the Department's pre-initiation analysis of the petition, we reviewed the adequacy and accuracy of the information in the petition, to the extent appropriate information was available for this purpose (e.g., import statistics, foreign market research reports, and data from U.S. producers). See Notice of Initiation and ''Import Administration AD Investigation Initiation Checklist,'' (April 20, 1998). The estimated dumping margins were based on a comparison of two home market sales made by Atlas to steel service centers to two U.S. sales, as reported by domestic industry sources. The Department attempted to corroborate all of the secondary information from which the margin was calculated by reviewing all of the data presented and by requesting clarification and confirmation from petitioners and their sources as needed. See Memorandum to the File from Linda Ludwig and Marguerite Trossevin on April 17, 1998 Telephone Call to Market Research Firm Regarding the AD Petition for Antidumping Investigation of Stainless Steel Plate in Coils from Canada (April 20, 1998) and Memorandum to the File from Linda Ludwig on the same date. In addition, for purposes of this preliminary determination, the Department compared the export prices alleged by petitioners based on price quotations obtained from unaffiliated first purchasers with the average unit values of U.S. imports classified under the appropriate HTS number during the same months as the U.S. sales.

We observed that these values were almost identical for the first sale, and very similar for the second sale. U.S. official import statistics are sources which we consider to require no further corroboration by the Department. See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China, 62 FR 51410, 51412 (October 1, 1997). See Memorandum to the File from Helen M. Kramer on Corroboration of Petitioners' Estimated Dumping Margins (October 14, 1998). However, the Department was provided no information by the respondents or other interested parties, and is aware of no other independent sources of information that would enable it to corroborate home market prices further for this preliminary determination. The implementing regulation to section 776 of the Act, at 19 CFR 351.308(c), states ''[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.'' We note also that the SAA at 870 specifically states that, where ''corroboration may not be practicable in a given circumstance'', the Department may nevertheless apply an adverse inference. Based on the above, we find that the estimated margins set forth in the petition have probative value.

The All-Others Rate

The foreign manufacturer/exporter in this investigation is being assigned a dumping margin on the basis of facts otherwise available. Section 735(c)(5) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including weight averaging the zero, de minimis, and the margins based on facts available. In this case, the margin assigned to the only company investigated is based on adverse facts available. Therefore, consistent with the SAA, at 873, we are using an alternative method. As our alternative, we are basing the all others rate on a simple average of the margins in the petition. As a result, the all others rate is 11.10 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the percentage margin, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margin is as follows:

Exporter/manufacturer	Margin percentage
Atlas Stainless Steel (Sammi Atlas)	15.35
All Others	11.10

The all others rate, which we derived from the average of the margins

calculated in the petition, applies to all entries of subject merchandise other than those exported by the named respondent.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 16, 1998, and rebuttal briefs no later than November 23, 1998. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on December 15, 1998, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination within 75 days after the date of signing of this notice.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: October 27, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–29544 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–822]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils (''SSPC'') from Italy

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

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0780 or (202) 482–3818, respectively.

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 of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that Stainless Steel Plate in Coils (''SSPC'') from Italy are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On April 20, 1998, the Department initiated antidumping duty investigations of imports of stainless steel plate in coils from Belgium, Canada, Italy, South Africa, South Korea, and Taiwan (*Notice of Initiation of Antidumping Investigations: Stainless Steel Plates in Coils From Belgium, Canada, Italy, South Africa , South Korea and Taiwan* (63 FR 20580, April 27, 1998) (''Notice of Initiation'')). Since the initiation of this investigation the following events have occurred:

The Department set aside a period for all interested parties to raise issues regarding product coverage. On May 8, 1998, petitioners Armco, Inc.; J&L Specialty Steel Inc.; Lukens, Inc.; the United Steelworkers of America, AFL-CIO/CLC; the Butler Armco Independent Union: and the Zanesville Armco Independent Organization, Inc. (''petitioners'') submitted comments stating that, while they believed the scope of the investigations was accurate, they wished to clarify certain issues concerning product coverage. On May 21, 1998, respondents filed rebuttal comments stating their objection to the scope comments filed by petitioners. The Department made no changes to the scope concerning these comments.

During May 1998, the Department requested information from the U.S. Embassy in Italy to identify producers/exporters of the subject merchandise. The embassy identified two companies in Italy as producers/exporters of subject merchandise, Acciai Speciali Terni SpA (''AST'') and Arinox, Srl (''Arinox''). During May 1998, the Department also requested and received comments from petitioners and potential respondents in these investigations regarding the model matching criteria.

On May 15, 1998, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary injury determination in this case.

On May 27, 1998, the Department issued antidumping duty questionnaires to AST and to Arinox. On June 24, 1998, Arinox informed the Department by electronic mail that the company did not produce subject merchandise during the period of investigation, and therefore did not respond to the Department's questionnaire.

Furthermore, AST did not respond to the Department's antidumping questionnaire. Thus, the Department received no questionnaire responses from identified Italian stainless steel producers/exporters.

On July 28, 1998, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination for thirty days. On August 14, 1998, the Department postponed the preliminary determinations until no later than October 27, 1998. *See Notice of Postponement of Preliminary Antidumping Duty Investigations of Stainless Steel Plate in Coils: from Belgium, Canada, Italy, South Africa, South Korea and Taiwan* (63 FR 44840, August 21, 1998).

On August 20, 1998, petitioners amended the antidumping petitions to include Allegheny Ludlum Corporation as an additional petitioner.

Scope of Investigation

For purposes of these investigations, the product covered is certain stainless

steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination. As discussed above, AST failed to respond to the Department's questionnaire. Accordingly, we have determined, under section 776(a)(2)(A), that we must base our determination for that company on the facts available.

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (*see* also the Statement of Administrative Action (''SAA''), accompanying the URAA, H.R. Rp. No. 316, 103rd Cong., 2d Sess. 870). Given their refusal to comply with the Department's request for information, AST has failed to cooperate to the best of its ability in this investigation. Therefore, the Department has determined that an adverse inference is warranted with respect to AST.

In this proceeding, we used the information from the petition to form the basis for a dumping margin for this uncooperative respondent. Thus, consistent with Department practice (*see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany*), 63 FR 10847 (March 5, 1998) (''*Stainless Steel Wire Rod from Germany*'')) as facts otherwise available, the Department is assigning to AST the highest margin alleged in the petition for any Italian producer, which is 45.09 percent (*see* Initiation Checklist and the Notice of Initiation for a discussion of the margin calculations in the petition).

Section 776(c) of the Act provides that when the Department relies on ''secondary information,'' (*e.g.*, the petition) as the facts available, the Department shall, to the extent practicable, corroborate that information with independent sources reasonably at the Department's disposal. The SAA accompanying the URAA clarifies that the petition is ''secondary information.'' *See* SAA at 870. The SAA also clarifies that ''corroborate'' means to determine whether the information used has probative value. *Id*.

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, foreign market research reports, and data from U.S. producers). See Notice of Initiation and April 20, 1998, ''Import Administration AD Investigation Initiation Checklist (''Initiation Checklist''). Specifically, the petitioners based both export price (''EP'') and normal value (''NV'') in the petition on foreign market research, affidavits concerning prices and freight costs, official U.S. import statistics, U.S. government sources and International Financial Statistics.

As certain information included in the margin calculation in the petition is from public sources concerning for the most part the POI (*e.g.*, international freight and insurance, U.S. harbor maintenance and U.S. merchandise processing fees, SG&A and profit), we find, for the purpose of the preliminary determination, that the information is sufficiently corroborated. However, with respect to certain data included in the margin calculations included in the petition (*e.g.*, gross U.S. and home market unit prices), the Department was provided no information by the respondents or other interested parties, and is aware of no other independent sources of information, that would enable it to further corroborate the remaining components of the margin calculation in the petition. The implementing regulation to section 776 of the Act, at 19 CFR 351.308(c), states ''[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.'' Additionally, we note that the SAA at 870 specifically states that, where ''corroboration may not be practicable in a given circumstance'', the Department may nevertheless apply an adverse inference. We note further that the Department has used as the facts available margins developed in the petition that are based in part on foreign market research in other cases. *See, e.g., Stainless Steel Wire Rod From Germany*, and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products From Indonesia*, 61 FR 43333 (August 22, 1996).

The All-Others Rate

All foreign manufacturers/exporters in this investigation are being assigned dumping margins on the basis of facts otherwise available. Section 735(c)(5) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including weight averaging the zero, de minimus, and the margins based on facts available. In this case, the margin assigned to the only company investigated is based on adverse facts available. Therefore, consistent with the

SAA, at 873, we are using an alternative method. As our alternative, we are basing the all others rate on a simple average of all the margins in the petition, both price-to-price comparison and constructed value (''CV''). As a result, the all-others rate is 39.69 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service (''Customs'') to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct Customs to require a cash deposit or the posting of a bond equal to the percentage margins as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Acciai Speciali Terni SpA	45.09
All Others	39.69

The all-others rate, which we derived from the average of the margins calculated in the petition, applies to all entries of subject merchandise other than those exported by the named respondent.

ITC Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the publication of the preliminary determination, and rebuttal briefs, limited to issues raised in case briefs, no later than 55 days after the publication of the preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on December 28, 1998, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by January 10, 1999.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: October 27, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–29545 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–423–808]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Belgium

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

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Abdelali Elouaradia, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0162 or (202) 482–2243, respectively.

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 of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351, 62 FR 27296 (APRIL 1, 1998).

Preliminary Determination

We preliminarily determine that Stainless Steel Plates in Coils (''SSPC'') from Belgium are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On April 20, 1998, the Department initiated antidumping duty investigations of imports of stainless steel plate in coils from Belgium, Canada, Italy, South Africa, South Korea, and Taiwan (*Notice of Initiation of Antidumping Investigations: Stainless Steel Plate in Coils From Belgium, Canada, Italy, South Africa, South Korea and Taiwan* (63 FR 20580 (April 27, 1998)). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On May 8, 1998, Armco, Inc., J&L Specialty Steel, Inc., Lukens, Inc., North American Stainless, the United Steelworkers of America, AFL–CIO/CLC , the Butler Armco Independent Union and the Zanesville Armco Independent Organization, Inc. (''petitioners'') submitted comments to the Department stating that, while they believed the scope of the investigations was accurate, they wished to clarify certain issues concerning product coverage.

During May 1998, the Department requested information from the U.S. Embassy in Belgium to identify producers/exporters of the subject merchandise. During May 1998, the Department also requested and received comments from petitioners and potential respondents regarding the model matching criteria. Petitioners and ALZ, N.V. (''ALZ'') submitted comments on our proposed model matching criteria on May 21, 1998.

On May 15, 1998, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary injury determination in this case.

On May 27, 1998, the Department issued an antidumping duty questionnaire to ALZ, Fabrique de Fer, and Cockeril Sambre Group. In June 24, 1998, the Department received response

to Section A of the questionnaire from ALZ. In addition, on June 16 and 26, 1998, the Department received letters from Fabrique de Fer, and Cockeril Sambre Group stating that the companies did not sell the subject merchandise to the United States during the period of investigation (''POI''). We received ALZ's responses to Sections B, C and D of the questionnaire on July 27, 1998. Petitioners filed comments on ALZ's questionnaire responses in July, August, and September 1998. We issued supplemental questionnaires for Sections A, B, C and D to ALZ in July, August, and September, 1998, and received responses to these questionnaires in August, September and October 1998.

On July 28, 1998, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination for thirty days. The Department determined that this investigation is extraordinarily complicated and that additional time is necessary beyond the thirty days requested by petitioners for the Department to make its preliminary determination. On August 14, 1998, we postponed the preliminary determination until no later than October 27, 1998. (*See Notice of Postponement of Preliminary Antidumping Duty Investigations of Stainless Steel Plate in Coils: from Belgium, Canada, Italy, South Africa , South Korea and Taiwan*, 63 FR 44840, August 21, 1998). On August 20, 1998, petitioners amended the antidumping duty petitions to include Allegheny Ludlum Corporation as an additional petitioner. On October 19 and 20, 1998, petitioners submitted comments on ALZ's claim for a CEP adjustment, and on issues for consideration in this preliminary determination for ALZ. The Department did not address these comments because they came in too late.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on October 19, 1998, ALZ requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. On October 20, 1998, ALZ amended its request to include a request to extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) ALZ accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of these investigations, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The POI is January 1, 1997, through December 31, 1997.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by ALZ covered by the description in the *Scope of Investigation* section, above, and sold in Belgium during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire and the May 27, 1998, reporting instructions.

Fair Value Comparisons

To determine whether sales of SSPC from Belgium to the United States were made at LTFV, we compared constructed export price (''CEP'') to the Normal Value (''NV''), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs or CVs.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than CEP, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In this case, ALZ requested that the Department adjust NV to account for different LOTs in the home market and the U.S. market. The information on the record does not reveal meaningful differences between selling functions performed in the two markets, and thus no differences in home market and U.S. LOTs. Therefore, we preliminary do not grant a CEP offset for those sales by ALZ in Belgium which are compared with CEP sales in the United States (*See* Memorandum to Steven Presing from Steve Bezirganian and Abdelali Elouaradia, dated October 27, 1998).

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act because sales to the first unaffiliated purchaser took place after importation into the United States.

We based CEP on the packed ex-warehouse or delivered prices to unaffiliated purchasers in the United States. We made deductions for billing adjustments (*i.e.* adjustments for freight and adjustments for customer claims), where applicable. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, foreign inland insurance (including marine insurance), international freight (including foreign brokerage), U.S. inland freight from port to warehouse, U.S. inland insurance, U.S. brokerage and handling, U.S. warehouse expenses, U.S. inland freight from warehouse to unaffiliated customer and U.S. Customs duties. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs), inventory carrying costs, and other indirect selling expenses. We also deducted the profit allocated to these expenses, and further manufacturing costs in accordance with sections 772(d)(3) and 772(f) of the Act.

ALZ did not report in its U.S. sales database a small quantity of TrefilArbed re-sales of cut plate that the original U.S. customer had processed from SSPC purchased from TrefilArbed. In these few instances, TrefilArbed had agreed to accept the cut plate from the original U.S. customer, even though this customer had processed the SSPC into cut plate, a product not subject to this investigation. We preliminarily determine that these re-sales are of an insignificant quantity and value, and are not representative of the overall sales of subject merchandise. (*See* Memorandum to Joseph A. Spetrini from Roland MacDonald, dated October 22, 1998).

Normal Value

After testing home market viability, as discussed below, we calculated NV as noted in the ''Price-to-CV Comparisons'' and ''Price-to-Price Comparisons'' sections of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because ALZ's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales.

2. Cost of Production Analysis

Based on a cost allegation filed by the petitioners, the Department found reasonable grounds to believe or suspect that sales by ALZ in its home market were made at prices below the costs of production (COP), pursuant to section 773(b)(1). As a result, the Department has initiated an investigation to determine whether the respondent made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of ALZ's cost of materials and fabrication for the foreign like product, plus amounts for general expenses and packing costs. We relied on the COP data submitted by ALZ in its supplemental cost questionnaire response, except as discussed below, where the submitted costs were not appropriately quantified or valued.

1. We increased ALZ's reported cost of hot rolling services purchased from affiliated parties to reflect the difference between transfer prices and market prices, since the transfer prices were below market prices.

2. We revised ALZ's general and administrative (G&A) expenses to exclude an offset for net exchange gains. We also included exchange gains and losses related to purchases and accounts payable, consistent with our general practice in the calculation of G&A expenses.

3. We recalculated ALZ's financial expense ratio using their parent company's, ARBED Group, consolidated financial statements.

B. Test of Home Market Prices

We compared the weighted-average COP for ALZ, adjusted where appropriate (see above), to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time and in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable billing adjustments (*i.e.* invoice correction and alloy surcharge), movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of ALZ's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of ALZ's sales of a given product during the POI were at prices less than the COP, we determined that such sales have been made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of ALZ's cost of materials, fabrication, G&A, U.S. packing costs, direct and indirect selling expenses, interest expenses and profit. As noted above, we made adjustments to ALZ's reported cost of hot rolling services and G&A. In accordance with section

773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by ALZ in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We calculated NV based on prices to unaffiliated home market customers. We made deductions for billing adjustments (*i.e.* adjustment for transportation, when customer picks up the merchandise, invoice correction and alloy surcharge), early payment discounts, inland freight, and inland insurance. In addition, we made circumstance-of-sale adjustments or deductions for credit, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the amount of indirect selling expenses capped by the amount of the U.S. commissions.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A of the Act.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
ALZ, N.V.	3.44
All Others	3.44

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after publication of this notice. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held fifty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than one hundred and thirty-five days after publication of this notice.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: October 27, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–29546 Filed 11–3–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–831]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils (''SSPC'') From the Republic of Korea

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

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0165 or (202) 482–3818, respectively.

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 of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that Stainless Steel Plates in Coils (''SSPC'') from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On April 20, 1998, the Department initiated antidumping duty investigations of imports of stainless steel plate in coils from Belgium,

Canada, Italy, South Africa, South Korea, and Taiwan (*Notice of Initiation of Antidumping Investigations: Stainless Steel Plates in Coils From Belgium, Canada, Italy, South Africa, South Korea and Taiwan* (63 FR 20580, April 27, 1998)(''*Notice of Initiation*'')). Since the initiation of this investigation the following events have occurred:

The Department set aside a period for all interested parties to raise issues regarding product coverage. On May 8, 1998, petitioners Armco, Inc.; J&L Specialty Steel Inc.; Lukens, Inc.; North American Stainless; the United Steelworkers of America, AFL–CIO/CLC; the Butler Armco Independent Union: and the Zanesville Armco Independent Organization, Inc. (''petitioners'') submitted comments to the Department stating that while they believed the scope of the investigations was accurate, they wished to clarify certain issues concerning product coverage.

In May 1998, the Department requested information from the U.S. Embassy in the Republic of Korea to identify producers/exporters of the subject merchandise. In May 1998, the Department also requested and received comments from the petitioners and potential respondents in these investigations regarding the model matching criteria.

On May 15, 1998, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary injury determination in this case.

On May 27, 1998, the Department issued an antidumping duty questionnaire to Pohang Iron and Steel Company (''POSCO'') and Sammi Steel Company, Ltd. (''Sammi'').

On July 1, 1998, the Department received the response to Section A of the questionnaire from POSCO. Additionally, on July 13, 1998, the Department received a letter from Sammi stating that it did not export the subject merchandise to the United States during 1997. We received POSCO's responses to Sections B, C and D of the questionnaire on July 20, 1998. Petitioners filed comments on POSCO's questionnaire responses in July, August, and September 1998. We issued supplemental questionnaires for Sections A, B, C and D to POSCO on July 13, August 4, September 16, September 17, 1998, and October 7, 1998, and received responses to these questionnaires in July, August, September and October 1998.

On July 28, 1998, pursuant to section 733(c)(1)(A) of the Act, petitioners made a timely request to postpone the preliminary determination for thirty days. The Department determined that this investigation was extraordinarily complicated and that additional time was necessary beyond the thirty days requested by petitioners for the Department to make its preliminary determination. On August 14, 1998, the Department postponed the preliminary determination fifty days until October 27, 1998. *See Stainless Steel Plate in Coils from Belgium, Canada, Italy, South Africa, South Korea and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations,* 63 FR 44840 (August 21, 1998).

On August 20, 1998, petitioners amended the antidumping petitions to include Allegheny Ludlum Corporation as an additional petitioner.

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

Transactions Reviewed

POSCO reported that it made sales of the subject merchandise to affiliated resellers during the POI. On September 16, 1998, the Department requested that POSCO report the home market downstream sales made by its affiliated service centers (*see* September 16, 1998 supplemental questionnaire). Thus, in determining normal value (''NV'') (*see* ''Normal Value'' section of the notice, below), the Department excluded POSCO's sales to the affiliated service centers and considered the affiliates' resales of the subject merchandise.

POSCO reported that it made local letter of credit sales (''local sales'') in the home market which are exempted from value-added tax requirements because the end-user intends to export its finished product. Because the statute at section 773(a)(1)(B)(i) defines ''the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) *for consumption* in the exporting country * * *,'' we are disregarding home market local sales because there is knowledge that these sales are not consumed in the foreign market (emphasis added).

For its home market transactions, POSCO has reported the date of invoice as the date of sale, *i.e.,* the date when price and quantity are finalized. However, petitioners have alleged that the home market sales documentation provided by POSCO did not appear to support POSCO's claim that price and quantity may change between order and invoice. In August 1998, the Department requested that POSCO describe the type and frequency of price and quantity changes between order and invoice. Based on its analysis of the information submitted by POSCO, the Department found that it required additional information to determine if date of invoice is the appropriate date of sale. As POSCO's supplemental response was not due until October 30, 1998, the Department has not considered this issue for the preliminary determination. Therefore for the preliminary determination, the Department is using the invoice date as the date of sale for home market sales. We intend to revisit this issue after incorporating the revised data into our analysis and verifying the accuracy of that data.

In calculating export price (''EP'') (*see* ''Export Price'' section of the notice, below), the Department determined that those U.S. sales for which POSCO was

not paid should be excluded from the U.S. database.

For its U.S. sales, POSCO has reported the date of invoice as the date of sale, *i.e.*, the date when price and quantity are finalized. For U.S. sales, petitioners also alleged that the invoice date may not be the appropriate date of sale. Similarly, the Department requested and received additional information from POSCO on its use of invoice date as the date of sale. As described above, the Department found that it did not have enough information to make a determination whether invoice date was the appropriate date of sale and requested additional information from POSCO that was not due until October 30, 1998. Therefore for the preliminary determination, the Department is using the invoice date as the date of sale for U.S. sales. We intend to revisit this issue after incorporating the revised data into our analysis and verifying the accuracy of that data.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the *Scope of Investigation* section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire and the May 27, 1998 reporting instructions.

Fair Value Comparisons

To determine whether sales of SSPC from the Republic of Korea to the United States were made at less than fair value, we compared EP to NV. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or constructed export price (''CEP'') transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than CEP, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In this case, POSCO did not claim an LOT adjustment. The Department notes that in its July 1, 1998 response, POSCO stated that the downstream sales made by the affiliated service centers were at a different level of trade than other sales made by POSCO in the POI to both the U.S. and home market. However, it its October 5, 1998 response on downstream sales, POSCO reported that all sales in the U.S. and home market were made at the same level of trade. To ensure that no such adjustment was necessary, in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer and selling expenses.

In both the U.S. market and the HM market, POSCO reported one level of trade. POSCO sold through three channels of distribution in the U.S. market: (1) From POSCO Steel Sales and Services Co., Ltd. (''POSTEEL''), POSCO's affiliated company responsible for the majority of home market sales and all U.S. sales, to one unaffiliated end-user; (2) from POSTEEL through Pohang Steel American Corp. (''POSAM''), POSCO's U.S. subsidiary; and (3) from POSTEEL to unaffiliated Korean trading companies for resale in the U.S. POSCO also sold through three channels of distribution in the home market: (1) Directly from its mill to two unaffiliated end users; and (2) through POSTEEL to unaffiliated end-users and domestic trading companies. Additionally, POSCO has reported the home market downstream sales in HM Channel 3. The affiliates' resales were made exclusively to end-users with one exception.

For sales in HM Channel 1, POSCO performed all sales-related activities including arranging for freight and delivery, providing computerized accounting and sales systems, market research, warranty, sales negotiation, after sales service, and quality control. The same selling functions were performed in HM Channel 2; however, it was POSTEEL, not POSCO which performed all the major selling functions. Finally, in HM Channel 3, POSCO stated that the affiliated resellers sold their sales on a delivered or ex-factory basis.

POSCO performed similar selling functions in the U.S. market as in the home market including making freight and delivery arrangements and offering warranties and technical advice. As in sales in HM Channel 2, POSTEEL performed the major selling functions for U.S., regardless of channel of distribution. POSTEEL made the international freight arrangements except in the case of U.S. Channel 3 in which it sold FOB Pohang Port. Also, in U.S. Channel 2, POSAM invoiced the U.S. customer and for many sales, arranged for delivery to the customer from the U.S. port. Finally, as in the home market, POSCO reported that it did not provide inventory maintenance or advertising in the U.S. market.

Therefore, based on the information on the record, we preliminarily conclude that POSCO performed similar selling functions in the U.S. market and HM Channels 1 and 2 and that a LOT adjustment is not warranted for comparisons between the U.S. market and HM Channels 1 and 2. However, as POSCO's response detailing the type of selling functions performed by the affiliated service centers was not due until October 30, 1998, the Department could not make a determination for this preliminary determination whether the affiliated service centers' resales (HM Channel 3) were sold at a different level of trade than other home market channels or U.S. channels. Thus, the Department will consider this issue for the final determination. For a further discussion of the Department's LOT analysis, *see Memorandum to the File: Analysis Memorandum for the Preliminary Determination,* October 27, 1998.

Export Price/Constructed Export Price

We based our calculation on EP, in accordance with section 772 (a) of the Act, because the subject merchandise

was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated.

POSCO classified all of its sales of the subject merchandise in the United States as EP sales in its questionnaire response, including those sales made prior to importation through POSAM, POSCO's wholly owned U.S. subsidiary. We examined several factors to determine whether sales made prior to importation through POSAM to an unaffiliated customer in the United States are EP sales. These factors are: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether the sales follow customary commercial channels between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (*e.g.,* arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.,* negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review,* 62 FR 18389, 18391 (April 15, 1997); *Mitsubishi Heavy Industries* v. *United States,* Slip Op. 98–82 at 6 (CIT, June 23, 1998).

Concerning the first two criteria, the record indicates that POSCO's sales through POSAM were shipped directly from the manufacturer to the unaffiliated U.S. customer and that this was the customary commercial channel. In determining whether the U.S. affiliate acted solely as a ''processor of sales-related documentation'' and a ''communication link'' with the unaffiliated U.S. customer, we reviewed the selling functions performed by POSAM and the sales process for these sales. Although POSAM performed a variety of selling functions on behalf of POSCO in connection with POSCO's SSPC sales in the United States, including forwarding inquiries and confirmations to and from the customer and POSTEEL, invoicing customers, arranging for freight to the customer from the U.S. port, collecting payment, and serving as importer of record, POSCO has stated that POSTEEL determined price and terms of sale and performed all other sales related activities. We will conduct an in-depth examination of the most appropriate classification of POSCO's U.S. sales through POSAM (i.e., CEP versus EP) at verification. However, based on POSCO's record statements, we preliminarily determine that POSCO's U.S. sales of SSPC through POSAM qualify as EP sales. For further discussion of this issue, *see Memorandum to the File: Analysis Memorandum for the Preliminary Determination for POSCO,* October 27, 1998.

We based EP on the packed prices to unaffiliated purchasers in the United States. We made deductions for foreign inland freight, brokerage and handling, ocean freight, marine insurance, U.S. inland freight (where applicable), U.S. brokerage and wharfage charges (where applicable) and U.S. Customs duties in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. For a further discussion of this issue, *see Memorandum to the File: Analysis Memorandum for the Preliminary Determination for POSCO,* October 27, 1998. As noted in the ''Transactions Reviewed'' section of the notice, above, the Department's use of POSCO's date of invoice as the date of sale for the U.S. in accordance with 19 CFR 351.401(i) is dependent upon the results of our analysis.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since POSCO's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales.

Cost of Production Analysis

Based on the cost allegation submitted by the petitioners in the petition, the Department found reasonable grounds to believe or suspect that POSCO had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(2)(A)(i) of the Act. As a result the Department initiated an investigation to determine whether POSCO made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See Notice of Initiation*.

When the annual inflation rate in the country under investigation exceeds 25 percent, the Department considers that inflation to be significant and often uses a modified questionnaire. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey,* 61 FR 30309, 30315 (June 14, 1996).

Although the inflation rate in Korea in December 1997, was 8.19 percent, the annual inflation rate during the POI did not exceed 25% (*see* International Monetary Fund's International Financial Statistics: Producer Prices (July 1998; March 1998; December 1997; July 1997)). Therefore, we preliminarily determine that it is not appropriate to send out the Department's modified cost questionnaire in this case.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of POSCO's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We used the information from POSCO's Section D supplemental questionnaire response to calculate COP.

B. Test of Home Market Prices

We compared the weighted-average COP for POSCO, adjusted where appropriate (see above), to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to home market prices, less any applicable movement

charges and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'', 773(b)(2)(c)(i), within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases because we compared prices to weighted-average COPs for the POI , we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses and profit. We calculated the COP included in the calculation of CV as noted above, in the ''Calculation of COP'' section of the notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We calculated NV based on prices to unaffiliated home market customers. We made a deduction for inland freight. We made circumstance-of-sale adjustments or deductions for credit, warranty expense and interest revenue, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Currency Conversion

Our preliminary analysis of Federal Reserve dollar-won exchange rate data shows that the won declined rapidly at the end of 1997, losing over 40% of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have been inclined to view the won's decline at the end of 1997 as nothing more than a sudden, but only momentary drop, despite the magnitude of that drop. As it was, however, there was no significant rebound. Therefore, we have preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, i.e., as having experienced only a momentary drop in value. Therefore, in making this preliminary determination, the Department used daily rates exclusively for currency conversion purposes for HM sales matched to U.S. sales occurring between November 1 and December 31, 1997.

The Department makes this determination without the benefit of extensive case precedent dealing with this area of our currency conversion policy. The Department therefore welcomes comments from interested parties on all aspects of our analysis and the time period-specific exchange rates used. For the purposes of the final determination, the Department will also analyze the implications, if any, of the decline in the won during 1997 for price averaging and whether multiple averages are warranted. The Department is studying this issue in *Mushrooms from Indonesia. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Preserved Mushrooms from Indonesia,* 63 FR 41783 (August 5, 1998).

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
POSCO	2.77
All Others	2.77

ITC Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the publication of the preliminary determination, and rebuttal briefs, limited to issues raised in case briefs, no later than 55 days after the publication of the preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held 57 days after the publication of the preliminary determination, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by January 10, 1999.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: October 27, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–29547 Filed 11–3–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–805]

Notice of Preliminary Determination of Sales at Less Than Fair Value; Stainless Steel Plate in Coils From South Africa

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

ACTION: Notice of preliminary determination of sales at less than fair value.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Robert James at (202) 482–5222 or John Kugelman at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1998).

Preliminary Determination

We preliminarily determine that stainless steel plate in coil (SSPC) from South Africa is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On April 20, 1998, the Department initiated antidumping duty investigations of imports of stainless steel plate in coils from Belgium, Canada, Italy, the Republic of South Africa (South Africa), South Korea, and Taiwan. *See Initiation of Antidumping Duty Investigations: Stainless Steel Plate in Coils From Belgium, Canada, Italy, Republic of South Africa, South Korea and Taiwan,* 63 FR 20580, (April 27, 1998). Since the initiation of this investigation the following events have occurred:

The Department set aside a period for all interested parties to raise issues regarding product coverage. On May 8, 1998, Armco Inc., J & L Specialty Steel, Inc., Lukens, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (petitioners)[1] filed comments aimed at clarifying the scope of these investigations.

During May 1998, the Department requested information from the U.S. Embassy in Pretoria to identify producers/exporters of the subject merchandise. On May 15, 1998, the Department also requested comments from petitioners, a potential respondent, Columbus Stainless (Columbus), and the Embassy of South Africa regarding the criteria to be used for model matching purposes. Petitioners submitted comments on our proposed model matching criteria on May 21, 1998.

Also on May 21, 1998, the United States International Trade Commission (the Commission) notified the Department of its affirmative preliminary injury determination in this case.

The Department subsequently issued its antidumping questionnaire to Columbus on May 27, 1998. The questionnaire is divided into five parts; we requested that Columbus respond to section A (general information, corporate structure, sales practices, and merchandise produced), section B (home market or third-country sales), and section C (U.S. sales). Columbus submitted its response to section A of the questionnaire on June 24, 1998; Columbus's responses to sections B and C followed on July 20, 1998.

Petitioners filed comments on Columbus's questionnaire responses in July and August 1998. We issued a supplemental questionnaire for Sections A, B, and C to Columbus on August 18, 1998, to which Columbus responded on September 8, 1998.

On July 29, 1998, petitioners made a timely request for a thirty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Tariff Act. The Department determined that these concurrent investigations are extraordinarily complicated and that additional time would be required beyond the thirty days requested by petitioners for the Department to make its preliminary determinations. On August 14, 1998, we postponed the preliminary determination until no later than October 27, 1998. *See Stainless Steel Plate in Coils From Belgium, Canada, Italy, South Africa, South Korea and Taiwan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations,* 63 FR 44840 (August 21, 1998).

On August 7, 1998, petitioners timely filed an allegation that Columbus's sales of the foreign like product were at prices below its cost of production. After analyzing petitioner's allegation and soliciting additional clarification from petitioners, on August 24, 1998, we requested that Columbus respond to section D (cost of production (COP) and constructed value (CV)) of our original questionnaire. Columbus filed its response on September 30, 1998. We solicited additional information on Columbus's COP in a supplemental questionnaire issued October 6, 1998. Columbus timely filed its response on October 19, 1998.

The Department issued an additional supplemental sales questionnaire on October 15, 1998; Columbus's response to this questionnaire is due October 30, 1998.

Scope of the Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and

[1] On August 28, 1998, petitioners amended the antidumping duty petitions to include Allegheny Ludlum Corporation as an additional petitioner.

annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1997 through December 31, 1997.

Fair Value Comparisons

To determine whether sales of SSPC from South Africa to the United States were made at less than fair value, we compared export price (EP) to the normal value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average EPs for comparison to weighted-average NVs or CVs.

Transactions Investigated

For its home market and U.S. sales Columbus reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. Columbus further stated that the invoice date represented the date when the essential terms of sales, i.e., price and quantity, are definitively set, and that up to the invoice date, these terms were subject to change. However, petitioners have alleged that the sales documentation provided by Columbus does not appear to support Columbus's claims that price and quantity may change at any time between the order acceptance date and the final invoice date. On August 18, 1998, the Department requested that Columbus provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. Based on our analysis of the information submitted by Columbus, we found that we required additional information to determine if date of invoice is the appropriate date of sale. On October 15, 1998, the Department sent an additional questionnaire to Columbus, requesting that it report sales during the POI for which Columbus had issued an order acceptance, in addition to those sales invoiced during the POI. However, Columbus's response to this supplemental request for information is not due until October 30, 1998; therefore for the preliminary determination, the Department is using the invoice date as the date of sale for both home market and U.S. sales. We intend to revisit this issue upon receiving Columbus's supplemental response, and we will incorporate and verify the revised data, as appropriate, in our analysis for the final determination.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Investigation'' section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP it is the level of the sale from the exporter to the importer. If the sales being compared are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the U.S. sales being compared, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act.

To determine whether home market sales are at a different LOT than U.S. sales we apply a two-part test. First, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final end user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur at some point along this chain. For sales to the United States, the respondent's sales are generally to an importer, whether affiliated or unaffiliated. We review and compare the distribution chains in the home market and the United States, including the selling functions, classes of customers, and the level of selling expenses incurred at each claimed LOT. Unless sales being compared are at different stages in the marketing process, the Department will not find a difference in LOT even if selling functions are different.

Second, we examine the selling functions performed at the different LOTs. If the LOTs in the two markets are different, the selling functions performed in selling to each LOT should also be different. Therefore, unless we find that there are different selling functions and different stages in the marketing process for the sales to the U.S. and home markets, we will not determine that there are, in fact, separate LOTs. Different LOTs necessarily involve different selling functions; however, differences in selling functions, even substantial ones, are not alone sufficient to establish that different LOTs exist. Differences in LOTs are characterized by purchasers at different stages of marketing and by sellers performing qualitatively different functions in selling to these purchasers.

If we compare U.S. sales to home market sales made at a different LOT, we will make an adjustment to NV if the difference in LOTs affects price comparability. In turn, we determine any effect on price comparability by examining sales at different LOTs in the comparison market. Any effect on price comparability must be manifested by a pattern of consistent price differences between the home market sales used for comparison and the sales at the LOT of the export transaction. *See, e.g.,*

Polytetraflourethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review, 62 FR 26285 (May 13, 1997). To quantify the price differences, we calculate the difference in the average of the net prices of the same merchandise sold at different LOTs. We use the average percentage difference between these net prices to adjust NV when the LOT of the NV sale is different from that of the export sale. If there is no pattern of price differences, then no LOT adjustment is necessary. Finally, for CEP sales, if the NV LOT is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In this case Columbus stated that its selling activities differ very little between home market and export sales, noting that it does not ''maintain a distribution network of our own, nor do we maintain an inventory in any market * * *. The only difference between our home market sales and our exports is the physical delivery distance, and the fact that we use agents to solicit and administer our customers' orders in our export markets.'' Columbus's June 24, 1998 Section A response at 12 and 13. In order to confirm independently the absence of separate LOTs within or between the U.S. and home markets, we examined Columbus's questionnaire responses for indications that Columbus's sales functions differed qualitatively or quantitatively among customer categories. Where possible, we further examined whether each selling function was performed for a substantial portion of sales.

In the home market Columbus sold to distributors and end users, and claims a single LOT existed. Based upon our examination of information supplied by Columbus in its original and supplemental questionnaire responses, we agree that only one LOT existed for Columbus in the home market. Columbus provided no strategic or economic planning services, market research, business development services, personnel training, procurement, or inventory maintenance services for either end-user or distributor customers. Both categories of customers received similar degrees of packing, after-sales services, and freight and delivery arrangements. Finally, Columbus provided a limited degree of advertising directed at its customers' customers, primarily in the form of advertising in industry journals.

For its U.S. sales Columbus reported sales through its agents to two customer categories, i.e., distributors and end-users. To determine whether, in fact, a single stage of marketing existed, we examined the selling functions as reflected in the starting price to the unaffiliated U.S. customer. Columbus provided delivery services to the U.S. port designated by the customer for all of its U.S. sales. Columbus also provided technical assistance, as needed. For certain sales of grade 3Cr12 stainless steel, Columbus provided a higher degree of these technical services due to the specialized applications to which 3Cr12 stainless steel is aimed. We find preliminarily that Columbus provided the same level of selling functions, with the sole exception being the additional technical services offered for sales of 3Cr12 steel. This single exception, however, is not sufficient to warrant a finding that Columbus sells at two distinct LOTs in the United States. Accordingly, we preliminarily agree with Columbus that its EP sales constitute a single LOT.

When comparing Columbus's sales at its EP LOT to its home market LOT, we found that Columbus provided little or no strategic or economic planning, market research, engineering services, or post-sale warehousing at either the EP or home market LOT. Columbus provided limited advertising services in the home market while providing none at the EP level. All packing expenses at either LOT were borne by Columbus, and freight arrangements were similar (in the activities performed) in both markets. Columbus provided similar degrees of after-sales and technical support at both the EP and home market LOT, with the exception noted above for sales of 3Cr12 steel. Our analysis of the selling functions performed by Columbus in both markets leads us to conclude that sales within or between the markets were made at the same LOT. We have not, therefore, made a LOT adjustment because all price comparisons are at the same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Tariff Act is not appropriate.

Export Price

We calculated the price of United States sales based on EP, in accordance with section 772(a) of the Tariff Act, because the subject merchandise was sold to the first unaffiliated purchasers in the United States prior to the date of importation and because record evidence did not support basing price on CEP. We calculated EP based upon packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, ocean freight, foreign handling, marine insurance, foreign warehousing expenses, and U.S. customs duties. We also made adjustments for credit and, where appropriate, credit insurance costs.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales) we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Tariff Act. As Columbus's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Cost of Production Analysis

A timely allegation filed by petitioners provided the Department with reasonable grounds to believe or suspect that Columbus's sales of the foreign like product were made at prices which represent less than the cost of production. See section 773(b)(2)(A) of the Tariff Act. Accordingly, on August 24, 1998, the Department initiated a COP investigation to determine whether Columbus's sales in South Africa were made at prices less than the COP. In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of Columbus's cost of materials and fabrication for the foreign like product, plus an amount for G&A, interest expenses, and packing costs.

We used the information from Columbus's section D supplemental questionnaire response to calculate COP. However, while the Department's questionnaire instructed Columbus to submit a single COP for each product sold (i.e., each CONNUM), weighted by quantity produced during the POI, Columbus instead provided simple average COPs based on quarterly costs. In addition, Columbus reported multiple COPs (i.e., different amounts) for the same CONNUM. To conduct our

cost test for this preliminary determination we have calculated a single average COP for each CONNUM, weighted by sales quantity, as this is the only information currently available on the record. We have requested additional data from Columbus, including COPs weighted by production quantity, and will analyze these new data for our final determination.

We compared the weighted-average COP for Columbus to home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities over an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, early payment and other discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C)(i) of the Tariff Act, where less than twenty percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where twenty percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with section 773(b)(2)(C)(i) of the Tariff Act. In addition, we determined that such below-cost sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Tariff Act. In such cases, pursuant to section 773(b)(2)(D) of the Tariff Act, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

Our cost test for Columbus revealed that less than twenty percent of Columbus's home market sales of certain products were at prices below Columbus's COP. We retained all such sales in our analysis. For other products, more than twenty percent of Columbus's sales were at below-cost prices. In such cases we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. See Preliminary Determination Analysis Memorandum, October 27, 1998, a public version of which is on file in room B–099 of the main Commerce building.

Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses, and profit. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Columbus in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data Columbus supplied in its section D supplemental questionnaire response. However, while the Department's questionnaire instructed Columbus to submit a single CV for each product sold (i.e., each CONNUM), weighted by quantity produced during the POI, Columbus provided simple average COPs based on quarterly costs. In addition, Columbus reported multiple CVs (i.e., different amounts) for the same CONNUM. To calculate CV for this preliminary determination we have calculated a single average CV for each CONNUM, weighted by sales quantity, as this is the only information currently available on the record. We have requested additional data from Columbus, including CVs weighted by production quantity, and will analyze these data for our final determination.

Price-to-Price Comparisons

For those sales at prices which were at or above the COP, we based NV on Columbus's sales to unaffiliated home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act.

Columbus's home market prices were reported net of certain volume discounts. We made additional deductions for early payment discounts, inland freight, and inland insurance and packing. Furthermore, we made circumstance-of-sale (COS) adjustments in accordance with section 773(a)(6) of the Tariff Act. We deducted credit expenses and mandatory assessments of the South African Stainless Steel Development Association. Finally, we increased NV by adding U.S. direct selling expenses and packing costs incurred in the home market for U.S. sales, in accordance with section 773(a)(6)(A) of the Tariff Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with section 773(a)(2)(A) of the Tariff Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in South Africa. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Verification

As provided in section 782(i) of the Tariff Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Tariff Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin
Columbus Stainless	31.79
All Others	31.79

Commission Notification

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of our determination. If our final determination is affirmative, the Commission will determine before the

later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of stainless steel plate in coils are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Tariff Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. See 19 CFR 351.310(c). We intend to issue our final determination in this investigation no later than January 10, 1999.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Tariff Act.

Dated: October 27, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–29550 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce hereby publishes a list of scope rulings and anticircumvention inquiries completed by Import Administration between July 1, 1998 and September 30, 1998. In conjunction with this list, the Department of Commerce is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. We intend to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4793.

Background

The regulations of the Department of Commerce (the Department) (19 CFR 351.22(o)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed by Import Administration, between July 1, 1998, and September 30, 1998, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in January 1999 a notice of scope rulings and anticircumvention inquiries completed between October 1, 1998, and December 31, 1998, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), a brief description of either the ruling or product subject to the request, and the date of rulings made.

I. Scope Rulings Completed Between

July 1, 1998 and September 30, 1998:

Country: Italy

C–475–819 *Certain Pasta*

A–475–818 Joseph A. Sidari Company, Inc.—a shrink wrapped package containing six one-pound packages, each of which would first be individually packaged in a cellophane wrapper (cello) with ''Not Labeled for Retail Sale'' written across the entire length of each of the individual packages on both sides, is within the scope of the antidumping and countervailing duty orders. 7/30/98

Country: People's Republic of China

A–570–504 *Petroleum Wax Candles*—Et Al Imports—Paraffin Wax Bamboo Candles are outside the scope of the order. 7/2/98.

Kohl's Department Stores—star-shaped, tree-shaped, and snowflake-shaped wax-filled containers are within the scope of the order. Also, two gold candles with rope designs, one ivory candle with gold flower and vine designs, and one ivory candle with gold cherubs and rope designs are within the scope of the order and one white wax-filled container with carolers and a Christmas scene is outside the scope of the order. 8/24/98.

Leader Light Ltd.—3″×3″ square, 3″×6″ square, and 3″×6″ round candles are within the scope of the order. 8/31/98

A–570–808 *Chrome-Plated Lug Nuts*—Wheel Plus, Inc.—imported zinc-plated lug nuts which are chrome-plated in the United States are within the scope of the order. 9/22/98

Country: Japan

A–588–804 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*—Koyo Seiko Co., Ltd.—a cylindrical roller bearing for use as an axle bearing in cars and trucks is within the scope of the order. 8/10/98

A–588–837 *Large Newspaper Printing Presses*—Nireco Corporation—Calagraph Systems that are not imported and sold pursuant to a contract for a LNPP system, addition, or component, but rather imported and sold only as an upgrade or add-on to a pre-existing installed and operating LNPP are outside the scope of the order. 8/4/98

Komori American Corporation—the System 20 is outside the scope of the order. 8/4/98

II. Anticircumvention Rulings Completed Between July 1, 1998 and September 30, 1998

None.

III. Scope Inquiries Terminated Between July 1, 1998 and September 30, 1998

Country: Canada

A–122–506 *Oil Country Tubular Goods (OCTG)*—Regency Resources

Corporation—Clarification to determine whether used OCTG is within the scope of the order. Scope inquiry was terminated on 9/21/98.

IV. Anticircumvention Inquiries Terminated Between July 1, 1998 and September 30, 1998

None.

V. Pending Scope Clarification Requests as of September 30, 1998

Country: Mexico

A–201–805 *Circular Welded Non-Alloy Steel Pipe*—Cierra Pipe, Inc.,—Clarification to determine whether line pipe ''shorts,'' or ''old line pipe'' which has rusted and pitted after sitting in storage, constitute line pipe of a kind used for oil and gas pipelines or is pipe and tube covered by the order.

Country: Sweden

A–401–040 *Stainless Steel Plate*—Avesta Sheffield AB and Avesta Sheffield NAD, Inc.—Clarification to determine whether stainless steel slabs that are manufactured in Great Britain and rolled into hot bands in Sweden are within the scope of the order.

Country: Germany

A–428–801 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*—FAG Aerospace & Superprecision Bearings GmbH—Clarification to determine whether certain aerospace bearings which have entered the United States but have been returned to Germany for repair or refurbishing, and which then reenter the United States, are within the scope of the order.

A–428–816 *Cut-to-Length Carbon Steel Plate*

C–428–817 Novosteel SA—Clarification to determine whether certain profile slab produced by Reiner Brach GmbH and Co. KG is within the scope of the orders.

Country: India

A–533–806 *Sodium Sulfanilate*

C–533–806 3V Inc.—Clarification to determine whether sodium sulfanilate produced by 3V's affiliate, 3V Sigma S.p.A., in Italy from sulfanilic acid imported from India is within the scope of the order.

Country: People's Republic of China

A–570–504 *Petroleum Wax Candles*—Ocean State Jobbers—Clarification to determine whether taper candles consisting of a blend of petroleum wax and beeswax are within the scope of the order.

Et Al Imports—Clarification to determine whether candles consisting of an 80/20 beeswax/petroleum wax blend are within the scope of the order.

Target Stores—Clarification to determine whether ''cache box'' candles containing citronella oil are within the scope of the order.

Meijer Incorporated—Clarification to determine whether a wax-filled container in the shape of a rabbit is within the scope of the order.

Country: Japan

A–588–804 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*—Nissei Sangyo America, Ltd.—Clarification to determine whether ''vacuum nozzle assemblies'' are within the scope of the orders.

A–588–813 *Light-Scattering Instruments and Parts Thereof*—Thermo Capillary Electrophoresis, Inc.—Clarification to determine whether diode array detectors and cell flow units are within the scope of the order.

VI. Pending Anticircumvention Inquiries as of September 30, 1998

Country: Canada

A–122–823 *Cut-to-Length Carbon Steel Plate*—Kentucky Electric Steel Company (Petitioner)—Anticircumvention inquiry to determine whether Co-Steel Lasco and Gerdau MRM are circumventing the order by adding small amounts of boron to carbon steel plate products covered by the order.

Country: Mexico

A–201–805 *Certain Welded Non-Alloy Steel Pipe*—Allied Tube & Conduit Corp., Sawhill Tubular Division of Tex-Tube Co., Century Tube Corp., Laclede Steel Co., LTV Tubular Products Co., Sharon Tube Co., Western Tube & Conduit Co., Wheatland Tube Co., and CSI Tubular Products, Inc. (Petitioners)—Anticircumvention inquiry to determine whether imports of (i) pipe certified to the American Petroleum Institute (API) 5L line pipe specifications (API 5L or line pipe) and (ii) pipe certified to both the API 5L line pipe specifications and the less stringent American Society for Testing and Materials (ASTM) A–53 standard pipe specifications (dual certified pipe), falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order.

Country: United Kingdom

A–412–810 *Lead and Bismuth Carbon Steel Products*

C–412–811 Inland Steel Bar Company and USS/Kobe Steel Company (Petitioners)—Anticircumvention inquiry to determine whether British Steel PLC is circumventing the order by shipping leaded steel billets to the United States, where they are converted into the hot-rolled carbon steel products covered by the order.

Country: Germany

A–428–811 *Lead and Bismuth Carbon Steel Products*

C–429–812 Inland Steel Bar Company and USS/Kobe Steel Company (Petitioners)—Anticircumvention inquiry to determine whether Saarstahl A.G. and Thyssen Stahl A.G. are circumventing the order by shipping leaded steel billets to the United States, where they are converted into the hot-rolled carbon steel products covered by the order.

Country: Italy

A–475–818 *Certain Pasta*—Borden, Inc., Hershey Foods Corp., Gooch Foods, Inc. (Petitioners)—Anticircumvention inquiry to determine whether Barilla S.r.L. is importing pasta in the United States in bulk (defined as packages of greater than five pounds) and repackaging the pasta into packages of five pounds or less for sale in the retail market; and whether such repackaging constitutes circumvention of the antidumping duty order.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: October 30, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–29548 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.102898A]

Caribbean Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold public hearings on its Draft Comprehensive Amendment Addressing Sustainable Fisheries Act Requirements, Including Overfishing Definitions (draft Comprehensive SFA Amendment).

DATES: The public hearings will be held on November 6 and November 10, 1998, from 7:00 p.m. to 10 p.m. Written comments on the draft Comprehensive SFA Amendment will be accepted through November 11, 1998.

ADDRESSES: The hearings will be held in the U.S. Virgin Islands and in Puerto Rico. For specific hearing locations and times, see **SUPPLEMENTARY INFORMATION**. Copies of the Council's draft Comprehensive SFA Amendment can be obtained by calling the Council at (787) 766–5926; copies will be available at the hearings. Written comments on the draft Comprehensive SFA Amendment should be sent to the Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: 787–766–5926; fax: 787–766–6239.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: 787–766–5926; fax: 787–766–6239.

SUPPLEMENTARY INFORMATION: The Sustainable Fisheries Act of 1996 (SFA) amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require certain changes in the contents of the fishery management plans (FMPs) prepared by regional fishery management councils. Under the procedures of the Magnuson-Stevens Act, the Council has prepared FMPs for reef fish, spiny lobster, coral, and queen conch; these FMPs have been approved by NMFS and implemented through final regulations. The Council's draft Comprehensive SFA Amendment amends its FMPs to comply with aforementioned new requirements regarding FMP contents established in 1996.

The draft Comprehensive SFA Amendment contains new discussions on the status of the fisheries managed under the FMPs, on bycatch, and on recreational fishing. It also contains overfishing definitions and stock rebuilding plans for overfished species. Specifically, it includes the following overfishing definition for the red hind (*Epinephelus guttatus*):

A red hind stock is overfished when it is below the level of 45 percent of the spawning stock biomass per recruit that would occur in the absence of fishing. When a red hind stock is overfished, overfishing is defined as harvesting at a rate that is not consistent with a program that has been established to rebuild the stock to the 45 percent spawning stock biomass per recruit level. When a red hind stock is not overfished, overfishing is defined as a harvesting rate that, if continued, would lead to a state of the stock or stock complex that would not at least allow a harvest of OY (optimum yield) on a continuing basis.

This definition may be expanded to include the grouper complex. There is no new information available to the Council regarding the status of other Caribbean fishery stocks. Because the Comprehensive SFA Amendment contains no management measures, no implementing regulations will be required.

The Council hearings will be held at the following locations and times:

Friday, November 6, 1998, from 7–10 p.m., at the Conference Room of the Best Western Pierre Hotel, De Diego Avenue, Santurce, Puerto Rico; and

Tuesday, November 10, 1998, from 7–10 p.m., at the Conference Room of the Caravelle Hotel, located at 44A Queen Cross St., Christiansted, St. Croix, U.S. Virgin Islands.

Fishers and other interested persons are invited to attend these hearings and participate through oral and/or written statements regarding issues concerning the Comprehensive SFA Amendment.

Special Accommodations

These hearings are open to the public and will be conducted in English. The hearings are physically accessible to people with disabilities. For more information or requests for sign language interpretation or other auxiliary aids, please contact Mr. Miguel A. Rolon at the Council at least 5 days prior to the meeting dates (see **FOR FURTHER INFORMATION CONTACT**).

Dated: October 29, 1998.

Richard W. Surdi,

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

[FR Doc. 98–29522 Filed 10–30–98; 3:15 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; Notice of Location of November Meeting

ACTION: Notice of location for the November 9 meeting.

Reference: This notice updates the notice of postponement published in the **Federal Register** on October 22, 1998. Citation: 63 FR 56628.

SUMMARY: The President established the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (PIAC) to advise the Vice President on the public interest obligations of digital broadcasters. The Committee will study and recommend which public interest obligations should accompany broadcasters' receipt of digital television licenses. The President designated the National Telecommunications and Information Administration as secretariat for the Committee.

Authority: Executive Order 13038, signed by President Clinton on March 11, 1997.

DATES: The meeting will be held on Monday, November 9 from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting is scheduled to take place at the Ronald Reagan International Trade Center, in the Polaris Room, at 1300 Pennsylvania Avenue, NW, Washington, DC 20230. The nearest Metro stops are Federal Triangle and Metro Center.

FOR FURTHER INFORMATION CONTACT: Karen Edwards, Designated Federal Officer and Telecommunications Policy Specialist, at the National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4720, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Telephone: 202–482–8056; Fax: 202–482–8058; E-mail: piac@ntia.doc.gov.

Media Inquiries: Please contact Sallianne Fortunato of NTIA's Office of Public Affairs at 202–482–7002.

Agenda

Opening remarks
Committee deliberations
Public comment
Closing remarks

This agenda is subject to change. For an updated, more detailed agenda, please check the Advisory Committee homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm.

Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. This meeting is physically accessible to people with disabilities. Any member of the public requiring special services, such as sign language interpretation or other ancillary aids, should contact Karen Edwards immediately at 202–482–8056 or at piac@ntia.doc.gov.

Members of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting. The Secretariat's guidelines for public comment are described below and are available on the Advisory Committee homepage (www.ntia.doc.gov/pubintadvcom/pubint.htm) or by calling 202–482–8056.

Guidelines for Public Comment

The Advisory Committee on Public Interest Obligations of Digital Television Broadcasters welcomes public comments.

Oral Comment: In general, opportunities for oral comment will usually be limited to no more than five (5) minutes per speaker and no more than thirty (30) minutes total at each meeting.

Written Comment: Written comments must be submitted to the Advisory Committee Secretariat at the address listed below. Comments can be submitted either by letter addressed to the Committee (please place ''Public Comment'' on the bottom left of the envelope and submit at least thirty-five (35) copies) or by electronic mail to piac@ntia.doc.gov (please use ''Public Comment'' as the subject line). Written comments received within three (3) workings days of a meeting and comments received shortly after a meeting will be compiled and sent as briefing material to Committee members prior to the next scheduled meeting.

Obtaining Meeting Minutes

Within thirty (30) days following the meeting, copies of the minutes of the meeting may be obtained over the Internet at www.ntia.doc.gov/pubintadvcom/pubint.htm, by phone request at 202–482–8056, by email request at piac@ntia.doc.gov or by written request to Karen Edwards; Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4720; 14th Street and Constitution Avenue NW, Washington, DC 20230.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 98–29628 Filed 11–2–98; 12:26 pm]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) Performance Appraisal System:

William T. Hatch

Ronald P. Hack

Bernadette McGuire-Rivera

Dennis R. Connors

Neal B. Seitz

William F. Utalaut

Vicki G. Brooks,

Executive Secretary, National Telecommunications and Information Administration, Performance Review Board.

[FR Doc. 98–29558 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–BS–M

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 19 November 1998 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 26 October 1998.

Charles H. Atherton,

Secretary.

[FR Doc. 98–29461 Filed 11–3–98; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

October 29, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 5, 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 this limit, 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.

The current limit for Categories 340/640 is being increased for carryover and carryforward.

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 63 FR 5786, published on February 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 29, 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 January 29, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Laos and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 5, 1998, you are directed to increase the current limit for

Categories 340/640 to 175,358 dozen [1], as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the Lao People's Democratic Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls 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. 98–29489 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations with the Government of Cambodia

October 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

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 categories for which consultations have been requested, call (202) 482–3740.

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.

On October 28, 1998, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Government of the United States requested consultations with the Government of Cambodia with respect to cotton knit shirts and blouses in Categories 338/339 and cotton sweaters in Category 345, produced or manufactured in Cambodia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Cambodia, the Government of the United States may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 338/339 and 345, produced or manufactured in Cambodia and exported during the twelve-month period which began on October 28, 1998 and extends through October 27, 1999, at a level of not less than 1,745,634 dozen for Categories 338/339 and at a level of not less than 53,001 dozen for Category 345.

Statements of serious damage, actual threat of serious damage or the exacerbation of serious damage concerning Categories 338/339 and 345 follow this notice.

In a notice and letter to the Commissioner of Customs published on October 28, 1998 (63 FR 57666), CITA extended the restraint limit on cotton and man-made fiber gloves and mittens in Categories 331/631 for the period October 29, 1998 through October 28, 1999.

Anyone wishing to comment or provide data or information regarding Categories 331/631, 338/339 and 345 or to comment on domestic production or availability of products included in these categories is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Cambodia.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular commentary or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C.553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Cambodia, further notice will be published in the **Federal Register**.

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).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Summary of the Statement in Support of Request for Consultations Under Section 204 of the Agricultural Act of 1956

Men's & Boys' and Women's & Girls' Cotton Knit Shirts and Blouses—Category 338/339

October 1998

Import Situation and Conclusion

U.S. imports of men's and boys' and women's and girls' cotton knit shirts and blouses, Category 338/339, from Cambodia surged to 1,745,634 dozen during the year ending July 1998, nearly 12 times the 151,226 dozen imported during the year ending July 1997 and more than 600 times the 2,568 dozen imported in calendar year 1996. Imports from Cambodia were 1.2 percent of total U.S. imports of Category 338/339 in the year ending July 1998, and were equivalent to 1.7 percent of U.S. production of Category 338/339 in 1997.

U.S. imports of men's and boys' and women's and girls' cotton knit shirts and blouses, Category 338/339, from Cambodia entered the U.S. at an average landed duty-paid value of $47.28 per dozen during the first seven months of 1998, 10 percent below the average landed duty-paid value for all men's and boys' and women's and girls' cotton knit shirt and blouse imports into the U.S., and 43 percent below the average U.S. producers' price for men's and boys' and women's and girls' cotton knit shirts and blouses.

The sharp and substantial increase of low-valued Category 338/339 imports from Cambodia threatens to cause disruption to the U.S. men's and boys' and women's and girls' cotton knit shirt and blouse market and to the orderly flow of trade in these products. In several instances, Cambodia's import level for the year ending July 1998 exceeds the trade levels of WTO countries that have quota agreements with the United States.

U.S. Production, Import Penetration, and Market Share

U.S. production of men's and boys' and women's and girls' cotton knit shirts and blouses, Category 338/339, declined in 1997 falling to 104,876,000 dozen, 4 percent below the 1996 production level. Imports of Category 338/339 increased from 97,278,858 dozen in 1996 to 119,559,213 dozen in 1997, a 23 percent increase. Imports continued to increase reaching 141,574,072 dozen in the year ending July 1998, 28 percent above the same period a year earlier.

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

The ratio of imports to domestic production increased from 89 percent in 1996 to 114 percent in 1997. The domestic manufacturers' share of the U.S. market for men's and boys' and women's and girls' cotton knit shirts and blouses dropped 10 percentage points, falling to 36 percent in 1997.

Summary of the Statement in Support of Request for Consultations Under Section 204 of the Agricultural Act of 1956

Cotton Sweaters—Category 345

October 1998

Import Situation and Conclusion

U.S. imports of cotton sweaters, Category 345, from Cambodia surged to 53,001 dozen during the year ending July 1998, over 200 times the 249 dozen imported during the year ending July 1997. There were no imports from Cambodia in 1996. Imports from Cambodia were 1.6 percent of total U.S. imports of Category 345 in the year ending July 1998, and were equivalent to 2.3 percent of U.S. production of Category 345 in 1997.

U.S. imports of cotton sweaters, Category 345, from Cambodia entered the U.S. at an average landed duty-paid value of $57.26 per dozen during the first seven months of 1998, 62 percent below the average landed duty-paid value for all cotton sweater imports into the U.S., and 68 percent below the average U.S. producers' price for cotton sweaters.

The sharp and substantial increase of low-valued Category 345 imports from Cambodia threatens to cause disruption to the U.S. cotton sweater market and to the orderly flow of trade in these products.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton sweaters, Category 345, declined in 1997 falling to 2,290,000 dozen, 18 percent below the 1996 production level. Imports of Category 345 increased from 2,368,553 dozen in 1996 to 2,862,748 dozen in 1997, a 21 percent increase. Imports continued to increase reaching 3,322,066 dozen in the year ending July 1998, 30 percent above the same period a year earlier.

The ratio of imports to domestic production increased from 85 percent in 1996 to 125 percent in 1997. The domestic manufacturers' share of the U.S. market for cotton sweaters dropped 10 percentage points, falling to 41 percent in 1997.

[FR Doc. 98–29635 Filed 11–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity futures Trading Commission.

TIME AND DATE: 10:00 a.m., Thursday, November 19, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–29651 Filed 11–2–98; 2:39 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Thursday, November 19, 1998.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–29652 Filed 11–2–98; 2:39 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0028]

Submission for OMB Review; Comment Request Entitled Termination Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Termination Requirements. A request for public comments was published at 63 FR 46003, August 28, 1998. No comments were received.

DATES: Comments may be submitted on or before December 4, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA, (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Contracting officers terminate contracts, for default or convenience, only when it is in the best interest of the Government to do so. After receipt of the notice of termination, contractors are required to terminate subcontracts, advise the contracting officer of any special circumstances, submit any requests for an equitable adjustment, submit a settlement proposal, and take other action as directed. Records regarding the terminated contract must be maintained for 3 years.

The information submitted or retained in connection with contract termination is used to reach an equitable settlement with firms and to protect the interests of the Government and the terminated contractor.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *3* hours per termination, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The annual reporting burden is estimated as follows: Respondents, *2,920;* responses per respondent, *1;* total annual responses, *2,920;* preparation hours per response, *3;* and total response burden hours, *8,760;* and total recordkeeping hours, *2,920.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0028, Termination Requirements, in all correspondence.

Dated: October 30, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–29509 Filed 11–3–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) for BRAC 95 Disposal and Reuse of Property at the Red River Army Depot, Texarkana, TX

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability.

SUMMARY: The Department of the Army announces today the availability of the EA and Finding of No Significant Impact (FNSI) for the disposal and use of BRAC property at the Red River Army Depot (RRAD), Texarkana, Texas, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. The 1994 Defense Base Closure and Realignment Commission (BRAC) recommended the realignment of RRAD. The proposed action in the disposal of property made available by the realignment of specified missions at RRAD.

DATES: Inquiries will be accepted until November 19, 1998.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to Mr. Joe Hand, U.S. Army Corps of Engineers, Mobile District, (ATTN: CESA–PD–EC), P.O. Box 2288, Mobile, Alabama 36628–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Hand via facsimile at (334) 690–2721.

SUPPLEMENTARY INFORMATION: The EA evaluates the environmental and socioeconomic effects associated with the disposal and subsequent reuse of the RRAD property. The Army proposes to dispose of approximately 765 acres of the 19,081-acre installation, which was identified through the BRAC process as surplus. Three alternative methods of disposal were analyzed: encumbered disposal, unencumbered disposal and retention of the property in caretaker status (i.e., no action alternative). The Army's preferred alternative for disposal of the RRAD BRAC property is encumbered disposal which involves conveying the property with conditions imposed on easements and rights-of-way, asbestos-containing material, groundwater-use prohibition, lead-based paint, and remedial activities, utility dependencies and wetlands.

The EA, which is incorporated into the FNSI, examines potential effects of the proposed action and alternatives on 16 resource areas and areas of environmental concern: land use, climate, air quality, noise, geology, water resources, infrastructure, training areas, hazardous and toxic substances, permits and regulatory authorizations, biological resources and ecosystems, cultural resources, economic development, sociological environment, quality of life, and installation agreements.

The EA concludes that the disposal and subsequent reuse of the property will not have a significant impact on the human environment. Issuance of a FNSI would be appropriate. An Environment Impact Statement is not required prior to implementation of the proposed actions.

Dated: October 29, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–29502 Filed 11–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and 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 December 4, 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, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Werfel__d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

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 Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 29, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Equity Assistance Centers (formerly called Desegregation Assistance Centers) Under Civil Rights Technical Assistance and Training.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 650.

Abstract: The Equity Assistance Centers provide technical assistance and services in the areas of race and national origin desegregation and gender equity in a geographical region.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–29488 Filed 11–3–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Impact Statement on the Proposed Production of Plutonium-238 for Use in Advanced Radioisotope Power Systems for Future Space Missions

AGENCY: Department of Energy (DOE).

ACTION: Notice of extension of comment period.

SUMMARY: DOE is extending the public scoping period on the environmental impact statement (EIS) for the Proposed Production of Plutonium-238 for Use in Advanced Radioisotope Power Systems for Future Space Missions from November 4, 1998, to January 4, 1999. DOE is also changing the toll-free telephone number from (800) 708–2680 to (877) 562–4593 and establishing a fax number, (877) 562–4592, that the members of public can use to submit their comments. Since the publication of the Notice of Intent (NOI), DOE has established the dates and locations for the public scoping meetings and is publishing them in this notice.

DOE will also announce the dates and locations of these meetings in the local media at least 15 days prior to the meetings.

DATES: Comments on the scope of the EIS should be postmarked by January 4, 1999, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

DOE will conduct public scoping meetings to assist in defining the appropriate scope of the EIS and to identify significant environmental issues to be addressed. These meetings will be held at the following locations and times:

- November 12, 1998, Shilo Inn, 780 Lindsey Blvd., Idaho Falls, Idaho
- November 17, 1998, Oak Ridge Associated Universities, Pollard Auditorium, 210 Badger Ave., Oak Ridge, Tennessee
- November 19, 1998, Best Western Tower Inn, 1515 George Washington Way, Richland, Washington

The schedule for all three meetings will be the same. They will begin at 5:00 p.m. and end at 9:00 p.m. Written comments may be submitted at the meetings or by mail to Ms. Colette Brown at the address identified below. If the comments are mailed, they should be postmarked by January 4, 1999, to ensure consideration.

FOR FURTHER INFORMATION CONTACT: For further information on this EIS, please contact Colette Brown, Office of Nuclear Energy, Science and Technology (NE–50), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874. Telephone: (301) 903–6924, Facsimile: (301) 903–1510, Electronic Mail: *Colette.Brown@HQ.DOE.GOV*. For further information on DOE procedures for implementing the National Environmental Policy Act (NEPA), contact Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20582–0119, Telephone: (202) 586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: On October 5, 1998, DOE published a notice in the **Federal Register** (63 FR 53398) announcing its intent to prepare an EIS on the proposed production of plutonium-238 for use in advanced radioisotope power systems for future space missions. In that notice, DOE indicated that the public scoping meetings would be announced at a later time. Because the scoping meetings could not be scheduled within the public comment period established by the original notice, the comment period has been extended to January 4, 1999. Comments should be postmarked by that date to ensure consideration.

To provide an additional method for submitting comments on the scope of the EIS and to correct a mistake in the original notice, DOE is adding a fax number and changing the toll-free telephone number. The toll-free telephone number has been changed to (877) 562–4593. The new fax number to be used to submit comments on the scope of the EIS is (877) 562–4592.

Signed in Washington, DC, this 29th day of October 1998, for the U.S. Department of Energy.

William D. Magwood, IV,

Acting Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 98–29529 Filed 11–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos, National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES:

Wednesday, November 18, 1998:

6 p.m.–9 p.m.

6:30 p.m. to 7:00 p.m. (public comment session)

ADDRESSES: Hotel Santa Fe, 1501 Paseo De Peralta, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m.—Call to Order by DOE

6:00 p.m.—Welcome by Chair, Roll Call, Approval of Agenda and Minutes

6:30 p.m.—Public Comments

7:00 p.m.—Break

7:15 p.m.—Board Business

9:00 p.m.—Adjourn

Public Participation: The meeting is open to the public. The public may file written statements with the Committee, either before or after the meeting. A sign-up sheet will also be available at the door of the meeting room to indicate a request to address the Board. Individuals who wish to make oral presentations, other than during the public comment period, should contact Ms. Ann DuBois at (505) 665–5048 five

(5) business days prior to the meeting to request that the Board consider the item for inclusion at this or a future meeting. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that has to be resolved prior to publication.

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 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Ms. M.J. Byrne, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on October 29, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–29531 Filed 11–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant, Amarillo, TX

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas

DATE AND TIME: Tuesday, November 17, 1998: 9 a.m.–1:30 p.m.

ADDRESSES: Amarillo Senior Citizens' Association, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, PO. Box 30030, Amarillo, TX 79120 (806) 477-3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

9:00 a.m.—Welcome—Agenda Review—Approval of Minutes
9:10 a.m.—Co-Chair Comments
9:30 a.m.—RTG Presentation
10:30 a.m.—RTG Question & Answer
10:45 a.m.—Break
11:00 a.m.—Task Force/Subcommittee Minutes
11:45 a.m.—Lunch
12:30 p.m.—Ex-Officio Reports
1:00 p.m.—Updates—Occurrence Reports—DOE
1:20 p.m.—Closing Remarks
1:30 p.m.—Adjourn

Public Participation: The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office 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 Official 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 at any time throughout the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10 pm, Monday through Thursday; 7:45 am to 5 pm on Friday; 8:30 am to 12 noon on Saturday; and 2 pm to 6 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9 am to 7 pm on Monday; 9 am to 5 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on October 29, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–29532 Filed 11–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL).

DATES:

Tuesday, November 17, 1998
8 a.m.–6 p.m.
Wednesday, November 18, 1998
8 a.m.–5 p.m.

There will be public comment sessions on Tuesday, November 17, 1998 from 9:45 a.m. to 10 a.m., 12 p.m. to 12:15 p.m., 4 p.m. to 4:15 p.m., and 5:30 p.m. to 5:45 p.m. These times are subject to change as the meeting progresses, depending on the extent of comment offered. Please check with the meeting facilitator to confirm these times.

ADDRESSES: The Miles & Virginia Willard Fine Arts Center, 498 A Street, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: INEEL Information (1–800–708–2680) or Woody Russell, DOE-Idaho, (208) 526–0561, or Wendy Green Lowe, INEEL Board Facilitator, Jason Associates Corp. (208–522–1662) or visit the Board's Internet homepage at http://www.ida.net/users/cab.

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

Radioisotope Thermoelectric Generator Environmental Impact Statement scoping process; Plutonium 238 Production Environmental Impact Statement;
DOE's perspective on the INEEL Long Range Plan '' expectations for new site contractor;

Proposed Plan for Waste Area Group 3 (Idaho Nuclear Technology and Engineering Center);
Nevada Test Site report regarding migration of plutonium contamination and the implications for cleanup at the INEEL;
DOE's strategy for emergency response planning and preparations for State, local, and Tribal governments for radiological materials transport; and
The TRA Accident report, plutonium uptake at the INTEC, and the decision to rebid the INEEL contract;
Discuss the Environmental Assessment on the intermodal transport of Low-Level Waste to Nevada Test Site; and
Finalize recommendations on the Proposed Plan for Waste Area Group 3 (Idaho Nuclear Technology and Engineering Center), the Proposed Plan for Waste Area Group 1 (Test Area North), suggestions developed at the Low-Level Waste Seminar, and establishing common databases for background radiation information to support decisionmaking in the cleanup program.

Agenda topics may change up to the day of the meeting. The final agenda will be available at the meeting.

Public Participation: The two-day meeting is open to the public, with public comment sessions scheduled for Tuesday, November 17, 1998. The Board will be available during these time periods to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. 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 the INEEL Information line or Wendy Green Lowe, Jason Associates Corp., at the addresses or telephone numbers 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. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

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 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Charles M. Rice, INEEL Citizens' Advisory Board Chair, 477 Shoup Ave., Suite 205, Idaho Falls, Idaho 83402 or by calling Wendy Green Lowe, the Board Facilitator, at (208) 522–1662.

Issued at Washington, DC on October 29, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–29533 Filed 11–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Johnson Creek Artificial Propagation Enhancement Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Floodplain and Wetlands Involvement.

SUMMARY: This notice announces BPA's intention to fund a small scale program designed to increase survival of a weak but recoverable population of summer chinook salmon in Johnson Creek, a tributary of the South Fork Salmon River in Valley County, Idaho. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATES: Comments are due to the address below no later than November 19, 1998.

ADDRESSES: Submit comments to Communications, Bonneville Power Administration—ACS–7, P.O. Box 12999, Portland, Oregon 97212. Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION CONTACT: Colleen Spiering—ECP–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5756, fax number 503–230–4089.

SUPPLEMENTARY INFORMATION: The project would include the following types of activities that may involve wetlands or floodplains: expansion of the McCall Fish Hatchery; in-stream temporary weirs for adult fish trapping; smolt acclimation and release sites utilizing stream side channels and possibly installing adult holding tanks. All proposed sites are in Valley County, Idaho. The locations of the proposed sites are as follows: McCall Fish Hatchery, T.18N., R3E., S.8. Pen Basin and Landmark Airstrip acclimation sites, T.15N., R.8E., S.18. Wapiti Meadows Ranch acclimation site, T.18., R.8E., S.29 and 32. Bryant Ranch and Old State Lands adult trap sites, T.18N., R.8E., S.9 and 16. Cox Ranch Acclimation site, T.18N., R.8E., S.20. Whitehorse Rapids, Burntlog Creek, and Ditch Creek acclimation sites, T.17N., R.8E., S.20.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on October 27, 1998.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 98–29530 Filed 11–3–98; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–213–008]

Columbia Gas Transmission; Notice of Application

October 29, 1998.

Take notice that on October 23, 1998, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 12801 Fair Lakes Parkway, Fairfax, Virginia, 22030–10-46, an abbreviated application pursuant to Sections 7(b) and Section 7(c) of the Natural Gas Act, as amended, to amend its certificates previously issued by the Commission in an Order Denying Rehearing and Issuing Certificates on May 14, 1997, Order Amending Certificate on November 25, 1997, and Order Amending Certificates on June 30, 1998 in Docket Nos. CP96–213–000, et al., Columbia's Market Expansion Project (MEP).

Specifically, Columbia proposes to make a facility modification to the 1999 construction previously authorized at its Smithfield Compressor Station, located in Wetzel County, West Virginia.

As part of the MEP project, Columbia originally proposed to uprate and

relocate an existing Solar Centaur gas turbine (Unit No. 6) from its Clendenin Compressor Station to its Smithfield Compressor Station. Subsequently, Columbia has determined that it should retain Unit No. 6 at Clendenin for continued standby service.

Columbia now proposes herein to amend its certificate to modify the 1999 Smithfield compressor project by installing a new Solar Taurus 7,170 horsepower (ISO) gas turbine/compressor and abandoning an existing Solar Centaur 3,830 horsepower gas turbine/compressor. The existing Smithfield Centaur unit will be returned to Solar, Inc. (Solar) as an exchange for credit toward the purchase of the Taurus unit. Columbia states that this proposed modification to the Smithfield project results from further design, operating and cost analysis performed by Columbia's engineering personnel, and; this proposal will allow Columbia to fully benefit from the increased efficiency of a new generation Solar Taurus/C–40 compressor package. Columbia states the Centaur/C–30 units are less efficient than a Taurus/C–40 package. Columbia anticipates future operation and maintenance cost savings will result from more efficient compressor operations.

The revised estimated investment cost of $8,567,200 for the Smithfield project results in an approximate increase of $465,000 in 1995 dollars of the estimated Gross Investment for the MEP.

Any person desiring to participate in a hearing process or to make any protest with reference to said application should on or before November 19, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. The Commission's rules require that protesters provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of its intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in a subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–29479 Filed 11–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4400–000]

Pittsfield Generating Company, L.P.; Notice of Issuance of Order

October 30, 1998.

Pittsfield Generating Company, L.P. (Pittsfield), an affiliate of Pacific Gas & Electric Company, filed an application for Commission authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Pittsfield requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Pittsfield. On October 29, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's October 29, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Pittsfield should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Pittsfield is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Pittsfield, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Pittsfield's issuances of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 30, 1998.

Copies of the full text of the Order are available from the Commission's Public

Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 98–29507 Filed 11–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 29, 1998.

Take notice that on October 26, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventeenth Revised Sheet No. 50. The tariff sheet is proposed to be effective November 1, 1998.

Transco states that the purpose of the instant filing is to track fuel changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. The filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule FT–NT.

Included in Appendix B attached to the filing is the explanation of the fuel changes and details regarding the computation of the revised Rate Schedule FT–NT fuel percentages.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29482 Filed 11–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC98–66–000 and ER98–4705–000]

USGen New England, Inc.; Notice of Filing

October 29, 1998.

Take notice that on October 27, 1998, USGen New England, Inc. tendered for filing an amendment to the Application filed in the above-referenced dockets. The amendment informs the Commission that one of the owner lessors and one of the owner participants previously identified in the Application will no longer participate in the proposed sale-leaseback of the Bear Swamp Project.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 6, 1998. Protests will be considered by the Commission to determine 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.

David P. Boergers,

Secretary.

[FR Doc. 98–29483 Filed 11–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–98–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

October 29, 1998.

Take notice that on October 26, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to become effective October 1, 1998:

Sixth Revised Sheet No. 321

Williston Basin states that it has determined that the take-or-pay amounts associated with Docket No. RP93–175–000 have been fully recovered as of September 30, 1998. As a result, the instant tariff sheet reflects the elimination of the fixed monthly surcharge associated with Docket No. RP93–175–000, effective October 1, 1998.

Further, Williston Basin states that it is filing as Exhibit A of Appendix C of the instant filing, the final reconciliation of the monthly fixed surcharge in Docket No. RP93–175–000, pursuant to Section 37 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–29481 Filed 11–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Accepting Application for Filing and Requesting Interventions and Protests

October 29, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Minor License

b. *Project No.:* 597–003

c. *Date Filed:* June 24, 1998

d. *Applicant:* PacifiCorp

e. *Name of Project:* Stairs Hydroelectric Project

f. *Location:* On Big Cottonwood Creek in Big Cottonwood Canyon, Salt Lake County, near the town of Sandy, about 15 miles southeast of downtown Salt Lake City, Utah. The project affects federal lands within the Wasatch-Cache National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Michael B. Burke, Project Manager, PacifiCorp, 910 S.W. Sixth Avenue, 610PSB, Portland, Oregon 97204, (503) 464–5344.

i. *FERC Contact:* Gaylord W. Hoisington (202) 219–2756

j. *Deadline for Interventions and Protests:* 60 days from the Issuance date of this notice.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Brief Description of Project:* The existing project consists of: (1) a 150-foot-long and 35-foot-high earth-fill diversion dam; (2) a reinforced concrete spillway; (3) a reinforced concrete intake structure; (4) a 2,850-foot-long penstock; (5) a 100-foot-wide by 35-foot-long masonry powerhouse; (6) one Francis turbine generator with a rated capacity of 1,200 kilowatts; (7) a 7-foot-wide by 5.3-foot-deep reinforced concrete tailrace; and (8) other appurtenances. No new construction is planned.

m. This notice also consists of the following standard paragraphs: B1 and E1.

n. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington D.C. 20426 or by calling (202) 219–1371. A copy is also available for inspection and reproduction at PacifiCorp, 910 S.W. Sixth Avenue, 610PSB Portland, Oregon 97204 or by calling Michael B. Burke (503) 464–5344.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practices and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All findings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 98–29480 Filed 11–3–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6184–6]

Clean Water Act Section 303(d): Availability of List Submissions and Proposed Decisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of an EPA decision identifying water quality limited segments and associated pollutants in California to be listed pursuant to Clean Water Act Section 303(d)(2), and requests public comment. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

EPA partially approved and partially disapproved California's submittal. Specifically, EPA approved California's listing of 472 waters and associated priority rankings. EPA disapproved California's decisions not to list 37 water quality limited segments and associated pollutants, and an additional 12 pollutants for waterbodies already listed by the State. EPA identified these additional waterbodies and pollutants for inclusion on the 1998 Section 303(d) list. EPA also announced its intention to approve the State's listing of Coyote Creek for toxicity pending solicitation of public comments concerning this listing decision.

EPA is providing the public the opportunity to review these proposed decisions as required by Public Participation regulations (40 CFR part 25). EPA will consider public comments in reaching its final decisions on the additional waterbodies and pollutants identified for inclusion on California's final lists.

DATES: Comments must be submitted to EPA on or before December 4, 1998.

ADDRESSES: Comments on the proposed decisions should be sent to David Smith, TMDL Coordinator, Water Division, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 744–2012, facsimile (415) 744–1078. Copies of the proposed decisions concerning California which explain the rationale for EPA's proposed decisions can be obtained by writing or calling Mr. Smith at the above address. Underlying documentation comprising the record for this decision is available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: David Smith at (415) 744–2012.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

On January 11, 1985, EPA published the Water Quality Planning and Management regulations (50 FR 1775). These regulations included requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations

did not specify dates for state compliance with the Section 303(d) requirements, but reiterated the statutory provisions calling for submissions from time to time. On July 24, 1992, EPA published a final rule (57 FR 33040) that amended 40 CFR 130.7 to establish that, for the purposes of identifying water quality limited waters still requiring TMDLs, ''from time to time'' means once every two years. The list of waters still needing TMDLs must also include a priority ranking and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's revised regulations, California submitted to EPA for its approval its listing decisions under Section 303(d)(2) on June 25, 1998. EPA approved California's listing of 472 waters and associated priority rankings. EPA disapproved California's decisions not to list 37 water quality limited segments and associated pollutants, and an additional 12 pollutants for waterbodies already listed by the State. EPA identified these additional waters and pollutants for inclusion on the 1998 Section 303(d) list. EPA also announced its intention to approve the State's listing of Coyote Creek for toxicity pending solicitation of public comments concerning the State's listing decision.

EPA solicits public comment on its identification of 37 additional waters and associated pollutants, and 12 additional pollutants for waters already listed by the State, for inclusion on California's 1998 Section 303(d) list. EPA also solicits public comment on California's listing of Coyote Creek in the Los Angeles Region due to toxicity.

EPA notes that it does not normally solicit public comment on its decisions to approve individual waters included on state Section 303(d) lists. Pursuant to the public participation requirements of 40 CFR part 25, EPA is providing this opportunity for public review and comment on its proposed approval decisions because California provided inadequate opportunity for public comment on the decision to list Coyote Creek for toxicity. In the future, EPA expects that states will provide adequate opportunities for public comment on all listed waters during development of the state lists.

Alexis Strauss,

Acting Director, Water Division.

[FR Doc. 98–29649 Filed 11–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6184–7]

Environmental Laboratory Advisory Board, Meeting Date and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Protection Agency (EPA) will convene an open meeting of the Environmental Laboratory Advisory Board (ELAB) on December 10, 1998, from 2:00 p.m. to 5:00 p.m. This meeting will be conducted by teleconference. The public is invited to join Ms. Ramona Trovato in Room 911, West Tower, Waterside Mall, 401 M Street, SW, Washington, DC.

Topics for discussion on the teleconference will include at a minimum an update from the workgroup tasked to examine performance-based measurement system, a briefing from the workgroup responsible for investigating issues affecting small laboratories, and discussion of agenda items for the ELAB meeting to be held January 14, 1999 at NELAC IVi in Bethesda, Maryland.

The public is encouraged to attend. Time will be allotted for public comment. Written comments are encouraged and should be directed to Ms. Elizabeth Dutrow; Designated Federal Officer; USEPA; 401 M Street, SW (8724R); Washington, DC 20460. If questions arise, please contact Ms. Dutrow by phone at (202) 564–9061, by facsimile at (202) 565–2441 or by email at dutrow.elizabeth@epamail.epa.gov.

Dated: October 26, 1998.

Nancy W. Wentworth,

Director, Quality Assurance Division.

[FR Doc. 98–29534 Filed 11–3–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00561; FRL–6044–3]

Ground Water & Pesticide Management Plans Workshop; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs will hold a 2-day, participatory workshop on November 18 and 19, 1998. This notice announces the location and times for the workshop and sets forth the agenda topics. This workshop is free and open to the public. Advance registration is recommended because space is limited. Registration forms can be obtained from the contact given below.

DATES: The Ground Water & Pesticide Management Plans Workshop will be held on Wednesday, November 18, 1998 from 9 a.m. to 5 p.m. and Thursday, November 19, 1998, from 8 a.m. to 3 p.m.

ADDRESSES: The workshop will be held at: The Doubletree Hotel, 1301 Wyandotte Street, Kansas City, MO 64105.

FOR FURTHER INFORMATION CONTACT: By mail: Arthur-Jean B. Williams, 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, Crystal Mall 2 (CM #2), (703)305–5239, (fax) (703) 308–3259; e-mail: williams.arty@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the Ground Water & Pesticide Management Plans Workshop includes the following:

1. Groundwater Workshop goals and expectations.
2. Background on Ground Water Pesticide Management Plans.
3. Development of a mock Ground Water and Pesticide Management Plan.
4. State specific efforts to develop Ground Water and Pesticide Management Plans.
5. Discussion of mock scenarios that explore specific outcomes of a mock plan.

List of Subjects

Environmental protection.

Dated: October 30, 1998.

Arthur-Jean Williams,

Acting Director, Field and External Affairs Division.

[FR Doc. 98–29650 Filed 11–3–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66257A; FRL–6041–7]

Vinclozolin; Approval of Existing Stocks Provision for Terminated Uses

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final approval of existing stocks provision of terminated uses.

SUMMARY: EPA is announcing approval, with one minor change, of a proposed existing stocks provision for products containing 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione), or vinclozolin. This notice is a follow-up to an earlier notice announcing a request by the registrant of vinclozolin, BASF Corporation, to terminate certain uses, and to propose provisions for existing stocks of products already in the channels of trade.

DATES: The proposed existing stocks provisions became effective upon approval of the EPA changes to vinclozolin registrations, September 4, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Mark Wilhite, Reregistration Branch I, (7508W), Special Review and Reregistration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20046. Office location, telephone number, and e-mail address: Reregistration Branch I, 6th Floor, 1925 Jefferson Davis Highway, Arlington, VA; (703) 308–8586; wilhite.mark@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

Vinclozolin (trade names Ronilan, Curalan, and Ornilan) is a fungicide first registered in 1981 to control various types of rot caused by *Botrytis spp.*, *Sclerotinia spp*, and other types of mold and blight causing organisms, on lettuce (all types), raspberries, onions, succulent beans, and turf on golf courses, commercial and industrial sites. Vinclozolin is also registered for use on ornamental plants in greenhouses, and nurseries. BASF, the sole registrant of vinclozolin used on food commodities, recently requested amendment of its vinclozolin registrations to terminate two uses of vinclozolin in order to mitigate acute dietary risk. With its request for use deletions, BASF also proposed provisions for existing stocks already in the channels of trade which contained the old labeling. EPA published the use deletions and existing stocks proposal in the **Federal Register** (63 FR 40710, July 30, 1998) (FRL–6020–9) and asked for public comment.

II. Comments and Response

EPA received one comment in response to the proposal, submitted on behalf of the California Strawberry Commission. The comment concerned the elimination of vinclozolin as a tool for growers to combat strawberry yield loss due to mold and rot, and the lack of involvement in the decision. The comment also pointed out an inconsistency in BASF's existing stocks proposal, which would have stopped use of product stickered after August 30, 1998 by June 30, 1999, while allowing product in the channels of trade before August 30, 1998, to be used until January 2000. The proposal was therefore inconsistent and likely to cause confusion among users.

In response to the first point, EPA is sympathetic to the needs of growers and seeks to involve them in such negotiations and decisions as much as possible. However, EPA would note that this matter involves a termination of uses initiated by the registrant, BASF. EPA published notice of BASF's request so that all affected parties could participate in the process. As to BASF's decision to terminate the strawberry use to reduce dietary exposure, EPA would point out that options available to BASF were limited, since vinclozolin is registered on only six crops in the United States. Strawberries and stone fruits accounted for approximately half of the tonnage of vinclozolin treated food commodities, and are more commonly consumed by infants and children than the other commodities for which vinclozolin is registered (lettuce, onions, raspberries, and snap beans). EPA is mandated by FQPA to place special emphasis on protecting infants and children. In addition, there are other fungicides registered as alternatives to vinclozolin for control of mold and rot in strawberries, as well as stone fruits.

In response to the second comment, EPA agrees that having two dates for use termination is confusing, and would be difficult to enforce. Accordingly, the final use date for use of vinclozolin products with the old labeling, which includes strawberries and stone fruits, is changed to no later January 30, 2000. The tolerance is expected to be revoked by that date. The change is reflected in the final existing stocks provision as outlined below in Unit III. of this notice.

III. Acceptance of Use Termination and Final Existing Stocks Provision

EPA approved BASF's label amendments (for EPA registration numbers 7969–62 and 7969–85) deleting strawberries and stone fruits on September 4, 1998. According to the terms of the label amendments, all product not labeled as of September 4, 1998, will contain the new labels reflecting the termination of uses on strawberries and stone fruits and any labeled product not released for shipment would be restickered to reflect the label amendments. The provisions for existing stocks of vinclozolin products with the old label, produced before the label changes were approved are outlined below.

1. Retailers, distributors, and end-users may sell, distribute, or use products with the previously approved labeling which have already been released for shipment as of September 4, 1998, until such supplies are exhausted or January 30, 2000, whichever comes first.

2. Any vinclozolin product that on September 4, 1998, had not been released for shipment, is present in a BASF manufacturing or packaging facility, and contains labeling not reflecting the use terminations will be stickered by BASF to reflect the use terminations and to bar sale and use by January 30, 2000.

3. Within 30 days of approval of the existing stocks proposal, BASF shall provide to all Ronilan points of purchase, 50 copies of a bulletin with the pertinent details of the label amendments and existing stocks provisions.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Use Terminations.

Dated: October 28, 1998.

Jack E. Housenger,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–29540 Filed 11–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6184–8]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for Public Comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9601–9675, notice is hereby given that a proposed purchaser agreement (''Purchaser Agreement'') associated with the North

Penn Area 12 Superfund Site, Worcester Township, Montgomery County, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under Section 107 of CERCLA, 42 U.S.C. 9607, against Techni-Tool, Inc. and T-Squared Realty, L.L.C. (''Purchasers''). The settlement would require the Purchasers to, among other things, (1) file a Notice of Use Restriction with the Montgomery County Recorder of Deeds within thirty (30) days of the effective date of the Purchaser Agreement, (2) provide access to EPA and all other persons performing response actions under EPA oversight, and (3) perform the following property revitalization activities: demolish existing dilapidated structures at the Site, including the buildings and water storage tanks; remove the debris; abate the existing asbestos on the property; investigate and remove any drums and PCB-contaminated concrete on the property; and remove the fuel oil tanks and septic system.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before December 4, 1998.

ADDRESSES: The Purchaser Agreement and additional background information relating to the Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Purchaser Agreement may be obtained from Natalie L. Katz (3RC22), Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''North Penn Area 12 Superfund Site, Prospective Purchaser Agreement'' and ''EPA Docket No. III–98–079–DC,'' and should be forwarded to Natalie Katz at the above address.

FOR FURTHER INFORMATION CONTACT: Natalie L. Katz (3RC22), Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2615.

Dated: October 27, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 98–29535 Filed 11–3–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–CCT; FRL–6039–8]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; The Confederated Tribes of the Colville Reservation Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On September 10, 1998, the Confederated Tribes of the Colville Reservation (Colville Confederated Tribes) submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of the Colville Confederated Tribes' application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application.

DATES: Comments on the authorization application must be received on or before December 21, 1998. Public hearing requests must be received on or before November 19, 1998.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket control number ''PB–402404–CCT'' (in duplicate) to: Kristin Andersen, Environmental Protection Agency, Region X, 1200 Sixth Avenue, WCM-128, Seattle, WA 98101.

Comments, data, and requests for a public hearing may also be submitted electronically to: andersen.kristin@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Kristin Andersen, Environmental Protection Agency, Region X, 1200 Sixth Avenue, WCM–128, Seattle, WA 98101, Telephone: (206) 553–0244, e-mail address: andersen.kristin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State or Indian Tribe may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on

whether the Colville Confederated Tribes' application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. Tribal Program Description Summary

The following summary of the Colville Confederated Tribes' proposed program has been provided by the applicant:

On September 10, 1998, The Colville Confederated Tribes applied to EPA for authorization to administer and enforce a Tribal Lead-based Paint Program. The Colville Confederated Tribes have adopted Resolution 1998-477, dated July 1, 1998, in which the Colville Confederated Tribes Toxic Lead (Pb) Code is adopted in order to provide clear and specific guidance in the assessment, inspection, pre-renovation notification and abatement of lead-based paint activities on the Colville Confederated Tribes Reservation. Penalties for non-compliance are established. The Colville Confederated Tribes Toxic Lead (Pb) Code targets all buildings located on the Colville Confederated Tribes Reservation.

The Colville Confederated Tribes Toxic Lead (Pb) Code is designed to be at least as protective as the Federal law and provide for adequate enforcement of all provisions through a schedule of flexible remedies. This is accomplished through a combination of tribal specific requirements (training accreditation) that are identical to the Federal regulations, and through incorporation by reference of other required Federal elements (certification of individuals, workplace standards and pre-renovation notification activities). Also incorporated by reference are the Federal definitions with notable expansion of the definition of target housing to include all reservation buildings.

The Colville Confederated Tribes Toxic Lead (Pb) Code contains enforcement and compliance requirements consisting of a schedule of flexible remedies and an appeals process.

The Colville Confederated Tribes Program and request for Federal delegation of authority is a natural application of tribal sovereign power over environmental regulatory activities on tribal lands for the health, welfare and safety of tribal community members.

III. Federal Overfiling

TSCA section 404(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number ''PB–402404–CCT.'' Copies of this notice, the Colville Confederated Tribes' application, and all comments received on the application are available for inspection in the Region X office, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located at EPA Region X, Office of Waste and Chemicals Management, Solid Waste and Toxics Unit, Environmental Protection Agency, 1200 Sixth Avenue, WCM–128, Seattle, WA.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

andersen.kristin@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 ''PB–402404–CCT.'' Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: October 22, 1998.

Charles C. Clarke,

Regional Administrator, Region X.

[FR Doc. 98–29538 Filed 11–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–WI; FRL–6037–6]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Wisconsin's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On August 31, 1998, the State of Wisconsin submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Wisconsin's application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application.

DATES: Comments on the authorization application must be received on or before December 21, 1998. Public hearing requests must be received on or before November 19, 1998.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by the tracking number PB-402404-WI. (in duplicate) to: Environmental Protection Agency, Region V, DT-8J, 77 West Jackson Blvd., Chicago, IL 60604. Comments, data, and requests for a public hearing may also be submitted electronically to: turpin.david@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Marlyse Wiebenga, Project Officer, Environmental Protection Agency, Region V, DT-8J, 77 West Jackson Blvd., Chicago, IL 60604, Telephone: (312) 886–4437.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. In lieu of the Federal program, under section 404(a), a State or Tribe may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998. States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive final program authorization, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether Wisconsin's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

Under section 250.04, Wisconsin Statutes, the Wisconsin Department of Health and Family Services (DHFS), as the designated State health planning and development agency, is given broad authority to administer and enforce public health programs. Among other

duties, the DHFS is charged with the general supervision of the health of Wisconsin citizens and surveillance activities sufficient to detect any occurrence of acute, communicable, or chronic diseases and threat of occupational or environmental hazards, and the administration of programs for the control and prevention of public health problems. It is granted all powers necessary to fulfill the duties prescribed in Wisconsin Statutes and to bring action in the courts for the enforcement of public health statutes and rules, including the authority to administer oaths, certify to official acts, and to issue subpoenas and compel the attendance of witnesses.

Chapter HFS 163, Wisconsin Administrative Code, has been promulgated by DHFS under the authority of ch. 254, Wisconsin Statutes to ensure that persons who perform lead-based paint activities do so safely to prevent exposure of building occupants to hazardous levels of lead. This is accomplished by requiring that before a person performs, supervises, or offers to perform or supervise a lead-based paint activity involving target housing (built before 1978) or a child-occupied facility or the real property on which the target housing or child-occupied facility stands, the person must be certified by the Department. In addition, no person may offer, advertise, claim to provide, or conduct a lead training course that is represented as qualifying a person for certification unless the course has received accreditation from the department, has an approved principal instructor, uses only approved instructors, and the training provider is owned by or employs an approved training manager.

Both lead companies and individual lead professionals must be certified to perform any of the following lead-based paint activities: abatement, other lead hazard reduction funded by a HUD lead-based paint grant, clearance, inspection, lead hazard screen, risk assessment or project design. A homeowner must be certified to perform a lead-based paint activity in the homeowner's own nonrental dwelling or real property when the dwelling is occupied by a person other than the owner's immediate family, a child has been identified as having an elevated blood lead level as described in code, or use of certified persons has been ordered.

Certification for individuals is offered in the following disciplines: lead inspector, project designer, risk assessor, supervisor, worker, and worker-homeowner. To be certified, an individual must be at least 18 years of age, meet the discipline's education and experience requirements, and successfully complete certification training requirements. The Department accredits the training courses which prepare individuals for certification. To be certified as a lead inspector, risk assessor, or supervisor, the individual also must pass a State certification exam administered or approved by the Department.

To be certified, a lead company must agree to employ only appropriately certified employees to perform or supervise lead-based paint activities, must agree that all company employees will follow the established work practice standards and will comply with all lead-based paint regulations. In addition, the employer responsible for persons performing lead-based paint abatement, or a designated employee, must be certified as a lead supervisor for purposes of ensuring the safe performance of lead-based paint abatement activities, providing notification of lead hazard reduction activities, verifying employee certification, and ensuring compliance with lead-based paint regulations. The employer responsible for persons providing lead management services, including lead inspections, lead hazard screens, and risk assessments, must be certified as a lead risk assessor for purposes of ensuring the safe performance of lead management activities, submitting reports of lead management activities, verifying employee certification, and ensuring compliance with lead-based regulations.

All lead-based paint activities performed must comply with work practice standards established under ch. HFS 163, and training must be consistent with the work practice standards. Work practice standards address the following lead-based paint activities: inspection, lead hazard screen, risk assessment, abatement, clearance, collection and laboratory analysis of samples, composite dust sampling, and recordkeeping.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under the tracking number ''PB-402404-WI.'' Copies of this notice, the State of Wisconsin's authorization application, and all comments received on the application are available for inspection in the Region V office, from 8:30 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The application materials are located at the Toxics Program Section, Environmental Protection Agency, Region V, 8th floor, 77 West Jackson Blvd., Chicago, IL.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

turpin.david@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 tracking number ''PB-402404-WI.'' Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. In addition, this action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded

Mandates Reform Act (2 U.S.C. 1531-1538). Finally, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: October 26, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 98–29539 Filed 11–3–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 4, 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 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0552.

Title: Section 76.1003 Adjudicatory proceedings.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 24.

Estimated Time per Response: 4–30 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 408 hours.

Cost to Respondents: $54,360.

Needs and Uses: The information disclosed and collected in these proceedings has been used by Commission staff to resolve disputes alleging unfair methods of competition and deceptive practices where the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–29456 Filed 11–3–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:07 p.m. on Thursday, October 29, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider

matters relating to the Corporation's corporate and liquidation activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director Julie L. Williams (Acting Comptroller of the Currency) and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(4), (c)(6), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: November 2, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–29641 Filed 11–2–98; 2:19 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, November 10, 1998 at 10:00 a.m.

PLACE: 999 E. Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–29662 Filed 11–2–98; 2:39 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 18, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. L. Clark Caley Estate, Clarks, Nebraska, and Chris S. Caley, Personal Representative, Grand Island, Nebraska; to acquire voting shares of Clark Bancshares, Inc., Clarks, Nebraska, and thereby indirectly acquire voting shares of Bank of Clarks, Clarks, Nebraska, Tereco, Inc., Silver Creek, Nebraska, and Farmers State Bank of Silver Creek, Silver Creek, Nebraska.

2. HRL Investments, L.P., Columbus, Nebraska; to acquire voting shares of Bradley Bancorp, Columbus, Nebraska, and thereby indirectly acquire voting shares of Columbus State Bank and Trust Company, Columbus, Nebraska.

Board of Governors of the Federal Reserve System, October 29, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29458 Filed 11–3–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 27, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Lincoln County Bancorp, Inc., Troy, Missouri; to acquire at least 90.08 percent of the voting shares of Exchange Bank of Missouri, Fayette, Missouri.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Chickasha Bancshares, Inc., Chickasha, Oklahoma; to acquire 100 percent of the voting shares of Cement Insurance Agency, Inc., Cement, Oklahoma; and thereby indirectly acquire Cement Bank, Cement, Oklahoma.

In connection with this application, Applicant has also applied to acquire Cement Insurance Agency, Inc., Cement, Oklahoma, and thereby engage in general insurance activities in a town of less that 5,000, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. FVNB Corp., Victoria, Texas, and FVNB Delaware Corp., Wilmington, Delaware (in formation); to merge with CBOT Financial Corporation, New Waverly, Texas, and thereby indirectly acquire CBOT Financial Corporation of Delaware, Wilmington, Delaware, and Citizens Bank of Texas, N.A., New Waverly, Texas. FVNB Delaware Corp., also has applied to becomea bank holding company.

In connection with this application, Applicants also have applied to acquire CBOT Mortgage (dba Citizens Mortgage), Conroe, Texas, and thereby engage in making, acquiring, brokering, and/or the servicing of mortgage loans, pursuant to § 225.28(b)(1) of Regulation Y.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Valley Community Bancshares, Inc., Puyallup, Washington; to acquire 100 percent of the voting shares of Valley Bank, Auburn, Washington (in formation).

2. Zions Bancorporation, Salt Lake City, Utah; to acquire 100 percent of the voting shares of Centennial Bank, National Association, Farmington, New Mexico.

Board of Governors of the Federal Reserve System, October 29, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29460 Filed 11–3–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 30, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Associated Banc-Corp, Green Bay, Wisconsin; to acquire 100 percent of the voting shares of Windsor Bancshares, Inc., Minneapolis, Minnesota, and thereby indirectly acquire Bank Windsor, Minneapolis, 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 FSB, Inc., Covington, Tennessee, and thereby indirectly acquire First State Bank of Covington, Tennessee, Covington, Tennessee.

2. Village Bancshares, Inc., St. Libory, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of St. Libory, St. Libory, Illinois.

Board of Governors of the Federal Reserve System, October 30, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29523 Filed 11–3–98; 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 November 27, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102–2034:

1. First Tennessee National Corporation, Memphis, Tennessee; to engage *de novo* through its subsidiary, First Horizon, FSB, Bristol, Virginia (a federal savings bank in formation) in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 29, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29459 Filed 11–3–98; 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, November 9, 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.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 30, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29578 Filed 10–30–98; 4:52 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 952–3267]

First American Real Estate Solutions, LLC; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: David Medine or Thomas Kane, FTC/S–4429, Washington, D.C. 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 28, 1998), on the World Wide Web, at ''http:/www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from First American Real Estate Solutions, LLC (''FARES''). The proposed order would settle charges that First American CREDCO (''CREDCO''), which is now a division of FARES, violated the Fair Credit Reporting Act (''FCRA''). The FCRA requires, *inter alia*, that consumer reporting agencies such as CREDCO reinvestigate items that consumers dispute on their consumer reports and correct or delete items that are inaccurate.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

According to the complaint, one of the consumer report products that CREDCO produces is the Instant Merge Report (''IMR''). IMRs contain blended consumer account information from two or three of the national consumer reporting agencies (''repositories''), Trans Union, Equifax, and Experian. The complaint alleges that, in connection with its IMRs, CREDCO (1) failed to reinvestigate disputed information, (2) failed to correct or delete information in consumers' files that CREDCO found to be inaccurate or obsolete or whose accuracy can no longer be verified, and (3) failed to include in subsequent IMRs a notation that a consumer disputes an item and a statement by the consumer setting forth the nature of the dispute or a codification or summary of that statement. According to the complaint, these practices violated Section 611 of the FCRA, 15 U.S.C. 1681i.

The complaint also alleges that CREDCO failed to follow reasonable procedures to prevent information that CREDCO has found to be inaccurate or obsolete, or whose accuracy could not be verified, from appearing on subsequent IMRs. According to the complaint, these practices violated Section 607(b) of the FCRA, 15 U.S.C. 1681e(b).

Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. 1681s(a)(1), all violations of the FCRA constitute unfair or deceptive acts or practices in commerce in violation of Section 5(a) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 459a). Thus, the complaint also alleges that CREDCO violated Section 5(a).

The proposed order contains injunctive provisions designed to remedy the violations charged and to prevent respondent FARES from engaging in similar acts and practices in the future. Specifically, the order would require that FARES (1) reinvestigate consumer report items that consumers dispute and record the current status of the items or delete them; (2) within five business days after receiving a consumer dispute, notify the furnisher that the item is disputed; (3) ''review and consider'' all relevant information submitted by consumers in connection with their disputes; (4) maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that has been deleted; and (5) notify a consumer, within five business days after it completes a reinvestigation, (a) that the consumer has the right to file a dispute statement, and (b) that the consumer has the right to request that FARES provide either a notice that the item has been corrected or deleted, or the consumer's dispute statement, to any person specifically designated by the consumer who has received a consumer report that contained the deleted or disputed information within two years prior to the consumer's request, for employment purposes, or within six months prior to the consumer's request, for any other purpose.

The proposed order also would require FARES to permit a consumer to file a dispute statement if its reinvestigation does not resolve the consumer's dispute. If the dispute statement is neither frivolous nor irrelevant, the proposed order would require FARES to include the statement, or a codification or summary of the statement, in all subsequent consumer reports that FARES prepares concerning the consumer that contain the disputed item. The proposed order also would require FARES, at the request of a consumer, to provide a notification that a disputed item has been corrected or deleted, or the consumer's dispute statement or a codification or summary of the statement, to any person specifically designated by the consumer who has received a consumer report that contained the deleted or disputed

information within two years prior to the consumer's request, for employment purposes, or within six months prior to the consumer's request, for any other purpose.

The proposed order also includes a number or recordkeeping and reporting requirements designed to assist the Commission in monitoring FARES's compliance.

Congress amended the FCRA in September 1996; the amendments became effective in September 1997. Because the practices of CREDCO that allegedly violated the FCRA occurred prior to September 1997, the complaint alleges violations of the pre-amendment FCRA only. The proposed order, however, requires FARES to comply with the post-amendment FCRA and any future FCRA amendments.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–29514 Filed 11–3–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Toxic Substances and Disease Registry

[ATSDR–138]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of five final toxicological profiles, prepared by ATSDR for the Department of Defense, on unregulated hazardous substances.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) of 1986 (Public Law 99–499) amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) of 1980. Section 211 of SARA also amended Title 10 of the U.S. Code, creating the Defense Environmental Restoration Program. Section 2704(a) and (b) of Title 10 of the U.S. Code directs the Secretary of Defense to notify the Secretary of Health and Human Services (HHS) of not less than 25 of the most commonly found, unregulated hazardous substances at defense facilities. The Secretary of HHS shall take necessary steps to ensure the timely preparation of toxicological profiles of these substances. Each profile includes an examination, summary and interpretation of available toxicological information and epidemiological evaluations. This information and these data are used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles include a determination of whether adequate information on the health effects of each substance is available or under development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure initiation of research to determine these health effects.

Notice of the availability of five new draft toxicological profiles for public review and comment was published in the **Federal Register** on November 26, 1996 (61 FR 60105), with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of each comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile.

The public comments, the classification of and response to those comments, and other data submitted in response to the **Federal Register** notice bear the docket control number ATSDR–115. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of five final toxicological profiles for the Department of Defense. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS order No.	CAS No.
1. 2-BUTOXYETHANOL AND 2-BUTOXYETHANOL ACETATE	PB99–102527	000111–76–2 000112–07–2
2. DIISOPROPYL METHYLPHOSPHONATE	PB99–102535	001445–75–6
3. HEXAMETHYLENE DIISOCYANATE	PB99–102543	000822–06–0
4. JET FUEL (JP–5)	PB99–102550	008008–20–6
JET FUEL (JP–8)		070892–10–3
5. METHYLENEDIANILINE	PB99–102568	000101–77–9

Dated: October 29, 1998.

Donna Garland,

Acting Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 98–29504 Filed 11–3–98; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–139]

Availability of Draft Toxicological Profile

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice, prepared by ATSDR for the Department of Defense, announces for review and comment, the availability of one new draft toxicological profile on unregulated hazardous substances. Profiles issued as ''Drafts for Public Comment'' represent the agency's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information or reports on studies about the health effects of petrochemical substances and their components for review and potential inclusion in the profile.

DATES: In order to be considered, comments on this draft toxicological profile must be received on or before February 22, 1999. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon scientific relevance and public health significance.

ADDRESSES: Requests for copies of the draft toxicological profile should be sent to the attention of Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Comments regarding the draft toxicological profile should be sent to the attention of Dr. Ganga Choudhary, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profile must be in writing, and must specifically identify the profiled hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profile should bear the docket control number ATSDR–139. Send one copy of all comments and three copies of all supporting documents to Dr. Ganga Choudhary at the above address by the end of the comment period. All written comments and the draft toxicological profile will be available for public inspection at ATSDR, Building 4, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8:00 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499) amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). Section 211 of SARA also amended Title 10 of the U.S. Code, creating the Defense Environmental Restoration Program. Section 2704(a) of Title 10 of the U.S. Code directs the Secretary of Defense to notify the Secretary of Health and Human Services (HHS) of not less than 25 of the most commonly found unregulated hazardous substances at defense facilities. The Secretary of HHS is to prepare toxicological profiles of these substances. Each profile includes an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information is used to ascertain the level of significant human exposure for the substance and the associated health effects. The profiles include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure initiation of research to determine these health effects.

Although key studies for the substance were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profile now or in the future.

The draft toxicological profile will be made available to the public on or about October 17, 1998.

Document	Hazardous substance	CAS No.
1.	Total Petroleum Hydrocarbons (TPHs).	

Dated: October 29, 1998.

Donna Garland,

Acting Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 98–29505 Filed 11–3–98; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual statistical report on children in foster homes and children in families receiving payments in excess of the poverty income level from a State program funded under Part A of Title IV of the Social Security Act.

OMB No.: 0970–0040.

Description: This information is collected to meet the statutory requirements of section 1124 of Title I of the Elementary and Secondary Education Act (as amended by Pub. L. 103–382). It is collected by DHHS from State public welfare agencies and turned over to the Department of Education which uses it to arrive at the formula for allocating Title I grant funds to State and local elementary and secondary schools for the purpose of providing educational assistance to disadvantaged children.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–4125	52	1	264	13,728

Estimated Total Annual Burden Hours: 13,728.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W.; Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Attn: Ms. Wendy Taylor.

Dated: October 21, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–28841 Filed 11–3–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98N–0517 and 98D–0548]

Development and Use of Guidances on Antimicrobial Drug Products; Draft Guidances for Industry on the Development of Antimicrobial Drug Products; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until January 29, 1999, the comment period for two **Federal Register** notices regarding guidance documents on developing antimicrobial drug products: A notice requesting comment on the agency's process for developing and using guidance documents on the development of antimicrobial drug products (63 FR 39096, July 21, 1998) and a notice announcing the availability of a general draft guidance for industry entitled ''Developing Antimicrobial Drugs—General Considerations for Clinical Trials'' and 17 draft guidances on developing antimicrobial drug products to treat individual indications (63 FR 40532, July 29, 1998). FDA is reopening the comment period for both notices to provide interested persons additional time for review and comment.

DATES: Written comments by January 29, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the 18 draft guidances for industry are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm''. Submit written requests for single copies of the draft guidances to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidances to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Renata Albrecht, Center for Drug Evaluation and Research (HFD–590), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2336.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 21, 1998 (63 FR 39096), FDA's Center for Drug Evaluation and Research (CDER) published a notice requesting comments on the development and use of guidance documents for antimicrobial drug products. CDER requested comment on the process the center is using to revise old and develop new guidances for industry on the development of antimicrobial drug products for the treatment of infections. In the **Federal Register** of July 29, 1998 (63 FR 40532), CDER published a notice announcing the availability of a general draft guidance for industry entitled ''Developing Antimicrobial Drugs—General Considerations for Clinical Trials'' and 17 draft guidances on issues related to developing antimicrobial drug products to treat individual indications. The July 21 and July 29, 1998, notices invited interested persons to submit written comments within 90 days.

The agency has decided to reopen the comment period for both notices until January 29, 1999, in response to requests for additional time for public review and comment on the documents because of the large number of draft guidances that were issued at one time.

Interested persons may, on or before January 29, 1999, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidances and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–29515 Filed 11–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: November 12–13, 1998.

Time: 8:00 AM to 6:00 PM.

Agenda: Concept review.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Executive Secretary, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard—Rm. 600C, Rockville, MD 20892–7405, 301/496–4218.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396; Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–29471 Filed 11–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI/Innovative Technology (PAR98–066).

Date: November 18–19, 1998.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, Executive Plaza North, 6130 Executive Boulevard, Bethesda, MD 20892, 301/435–9050.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI/Innovative Technology (PAR98–067).

Date: November 19–20, 1998.

Time: 1:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, Executive Plaza North, 6130 Executive Boulevard, Bethesda, MD 20892, 301/435–9050.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research ; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–29472 Filed 11–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: November 6, 1998.

Time: 8:30 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Department of Human Genetics, University of Michigan Medical School, Ann Arbor, MI 48109–0618.

Contact Person: Rudy O POZZATTI, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–29476 Filed 11–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Emphasis Panel.

Date: November 5, 1998.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 609, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–29477 Filed 11–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closing Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 5–6, 1998.

Time: 7:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Copley Marriott, 110 Huntington Avenue, Boston, MA 02116.

Contact Person: Edgar E. Hanna, PHD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–29473 Filed 11–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: November 17–18, 1998.

Time: 12:30 PM to 5:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Division of Intramural Research, NIDA, Johns Hopkins Bayview Campus, Bldg. C, 2nd Floor Auditorium, 5500 Nathan Shock Drive, Baltimore, MD 21224.

Contract Person: Stephen J. Heishman, PHD, Research Psychologist, Clinical Pharmacology Branch, Addiction Research Center, National Institute On Drug Abuse, National Institutes Of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224, (410) 550–1547.

Dated: October 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, HIH.

[FR Doc. 98–29475 Filed 11–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Meeting of the National Reading Panel

Notice is hereby given of the fourth Washington area meeting of the National Reading Panel. The meeting will be held on Monday, November 9, 1998, from 2:00 to 6:00 PM and on Tuesday, November 10, 1998, from 8:00 AM to 4 PM. The meeting location is the Embassy Suites Hotel, 4300 Military Road, NW, Washington, D.C. 20015. The entire meeting will be open to the public.

The National Reading Panel was requested by Congress and created by the Director of the National Institute of Child Health and Human Development in consultation with the Secretary of Education. The Panel will study the effectiveness of various approaches to teaching children how to read and report on the best ways to apply these findings in classrooms and at home. Its members include prominent reading researchers, teachers, child development experts, leaders in elementary and higher education, and parents. The Chair of the Panel is Dr. Donald N. Langenberg, Chancellor of the University System of Maryland.

The Panel will build on the recently announced findings presented by the National Research Council's Committee on the Prevention of Reading Difficulties in Young Children. Based on a review of the literature, the Panel will: determine the readiness for application in the classroom of the results of these research studies; identify appropriate means to rapidly disseminate this information to facilitate effective reading instruction in the schools; and identify gaps in the knowledge base for reading instruction and the best ways to close these gaps.

The agenda for this meeting will include obtaining consensus for the methodology to evaluate research studies, as well as reaching agreement on a prioritized list of claims, findings, and problems that will undergo this evaluation. A period of time will be set aside at approximately 3:00 PM on Tuesday, November 10 for members of the public to address the Panel and express their views regarding the Panel's mission. Individuals desiring an opportunity to speak before the Panel should address their requests to F. William Dommel, Jr., J.D., Executive Director, National Reading Panel, c/o Ms. Amy Andryszak and either mail them to the Widmeyer-Baker Group, 1875 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20009, or e-mail them to *amya@twbg.com*, or fax them to 202–667–0902. Requests for addressing the Panel should be received by November 4, 1998. Panel business permitting, each public speaker will be allowed five minutes to present his or her views. In the event of a large number of public speakers, the Panel Chair retains the option to further limit the presentation time allowed to each.

Although the time permitted for oral presentations will be brief, the full text of all written comments submitted to the Panel will be made available to the Panel members for consideration.

For further information contact Ms. Amy Andryszak at 202–667–0901. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Amy Andryszak by November 4, 1998.

Dated: October 26, 1998.

Duane Alexander,

Director, National Institute of Child Health and Human Development.

[FR Doc. 98–29478 Filed 11–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 5–6, 1998.
Time: 8:00 AM to 5:00 P.M.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC 20007.
Contact Person: Jean Hickman, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for the Scientific Review Special Emphasis Panel.
Date: November 12–13, 1998.
Time: 8:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: ANA Hotel, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Marjam G. Behar, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Nursing Research Study Section.
Date: November 12–13, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Silver Spring Plaza, 8777 Georgia Ave, Silver Spring, MD 20910.
Contact Person: Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

Name of Committee: Cardiovascular Sciences Initial Review Group, Hematology Subcommittee 2.
November 12–13, 1998.
Date: November 12–13, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Bethesda, MD 20814.
Contact Person: Jerrold Fried, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
November 12–13, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.
Contact Person: Cheri Wiggs, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG–1–02–(01).
Date: November 12–13, 1998.
Time: 8:30 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency, One Metro Circle, Bethesda, MD 20852.
Contact Person: Sami A. Mayyasi, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 12–13, 1998.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, D.C., 20037.
Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 12, 1998.
Time: 1:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Donald Schneider, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

Name of Committee: Cell Development and Function Initial Review Group, Biological Sciences Subcommittee 1.
Date: November 12–13, 1998.
Time: 5:30 PM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: St James Preferred Residence, 950 24th Street, NW, Washington, DC 20037.
Contact Person: Nancy Pearson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 12, 1998.
Time: 6:00 PM to 10:00 PM.
Agenda: To review and evaluate grant applications.
Place: Wyndham Bristol Hotel, Washington, DC 20037.
Contact Person: Bruce Maurer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 1998.
Time: 8:00 AM to 5:00 PM.
Agenda: To provide concept review of proposed grant applications.
Place: Wyndham Bristol Hotel, Washington, DC 20037.
Contact Person: Bruce Maurer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Daniel B. Berch, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204,

MSC 7848, Bethesda, MD 20892, (301) 435–1256.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 1998.
Time: 1:00 PM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Panniers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 13, 1998.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Calbert Laing, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SSS–6–5.
Date: November 13, 1998.
Time: 4:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: ANA Hotel, 2401 M Street, NW, Washington, DC 20037.
Contact Person: Marjam G. Behar, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16–17, 1998.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Houston Baker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, 301–435–1175, houstonb@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 1998.
Time: 8:30 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: J. Terrell Hoffeld, PHD, DDS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Luigi Giacometti, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 1998.
Time: 11:00 AM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge II, Bethesda, MD 20892.
Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16–17, 1998.
Time: 7:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Nancy Shinowara, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, shinowan@drg.nih.gov.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–29474 Filed 11–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Amend and Supplement a Comprehensive Management Plan and Supplement a Final Environmental Impact Statement

SUMMARY: This notice advises the public and other agencies that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Pronghorn Management Plan (PMP) and associated supplemental Environmental Impact Statement (EIS) for Hart Mountain National Antelope Refuge (Refuge), Lake County, Oregon. The PMP will amend and supplement the Comprehensive Management Plan (CMP) that was approved for the Refuge in May 1994. The supplemental EIS will disclose the environmental consequences of the changes and additions the PMP or its alternatives would make to the CMP. The Service is providing this notice to advise the public and other agencies of our intentions, to request suggestions and information on the scope of issues and alternatives to be included in the PMP and supplemental EIS, and to announce that public meetings will be held in appropriate locations between November 4, 1998 and December 4, 1998. Information about the times and locations of the public meetings will be published in local media, provided to known interested parties through public notices, and made available upon request from persons who contact the refuge at the address and telephone number provided herein. This notice is provided in compliance with the National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act; Service policy on refuge planning; and the National Environmental Policy Act and its implementing regulations.

DATES: Written comments should be received on or before December 21, 1998.

ADDRESSES: Address comments and requests for information to: Hart Mountain Refuge Pronghorn Plan; U.S.F.W.S.; P.O. Box 111 (18 South G Street, #301); Lakeview, Oregon 97630 (541/947–3315).

FOR FURTHER INFORMATION CONTACT: Victoria Roberts at the above address and telephone number.

SUPPLEMENTARY INFORMATION: The Service completed and approved a CMP and EIS in May 1994 to provide guidance for management of Hart Mountain National Antelope Refuge for the subsequent 15-year period. In this CMP, the Service acknowledged that many of the refuge habitats had been degraded by a long history of livestock grazing and fire suppression, and selected a ''Native Community Restoration'' alternative that emphasized habitat management actions including reintroduction of fire and removal of livestock grazing.

The PMP would be prepared as an amendment and step-down supplement to the approved CMP in accordance with the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act) (16 U.S.C. 668dd et seq.). The 1997 amendment to the Refuge Administration Act defines new

planning standards for national wildlife refuges and strengthens the compatibility standard for national wildlife refuges by defining a mission for the National Wildlife Refuge System and specifying that uses of refuges must be compatible with both the purpose(s) of the individual refuge and mission of the System. It also clarifies that if there are conflicts between the purpose(s) of a refuge and the mission of the System, the conflict must be resolved to first protect the purpose(s) of the refuge. Furthermore, the Service is directed to recognize compatible wildlife-dependent recreation as the priority public uses of the System, facilitate compatible wildlife-dependent recreation, and provide increased opportunities for families to experience compatible wildlife-dependent recreation.

Hart Mountain National Antelope Refuge was established ''* * * as a range and breeding ground for antelope and other species of wildlife * * *'' by Executive Order 7523 on Dec. 21, 1936. The 1994 CMP for the refuge emphasized wildlife habitat management actions, de-emphasized wildlife population management actions, and did not establish population objectives for pronghorn. Pronghorn population numbers have fluctuated widely since the establishment of the refuge, and the population is currently declining despite significant habitat improvements that have occurred since the Service began implementing the CMP in 1994.

This decline has surfaced debate over pronghorn population objectives and the role of wildlife population management in meeting these objectives and other refuge goals including the public use direction provided by Congress in the Refuge Improvement Act. The existing management plan provides that ''wildlife populations, with few exceptions, would be managed through managing upland and wetland habitat'' on the refuge. The limited direction provided for population management in the CMP, such as in the case of predator control, is ambiguous and has resulted in public controversy over interpretations of the CMP's intent.

The Service is initiating a public process to develop a PMP that is intended to resolve some of the differences in interpretation of the CMP and to provide more detailed direction on pronghorn management that reflects recent legislative direction and biological information that has been gathered since the CMP's completion. The PMP will establish population management objectives for the pronghorn herd that uses the Refuge, develop population management actions to meet these objectives, develop decision criteria that could be used to initiate these population management actions, and establish a link between these population objectives and the wildlife-dependent recreational uses the Service is directed to provide. No changes are contemplated to the habitat-related objectives or actions approved in the 1994 CMP.

The range of alternative pronghorn population management strategies being considered for the PMP at this time include to: (1) maximize the pronghorn population and increase wildlife-dependent recreation opportunities in a manner consistent with the habitat objectives of the 1994 CMP (intensive population management intervention to benefit pronghorn); (2) define and maintain minimum pronghorn population limits that will meet public expectations about the purpose of the refuge and demand for wildlife recreation (limited, incremental population management intervention); and (3) manage the pronghorn population primarily through management of refuge habitat as provided in the 1994 CMP (population management intervention only when the species is at risk) (no action). The alternatives that will be considered in the PMP and supplemental EIS are expected to evolve through the public participation process.

The supplemental EIS would identify the environmental consequences of changes and additions the proposed PMP and its alternatives would make to the CMP in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA regulations (40 CFR 1500–1508), and Service policies and procedures for compliance with those regulations.

Dated: October 5, 1998.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–29503 Filed 11–3–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Reassumption of Jurisdiction From the Native Village of Barrow

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Indian Child Welfare Act of 1978 (Pub. L. 95–608) provides, subject to certain specified conditions, that Indian tribes may petition the Secretary of the Interior for reassumption of jurisdiction over Indian child custody proceedings.

This is notice that the petition has been received by the Secretary from the Native Village of Barrow for the reassumption of jurisdiction over Indian child custody proceedings. The petition is under review and may be inspected at the Bureau of Indian Affairs, Division of Social Services, 1849 C Street, NW, Room 4603 MIB, Washington, D.C. 20240.

Dated: October 23, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–29556 Filed 11–3–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–99–1610–00]

Shooting Closure on Public Lands in San Diego County, CA

AGENCY: Bureau of Land Management, DOI.

ACTION: Closure Order.

SUMMARY: The Bureau of Land Management (BLM) is permanently closing 320 acres of public land near La Posta, southern San Diego County, California, to recreational target shooting. The closure is necessary due to safety hazards, fire danger, noise nuisance, litter and resource degradation and land use conflicts. BLM intends to eliminate these safety and environmental problems almost entirely by closing the area to target shooting. The closure will affect most of the recreational target shooters using BLM public lands in southern San Diego County. It will not affect licensed hunters in the pursuit of lawful game or law enforcement officers while in the performance of their official duties.

EFFECTIVE DATE: The closure is effective November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Hansen, Acting Field Manager, USDI Bureau of Land Management, Palm Springs-South Coast Field Office, 690 W. Garnet Avenue, P.O. Box 1260, North Palm Springs, CA 92258–1260. Telephone: (760) 251–4800.

SUPPLEMENTARY INFORMATION: The legal description for the Federally-managed lands permanently closed to recreational shooting (herein known as the La Posta parcel) is as follows: Township 17 South, Range 5 East, Section 25, East ½ SBM. The parcel is east of La Posta Road, approximately 4.5 miles south of Old Highway 30. The 320 acres parcel is a flat open field with a hill lying to the east.

On May 6, 1994, BLM held a public meeting on-site at the La Posta shooting area. Various safety concerns were expressed by local residents, causing BLM to consider better ways to manage the La Posta site or close it. Since that time, BLM has held more meetings and received numerous comments from the public, both opposing the shooting area and supporting it. Due to the growing list of problems associated with the shooting area, a temporary emergency closure was executed on June 26, 1996. Permanent closure of this area is necessary for the following reasons:

1. Safety Hazards

The eastern hill should serve as an adequate backstop for shooters placing their targets near its base. But many shooters place their targets high on the hill, trying to get a longer range. When doing this, bullets ricochet or carry directly east over the hill. Three quarters of a mile of down range on the other side of the hill lies a ranch. Investigations by BLM law enforcement indicate that horses, cattle and buildings have been hit by bullets and there have been near misses with people. There is also concern about the Campo historic train that runs through the ranch on Sundays. Immediately south and even closer to the shooting area lies another ranch that is frequently used by recreational groups and campers. Although shooters are supposed to shoot east into the hill, shots have been directed south towards this ranch, striking the house and resulting in near misses with people.

2. Fire Danger

From 1986 to 1992, the U.S. Forest Service had 25 fires near the La Posta site that were caused by target shooters. In 1994, the BLM La Posta site itself half burned by a fire started on the adjacent U.S. Navy shooting range. BLM has fire orders prohibiting the use of tracer rounds, steel core and incendiary types of ammunition, but evidence shows that target shooters are still causing many of the fires in the local area. Without the La Posta site being significantly graded, fire is a serious threat to the nearby residents.

3. Noise Nuisance

Prior to the emergency closure, on a busy day as many as 15 groups of shooters used the La Posta site at one time. The shooting started at dawn and continued nonstop until dark. One could hear the shooting from as far as five miles away. For the ranch only 500 feet to the south and other nearby residents on La Posta Road, it was a major nuisance.

4. Litter and Resource Degradation

The La Posta site used to be a natural area that attracted local hikers, hunters and dog trainers. Now targets, trash, broken glass and shells litter the area. Two major cleanups organized by local gun stores helped, but only temporarily. Despite frequent patrols by BLM law enforcement, and many concerned shooters and others picking up after themselves, the site deteriorated more each year.

5. Land Use Conflicts

The La Posta site was leased for cattle grazing long before it became a popular shooting area. The grazing lease is still valid yet the rancher is unable to use the area. BLM has also previously issued an apiary permit for the area. The placement of 100 beehives near numerous groups of shooters would likely result in injuries. There are also two mining claims on the east hill, down range. The grazing lease, apiary permit and mining claims are all incompatible land uses with target shooting.

BLM recognizes target shooting as a legitimate recreational use on the public lands. Before closing the La Posta site, several alternative sites were considered. Thus far, safety, fire, noise, environmental, land use, and legal access concerns have prevented the designation of any specific alternative shooting area. This closure is not intended to prohibit recreational target shooting on other BLM public lands; Nor does it affect licensed hunters in the pursuit of lawful game, or law enforcement officers while in the performance of their official duties. Individuals looking for alternative shooting areas are encouraged to obtain a BLM map from the Palm Springs-South Coast Field Office. Authority for this supplementary rule is established by 43 CFR 8364.1. Violation of the rule is punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

Dated: October 23, 1998.

Chris Roholt,

Acting Field Manager, Palm Springs-South Coast Field Office.

[FR Doc. 98–29524 Filed 11–3–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–024–1020–01]

Notice of Intent To Prepare a Land Use Plan Amendment

SUMMARY: The Snake River Resource Area, Upper Snake River District, is proposing to amend the Cassia Resource Management Plan to allow for the reallocation of 300 AUMs from livestock usage to bighorn sheep usage via a bighorn sheep reintroduction on Jim Sage Mountain in Cassia County, Idaho.

DATES: The public, state and local governments, and other Federal Agencies are invited to participate in the amendment process. Identification of issues, concerns, or other written comments pertaining to this notice will be accepted until November 30, 1998.

SUPPLEMENTARY INFORMATION: The proposed plan amendment would allow the reallocation of 300 AUMs of forage from livestock to bighorn sheep on Jim Sage Mountain in Cassia County, Idaho via a bighorn sheep reintroduction on public land managed by the Bureau of Land Management (BLM). The actual reintroduction of bighorn sheep would be conducted by the Idaho Dept. of Fish and Game with assistance from BLM and other agencies and individuals.

The public land where the reintroduction is proposed is currently managed for livestock grazing, wildlife habitat and recreation as part of the Jim Sage Allotment, #5003. All the aforementioned uses would continue.

Public participation in the amendment process will include publication of this notice in the **Federal Register** and local newspapers and the mailing of this notice to state and local governments, private individuals, and other interested parties. Depending on the amount of public interest, public meetings may be held in the Snake River Resource Area Office, Burley, Idaho.

ADDRESSES: Any comments on this notice should be mailed by close of business on November 30, 1998 to the Bureau of Land Management, Snake River Resource Area, Attention: Kurt Pavlat, 15 East, 200 South, Burley, ID 83318.

FOR FURTHER INFORMATION CONTACT: Kurt Pavlat, Range Conservationist, (208) 678–5514.

Dated: October 26, 1998.

Kurt Pavlat,

Range Conservationist.

[FR Doc. 98–29527 Filed 11–3–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30749]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 74,380.50 acres of National Forest System lands and 320 acres of non-Federal lands, if acquired, for protection of the San Francisco Peaks/Mount Elden Recreation Area. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands. The non-Federal lands would also be closed to mining by this notice if acquired by the United States during the 2-year period.

DATES: Comments should be received on or before February 2, 1999.

ADDRESSES: Comments should be sent to the Forest Supervisor, Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, Arizona 85006.

FOR FURTHER INFORMATION CONTACT: Pete Mourtsen, Coconino National Forest, 520–527–3600.

SUPPLEMENTARY INFORMATION: The Forest Service has filed an application to withdraw the following described National Forest System lands and non-Federal lands from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Coconino National Forest

National Forest System Lands

T. 21 N., R. 7 E.
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 8, inclusive, S½NW¼, S½SE¼, and SW¼, excluding HES 86.
T. 21 N., R. 8 E.
Sec. 6, lots 1 to 7, inclusive, SW¼NE¼, NE¼NE¼SE¼NE¼,W½E½SE¼NE¼, W½SE¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼SW¼, N½SW¼SE¼SW¼, NW¼SE¼, N½NE¼SE¼, SW¼NE¼SE¼, N½SE¼NE¼SE¼, SW¼SE¼NE¼SE¼, NW¼SE¼SE¼NE¼SE¼, and W½SW¼SE¼SE¼NE¼SE¼.
T. 22 N., R. 6 E.
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½NE¼, SW¼NW¼, and S½;
Secs. 9 to 11, inclusive;
Sec. 12, E½, and SW¼;
Sec. 13, N½;
Secs. 14 and 15;
Sec. 16, E½.
T. 22 N., R. 7 E.
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20 to 23, inclusive;
Sec. 24, lots 1 to 16, inclusive;
Sec. 25, lots 1 to 16, inclusive;
Sec. 26, lots 1 to 16, inclusive;
Sec. 27, NW¼, and S½;
Sec. 28 and 29;
Sec. 32, N½;
Sec. 33, N½, N½S½, SW¼SE¼, and W½W½W½SE¼SE¼;
Sec. 34, N½, N½SW¼, E½SW¼SW¼, and NW¼SE¼;
Sec. 35, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 36.
T. 22 N., R. 8 E.
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, W½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8, N½, SW¼, and W½SE¼;
Sec. 17, S½N½NE¼NE¼, S½NE¼NE¼, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20, N½NE¼NE¼, N½S½NE¼NE¼, SW¼SW¼NE¼NE¼, W½NE¼, S½SE¼NE¼, NW¼, and S½;
Sec. 29, N½, SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, and W½SW¼SE¼SE¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32, N½, N½S½, SW¼SW¼, W½SE¼SW¼, N½N½NE¼SE¼SW¼, N½N½NW¼SW¼SE¼, E½SW¼SE¼, and SE¼SE¼.
T. 23 N., R. 6 E.
Sec. 8, lots 1, 2, 7, and 8;
Sec. 9, lots 1 to 8, inclusive, and N½;
Sec. 10, NE¼, NE¼NE¼NW¼, NE¼NW¼NE¼NW¼,S½NE¼NW¼, NW¼NW¼NW¼NW¼, S½NW¼NW¼NW¼, SW¼NW¼NW¼, S½NW¼, and S½;
Sec. 11, E½, NW¼, W½SW¼, N½NE¼SW¼, SW¼NE¼SW¼,N½SE¼NE¼SW¼, SW¼SE¼NE¼SW¼, E½SE¼SE¼NE¼SW¼, W½NE¼SE¼SW¼, W½SE¼SW¼, E½E½NE¼SE¼SW¼, and E½E½SE¼SE¼SW¼;
Sec. 12;
Sec. 13, lots 1 to 4, inclusive, N½NE¼NE¼, SE¼SE¼NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼, S½NE¼SW¼NE¼, NW¼SW¼NE¼, S½S½NE¼, NE¼SE¼NE¼, S½NW¼SE¼NE¼, and W½;
Sec. 14, S½N½S½N½N½, S½S½N½N½, S½N½, E½SW¼, NW¼SW¼, and SE¼;
Sec. 15, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 16;
Sec. 17, lots 1 to 8, inclusive, and S½;
Sec. 20 and 21;
Sec. 22, W½NE¼, SE¼NE¼, N½SW¼, N½SW¼SW¼,N½N½SE¼SW¼, SE¼NE¼SE¼SW¼, E½SE¼SE¼SW¼, and SE¼;
Sec. 23, NE¼, E½NW¼, SW¼NW¼, N½SW¼, N½NE¼SW¼SW¼, SE¼NE¼SW¼SW¼, NW¼SW¼SW¼, N½SW¼SW¼SW¼, N½SE¼SW¼, N½SE¼, N½SW¼SE¼, SE¼SW¼SE¼, and SE¼SE¼;
Sec. 24, lots 1 to 8, inclusive, and W½;
Sec. 25, lots 1 to 8, inclusive, and W½;
Sec. 26, E½E½NE¼, NW¼NE¼NE¼, N½SW¼NE¼NE¼, SW¼SW¼NE¼NE¼, S½N½NW¼NE¼, S½NW¼NE¼, SW¼NE¼, NW¼NW¼SE¼NE¼, S½NW¼SE¼NE¼, SW¼SE¼NE¼, S½SW¼, and SE¼;
Sec. 27, N½NE¼NE¼, SW¼NE¼NE¼, W½SE¼NE¼NE¼, N½NE¼SE¼NE¼NE¼, NW¼NE¼, E½W½SW¼NE¼, E½SW¼NE¼, W½SE¼NE¼, W½NE¼SE¼NE¼, S½NE¼NE¼SE¼NE¼, SE¼NE¼SE¼NE¼, SE¼SE¼NE¼, S½SW¼NW¼NW¼, SW¼SE¼NW¼NW¼, W½NE¼SW¼NW¼, W½SW¼NW¼, SE¼SW¼NW¼, SW¼SE¼NW¼, N½NE¼SW¼, N½S½NE¼SW¼, W½W½SW¼, SE¼SW¼SW¼, S½SE¼SW¼, N½N½SE¼, N½SW¼NE¼SE¼, SE¼NE¼SE¼, N½S½NW¼SE¼, SW¼SW¼SE¼, W½SE¼SW¼SE¼, E½SE¼SE¼, and reconveyed portion of NW¼ (AZA 28296);
Secs. 28, 29, 32, and 33;
Sec. 34, SW¼NW¼NE¼, NW¼, and SE¼;
Sec. 35, N½NE¼, E½W½SE¼NE¼, E½SE¼NE¼, N½N½NW¼,

SW¼NW¼NW¼, W½SW¼NW¼, N½S½, N½SW¼SW¼, S½SE¼, reconveyed portion of NW¼ known as Parcels 1, 2, and 4 of Snow Bowl Estates (AZA 26537), and SE¼SW¼ excluding patented land;
Sec. 36.
T. 23 N., R. 7 E.
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 8 to 11, inclusive;
Sec. 12, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 13, lots 1 to 4, inclusive, W½E½, NW¼, N½SW¼, SW¼SW¼, and N½SE¼SW¼, less and except MS 4652;
Secs. 14 and 15;
Sec. 16, lots 1 to 8, inclusive, and N½;
Sec. 17;
Sec. 18, lots 3 to 5, inclusive, E½, N½NE¼NW¼, SE¼NE¼NW¼, N½NE¼NW¼NW¼, E½SE¼NW¼, S½SW¼SE¼NW¼, and E½SW¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20 and 21;
Sec. 22, lots 1 to 12, inclusive, and NE¼;
Sec. 23;
Sec. 24, lots 1 to 4, inclusive, N½NW¼NE¼, SE¼NW¼NE¼, E½SW¼NW¼NE¼, E½W½SW¼NW¼NE¼, E½W½W½SW¼NW¼NE¼, E½SW¼NE¼, E½NW¼SW¼NE¼, E½W½NW¼SW¼NE¼, E½W½W½NW¼SW¼NE¼, SW¼SW¼NE¼, W½W½W½SW¼NE¼NW¼, W½NW¼, W½W½W½NW¼SE¼NW¼, S½SE¼NW¼, SW¼, and W½SE¼;
Sec. 25, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 26;
Sec. 27, lots 1 to 4, inclusive, W½E½, and W½;
Secs. 28 and 29;
Sec. 30, lots 1 to 12, inclusive, and E½W½;
Sec. 31, lots 1 to 10, inclusive, E½NE¼, and E½W½;
Sec. 32, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 33, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 34, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Sec. 35, lots 3 to 7, inclusive, N½, N½SW¼, and NE¼SE¼, excluding 50′ R/W for railroad pipeline;
Sec. 36, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.
T. 23 N., R. 8 E.
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 17, SW¼;
Sec. 18, lots 1 to 4, inclusive, NE¼NE¼, S½NE¼, E½W½, and SE¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20, W½;
Sec. 29, N½, SW¼, E½NE¼SE¼, E½NW¼NE¼SE¼, W½E½NW¼SE¼, W½W½SE¼, W½NE¼SW¼SE¼, and N½NE¼SE¼SE¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32, W½NW¼NE¼, W½SE¼NW¼NE¼, S½NE¼, W½, and SE¼.

The areas described aggregate 74,380.50 acres in Coconino County.

Non-Federal Lands

T. 22 N., R. 6 E.
Sec. 12, NW¼.
T. 22 N., R. 7 E.
Sec. 27, NE¼.
The areas described aggregate 320 acres in Coconino County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Forest Supervisor, Coconino National Forest.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of time and place will be published in the **Federal Register** and a newspaper in the general vicinity of the lands to be withdrawn at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: October 27, 1998.

Alvin L. Burch,

Acting Deputy State Director, Resources Division.

[FR Doc. 98–29525 Filed 11–3–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF JUSTICE

Justice Programs Office

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: the Parole Data Survey and the Probation Data Survey.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days from the date listed at the top of this page in the **Federal Register**. This process is in accordance with the Paperwork Reduction Act of 1995.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency; including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Dr. Jan M. Chaiken, Director, Bureau of Justice Statistics, 810 Seventh St. NW, Washington, D.C. 20531. If you need a copy of the collection instruments with instructions, or have additional information, please contact Tom Bonczar at (202) 616–3615, or via facsimile at (202) 307–1463.

Overview of this information collection

(1) *Type of information collection:* Revision of currently approved collection.

(2) *The title of the Form/Collection:* The Parole Data Survey and the Probation Data Survey.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Forms: CJ–7; and CJ–8. Corrections Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State Departments of Corrections or State probation and Parole authority. Others: The Federal Bureau of Prisons, city and county courts and probation offices for which a central reporting authority does not exist. For the CJ–7 form, 54 central reporters (two State jurisdictions in California and one each from the remaining States, the District of Columbia, the Federal Bureau of

Prisons, and one local authority) responsible for keeping records on parolees will be asked to provide information for the following categories:

(a) As of January 1, 1999 and December 31, 1999, the number of adult parolees under their jurisdiction;

(b) The number of adults entering parole during 1999 through discretionary release from prison, mandatory release from prison, or reinstatement of parole;

(c) The number of adults released from parole during 1999 through successful completion, incarceration, transfers to another parole jurisdiction, or death;

(d) As of December 31, 1999, the number of male and female parolees under their jurisdiction;

(e) As of December 31, 1999, the number of white, black, American Indian or Alaska Native, Asian or Pacific Islander, or other adult parolees, and the number of adult parolees of Hispanic origin under their jurisdiction;

(f) As of December 31, 1999, the number of adult parolees under their jurisdiction with a sentence of more than one year, or a year or less;

(g) As of December 31, 1999, the number of adult parolees under their jurisdiction who were active, inactive, absconders, or supervised out of state;

(h) Whether the parolee authority operated an intensive supervision program, a program involving electronic monitoring, or had any parolees enrolled in a program that approximates a bootcamp, and the number of adult parolees in each of the programs as of December 31, 1999; and

(i) Whether the parolee authority supervised any parolees from local jails as of December 31, 1999.

For the CJ–8 form 271 reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons; and 219 from local authorities) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of January 1, 1999 and December 31, 1999, the number of adult probationers under their jurisdiction;

(b) The number of adults entering probation during 1999 with and without a sentence to incarceration;

(c) The number of adults released from probation during 1999 through successful completion, incarceration, and death;

(d) As of December 31, 1999, the number of male and female probationers under their jurisdiction;

(e) As of December 31, 1999, the number of white, black, American Indian or Alaska Native, Asian or Pacific Islander, or other adult probationers, and the number of adult probationers of Hispanic origin under their jurisdiction;

(f) As of December 31, 1999, the number of adult probationers under their jurisdiction who were sentenced for a felony, misdemeanor, or driving while intoxicated or under the influence of alcohol;

(g) As of December 31, 1999, the number of adult probationers under their jurisdiction who had entered probation with a suspended sentence to incarceration, a suspended imposition of sentence, a direct sentence to probation, or a split sentence to probation;

(h) As of December 31, 1999, the number of adult probationers under their jurisdiction who were active; inactive, absconders, or supervised out of state; and

(i) Whether the probation authority operated an intensive supervision program, a program involving electronic monitoring, or had any probationers enrolled in a program that approximates a bootcamp, and the number of adult probationers in each of the programs as of December 31, 1999.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond:* Three hundred and twenty-five respondents each taking an average 1.5 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 488 annual burden hours.

If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 29, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–29465 Filed 11–3–98; 8:45 am]

BILLING CODE 4410–18–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on November 15, 1998. The meeting will begin at 10:30 a.m. and continue until conclusion of the committee's agenda.

LOCATION: 9th Floor Conference Center of 750 First Street, N.E., Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the September 11, 1998, meeting of the committee.
3. Report on the Technology Conference held at Airlie House, Maryland, in September of this year.
4. Report on the State Planning Process.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: October 30, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–29695 Filed 11–2–98; 3:54 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on November 15, 1998. The meeting will begin at 12:30 p.m. and continue until the committee concludes its agenda.

LOCATION: 9th Floor Conference Center of 750 First Street NE, Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the September 11, 1998, meeting of the committee.

3. Consider and act on proposed new rule, 45 CFR Part 1645, Acquisition Procedures and Property Standards.
4. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: October 30, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–29696 Filed 11–2–98; 3:54 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information Pertaining to the Requirement to be Submitted

1. *The title of the information collection:*

—DOE/NRC Forms 741 & 741A—Nuclear Material Transaction Report;
—DOE/NRC Form 740M—Concise Note;
—NUREG/BR–0006—''Instructions for Completing Nuclear Material Transactions Reports and Concise Note, Forms 741, 741A, and 740M''.

2. *Current OMB approval numbers:* 3150–0003 for DOE/NRC Forms 741 and 741A; 3150–0057 for DOE/NRC Form 740M.

3. *How often the collection is required:*

—DOE/NRC Form 741/741A: As occasioned by special nuclear material or source material transfers, receipts, or inventory changes that meet certain criteria.
—DOE/NRC Form 740M: As necessary to inform the U.S. or the International Atomic Energy Agency (IAEA) of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement.

4. *Who is required or asked to report:* Persons licensed to possess specified quantities of special nuclear material or source material, and licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission that they are subject to 10 CFR Part 75.

5. *The number of annual respondents:*

—DOE/NRC Form 741/741A: 1,200.
—DOE/NRC Form 740M: 38.

6. *The number of hours needed annually to complete the requirement or request:*

—DOE/NRC Form 741/741A: 27,375 for NRC and Agreement State licensees (an average of approximately 22.8 hours per response for 1200 respondents).
—DOE/NRC Form 740M: 855 (an average of approximately 22.5 hours per response for 38 respondents).

7. *Abstract:* NRC and Agreement State licensees are required to make inventory and accounting reports on DOE/NRC Form 741/741A for certain source or special nuclear material inventory changes, for transfers or receipts of special nuclear material, or for transfer or receipt of 1 kilogram or more of source material. Licensees affected by 10 CFR Part 75 and related sections of Parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the U.S. or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the U.S./IAEA Safeguards Agreement. The use of Forms 740M, 741, and 741A, together with NUREG/BR–0006, the instructions for completing the forms, enables NRC to collect, retrieve, analyze as necessary, and submit the data to IAEA to fulfill its reporting responsibilities.

Submit, by January 4, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 29th day of October 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–29495 Filed 11–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection:

NUREG/BR–0238, Materials Annual Fee Billing Handbook
NUREG/BR–0239, Financial EDI Authorization Form
NUREG/BR–0253, Fact Sheet—Electronic Funds Transfer
NUREG/BR–0254, Payment Methods

2. Current OMB approval number: 3150–0190.

3. How often the collection is required: Annually.

4. Who is required or asked to report: Anyone doing business with the Nuclear Regulatory Commission including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.

5. The number of annual respondents: 1,320 (300 for the Financial EDI Form and 1,020 for the Credit Card Authorization Form).

6. The number of hours needed annually to complete the requirement or request: 105.6 (24 hours for the Financial EDI Form and 81.6 hours for the Credit Card Authorization Form).

7. Abstract: The U.S. Department of Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit card. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and inspection fees to the NRC.

Submit, by January 4, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 29th day of October 1998.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–29496 Filed 11–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–32443–SP and ASLBP No. 99–755–01–SP]

Michael A. Philippon; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on requests for hearing and/or petitions to intervene, and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Michael A. Philippon

(Denial of Senior Reactor Operator's License)

The hearing, if granted, will be conducted pursuant to 10 CFR Part 2 Subpart L of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a denial by NRC Staff of Mr. Philippon's senior reactor operator's license application and Mr. Philippon's request for a hearing pursuant to 10 CFR 2.103.

The Presiding Officer in this proceeding is Administrative Judge Thomas S. Moore. Pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Charles N. Kelber to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Moore and Judge Kelber in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge Thomas S. Moore, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Charles N. Kelber, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Issued at Rockville, Maryland, this 28th day of October 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–29498 Filed 11–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Notice of Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation, Portsmouth Gaseous Diffusion Plant, Portsmouth, Ohio

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs. The basis for this determination for the amendment request is described below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a 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 this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that

interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** notice.

A petition for review 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.

For further details with respect to the action see: (1) The application for amendment and (2) the Commission's Compliance Evaluation Report. 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 Room.

Date of amendment request: May 26, 1998.

Brief description of amendment: On May 26, 1998, the United States Enrichment Corporation (USEC) requested an amendment to the certificate of compliance for PORTS. The request is to revise Technical Safety Requirement (TSR) 2.1.3.9, Low Cylinder Pressure Shutoff, to reduce the shutoff pressure level setpoint from 20 psia to an allowable value of 15 psia and to reflect an improved description of the system operation through changes to the TSR's Surveillance Requirements and the Basis Statement wording.

Specifically, USEC has proposed to revise the Surveillance Requirements of TSR 2.1.3.9 to: (1) Require the quarterly channel functional test and the semiannual calibration to be based on an allowable pressure reading of greater than or equal to 15 psia, instead of a setpoint of 20 psia and (2) to specify a definitive, initial period of time when the channel functional test and calibration are performed—an allowable value of less than or equal to 65 minutes from an open ended ''after the first hour of heating.'' USEC has also proposed to revise the Basis Statement wording to reflect the revised system operation.

PORTS uses thirteen cylindrical (6, 7, and 8 foot diameter) steam autoclaves in buildings X–342, X–343 and X–344 to feed, transfer and sample UF_6 contained in cylinders. Cylinder heating is accomplished by pressurizing the autoclave with live steam. The feed, transfer and sample operations of the cylinders are protected against cylinder overpressure by instrumentation that measures cylinder pressure through sensors downstream in the UF_6 process line. If the cylinder has either a plugged cylinder valve or pigtail, the protection afforded by the cylinder high pressure shutoff system would be negated because the high pressure instrumentation would be unable to measure the UF_6 cylinder pressure. The low cylinder pressure shutoff system's sole function is to ensure line clarity by measuring for an expected pressure after a given time period. This is performed early in the heating evolution to ensure the availability of the pressure instrumentation well before the maximum allowable working pressure of the UF_6 cylinder.

Basis for Finding of No Significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The low cylinder pressure shutoff system is in place to verify the clarity of the UF_6 process line and the availability of the cylinder pressure instrumentation. The system is not involved in the generation of effluents; therefore, the proposed amendment will not change the types or increase the amount of effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed amendment which involves changing the surveillance requirements and actuation setpoints of the low cylinder pressure shutoff system will not affect operability. The low cylinder pressure shutoff system will still be capable of ensuring UF_6 process line clarity and the availability of the UF_6 cylinder high pressure autoclave steam shutdown system. The changes will not increase the probability or consequences of a UF_6 release associated with any postulated accident currently identified in the SAR. Therefore, the proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction activities; therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed amendment which involves changing the surveillance requirements and actuation setpoints of the low cylinder pressure shutoff system will not affect operability. The low cylinder pressure shutoff system will still be capable of ensuring UF_6 process line clarity and the availability of the UF_6 cylinder high pressure autoclave steam shutdown system. The changes will not increase the probability or consequences of any postulated radiological or chemical accident currently identified in the SAR. The proposed changes will also not result in an increase in the potential for, or radiological consequences from, previously evaluated criticality accidents. Therefore, the proposed changes will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

Releases of UF_6 involving autoclave feed, sampling and transfer operations have been analyzed in the SAR. The proposed amendment will not result in any changes to any of the operations; therefore, the proposed amendment will not result in the possibility of a new or different kind of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed changes, lowering the low cylinder pressure shutoff system setpoint from 20 psia to an allowable value of 15 psia will not affect the system operability. The function of the low cylinder pressure shutoff system is to ensure line clarity to the pressure instrumentation to allow for over pressure protection provided by the high UF_6 cylinder pressure shutoff system. The proposed revisions will

allow for improved system operability by lowering the setpoint from being set too close to the expected pressure measured at the particular time of the heating evolution. The revised methodology allows for the control system to accommodate for instrument uncertainty when determining the actual setpoint (a procedurally controlled value). The revised allowable value of 15 psia still allows for a 50% rise in pressure from the administratively controlled starting pressure of 10 psia, which allows for the low cylinder pressure control system to suitably demonstrate line clarity.

The change from the current surveillance requirements specifying ''. . . after the first hour of heating . . .'' to the proposed allowable value of less than or equal to 65 minutes will not lead to a significant increase in measured pressure. The proposed value provides a definitive time for the surveillance requirements to be performed within an expected pressure range that is well below the maximum allowable working pressure of the UF_6 cylinder.

The changes will not result in a significant reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

The proposed amendment which involves changing the surveillance requirements and actuation setpoints of the low cylinder pressure shutoff will not affect system operability. The low cylinder pressure shutoff system will still be capable of ensuring UF_6 process line clarity and the availability of the UF_6 cylinder high pressure autoclave steam shutdown system. Therefore, the proposed modifications will not result in a decrease in the overall effectiveness of the plant's safety program. The staff has also not identified any safeguards or security related implications from the proposed amendment.

Effective date: 60 days after issuance of amendment.

Certificate of Compliance No. GDP–2: Amendment will revise the Technical Safety Requirement.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 27th day of October 1998.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–29493 Filed 11–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Dockets 70–7001 and 70–7002]

Notice of Amendment to Certificates of Compliance GDP–1 and GDP–2 for the U.S. Enrichment Corporation (Paducah Gaseous Diffusion Plant and Portsmouth Gaseous Diffusion Plant, Paducah, Kentucky and Piketon, Ohio)

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following administrative amendments are not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendments is shown below.

The NRC staff has concluded that the administrative amendments provide reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue amendments to the Certificates of Compliance for the Paducah Gaseous Diffusion Plant and the Portsmouth Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that these amendments satisfy the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** notice.

A petition for review must be filed with the Secretary, 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.

For further details with respect to the action see the Commission's Compliance Evaluation Report.

Date of amendment request: There was no formal amendment request. USEC, Inc. was formally privatized by the U.S. Treasury Department on July 28, 1998. These amendments will impose the conditions of transfer attached to the privatization action.

Brief description of amendment: The Commission conditionally consented to the transfer of the certificates of compliance to the privatized USEC. This transfer was subject to USEC consenting to three proposed conditions that related to foreign ownership, control or domination and the Russian High Enriched Uranium Agreement. On July 20, 1998, USEC consented to the conditions. USEC, Inc. was formally privatized by the U.S. Treasury Department on July 28, 1998. These amendments do not approve the transfer; they are administrative amendments to add the conditions of transfer to the certificates of compliance.

Basis for finding of no significance: 1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

Operations at the gaseous diffusion plants will remain unchanged. The proposed action is to add three conditions of transfer to the certificates of compliance. There will be no change to the types or amount of effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed amendments will not increase any exposure to radiation. The action is solely an administrative action. Therefore, the changes will not result in a significant increase in individual or cumulative radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment will not result in any construction; therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed administrative amendments to add the conditions of transfer to the certificates of compliance have no impact on the potential for or occurrence of an accident or the resulting consequences. Therefore, these changes will not increase the probability of occurrence or consequence of any postulated accident currently identified in the safety analysis reports.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed amendments will not create the possibility of a new or different type of equipment malfunction or a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed amendments to add conditions to the certificates of compliance will have no impact on the margin of safety. Therefore, these changes do not decrease the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Implementation of the proposed amendments does not change the safety, safeguards, or security programs. Therefore, the effectiveness of the safety, safeguards, and security programs is not decreased. In approving the transfer, the Commission determined that the transfer would not be inimical to the common defense and security of the United States.

Effective date: The amendments to Certificates of Compliance GDP–1 and GDP–2 become effective immediately upon being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificates of Compliance GDP–1 and GDP–2: Amendments will revise the certificates of compliance to add three conditions of transfer related to foreign ownership, control or domination and the Russian High Enriched Uranium Agreement.

Local Public Document Room locations: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003 and Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 27th day of October, 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–29494 Filed 11–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Plant License Renewal

The ACRS Subcommittee on Plant License Renewal will hold a meeting on November 18, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 18, 1998—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss generic issues related to license renewal activities and the schedule for their resolution, selected technical and topical reports and the associated safety evaluation reports, status of the staff's review of the applications for renewing licenses for Calvert Cliffs and Oconee Nuclear Power Plants, and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: October 29, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–29499 Filed 11–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on November 19, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

A portion of this meeting will be closed to public attendance to discuss Westinghouse proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, November 19, 1998—8:30 a.m.—12:00 Noon.

The Subcommittee will review the Westinghouse methodology for best-estimate small-break loss of coolant accident analysis, using the WCOBRA/TRAC code. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 29, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–29500 Filed 11–3–98; 8:45 am]

BILLING CODE 7590–01–P

Nuclear Regulatory Commission Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment, Plant Operations, and on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment, Plant Operations, and on Regulatory Policies and Practices will hold a joint meeting on November 19 and 20, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, November 19, 1998—1:00 p.m. until the conclusion of business.

The Subcommittees will continue their discussion of proposed options to make 10 CFR Part 50 and 10 CFR 50.59 (Changes, tests and experiments) risk informed.

Friday, November 20, 1998—8:30 a.m. until the conclusion of business.

The Subcommittees will review proposed changes to the NRC assessment programs, including integrated review of assessment processes, Senior Management Meeting process, as well as risk-informed baseline inspection case studies and associated proposed changes to the inspection program, and other related risk-informed initiatives. The Subcommittees will also discuss AEOD programs for risk-based analysis of reactor operating experience including risk-informed performance indicators. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 29, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–29501 Filed 11–3–98; 8:45 am]

BILLING CODE 7590–01–P

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 fromOctober 9, 1998, through October 23, 1998. The last biweekly notice was published on October 21, 1998 (63 FR 56238).

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 December 4, 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.

Arizona Public Service Company, et al., Docket Nos. STN 50–528 and STN 50–529, Palo Verde Nuclear Generating Station, Units Nos. 1 and 2, Maricopa County, Arizona

Date of application for amendment: October 6, 1998.

Description of amendment request: The proposed amendment would clarify the power level threshold at which certain reactor protective system (RPS) instrumentation trips must be enabled and may be bypassed, and clarify that this level is a percentage of the neutron flux at rated thermal power (RTP). The bypass power level, 1E–4% RTP, would be specified as logarithmic power instead of thermal power. The intent of (and the implementation of) the 1E–4% RTP RPS instrumentation bypass threshold level in the technical specifications (TS) has always been that this power level is neutron power, which would be indicated by logarithmic power, and is not the heat transfer from the reactor core to the coolant, including decay heat, which is the thermal power definition in the TS.

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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would replace the words ''THERMAL POWER'' with ''logarithmic power'' for the 1E–4% rated thermal power (RTP) level threshold in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnote (d) for the reactor protective system (RPS) instrumentation. The purpose of the 1E–4% RTP threshold is to (1) specify the power, below which, the logarithmic power level trip is required to be operable and surveilled, and (2) specify the power, above which, the local power density (LPD) and departure from nucleate boiling ratio (DNBR) trips are required to be operable. For these purposes, the appropriate power threshold should be logarithmic power, which is the power indicated on the logarithmic nuclear instrumentation, and not thermal power. Thermal power is defined in TS section 1.1 as the total reactor heat transfer rate to the reactor coolant, and would include decay heat. Thermal power would therefore not drop to 1E–4% RTP for a considerable period of time after shutdown, and would not provide the plant protective function correlation required at 1E–4% neutron RTP. However, logarithmic power, which is indicated by neutron flux, does provide the plant protective function correlation required at 1E–4% neutron RTP for the required reactor trips as required by safety analyses. The logarithmic power level of 1E–4% neutron RTP nominally correlates to the neutron flux measured by the excore neutron instrumentation that is 1E–4% of the neutron flux at 100% RTP (3876 MWt) measured by the excore neutron instrumentation.

The proposed editorial amendment would also replace ''RTP'' with ''NRTP,'' in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnotes (c) and (d). A definition would be added for NRTP (nuclear rated thermal power) in section 1.1 as the indicated neutron flux at RTP. These editorial clarifications will reflect the fact that the logarithmic power level of 1E–4% is not a percentage of the ''total reactor core heat transfer rate to the reactor coolant of 3876 MWt,'' as RTP is defined in section TS 1.1, but is instead a percentage of the indicated neutron flux at RTP.

An editorial change is also proposed to specify NRTP as the ''ALLOWABLE VALUE'' parameter for the high logarithmic power level trip setpoint in Table 3.3.1–1 to correct the unintended omission of the trip setpoint parameter during preparation of the Improved Technical Specifications. This change will fill in the omitted parameter with the correct parameter of NRTP that is also consistent with the high logarithmic power trip setpoint parameter in Table 3.3.2–1.

These changes do not constitute a physical change to the Unit or make changes in the RPS instrumentation setpoints, system logic or manual actuation. In addition, these changes do not alter physical plant equipment or the way in which plant equipment is operated. This change is editorial in that it corrects the TS wording to match the appropriate power parameter that was originally intended and required by safety analyses, and that has been implemented since original licensing of the PVNGS plants. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would replace the words ''THERMAL POWER'' with ''logarithmic power'' for the 1E–4% RTP level threshold in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnote (d) for the RPS instrumentation. The purpose of the 1E–4% RTP threshold is to (1) specify the power, below which, the logarithmic power level trip is required to be operable and surveilled, and (2) specify the power, above which, the LPD and DNBR trips are required to be operable. For these purposes, the appropriate power threshold should be logarithmic power, which is the power indicated on the logarithmic nuclear instrumentation, and not thermal power. Thermal power is defined in TS section 1.1 as the total reactor heat transfer rate to the reactor coolant, and would include decay heat. Thermal power would therefore not drop to 1E–4% RTP for a considerable period of time after shutdown, and would not provide the plant protective function correlation required at 1E–4% neutron RTP. However, logarithmic power, which is indicated by neutron flux, does provide the plant protective function correlation required at 1E–4% neutron RTP for the required reactor trips as required by safety analyses.

The proposed editorial amendment would also replace ''RTP'' with ''NRTP,'' in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnotes (c) and (d). A definition would be added for NRTP (nuclear rated thermal power) in section 1.1 as the indicated neutron flux at RTP. These editorial clarifications will reflect the fact that the logarithmic power level of 1E–4% is not a percentage of the ''total reactor core heat transfer rate to the reactor coolant of 3876 MWt,'' as RTP is defined in section TS 1.1, but is instead a percentage of the indicated neutron flux at RTP.

An editorial change is also proposed to specify NRTP as the ''ALLOWABLE VALUE'' parameter for the high logarithmic power level trip setpoint in Table 3.3.1–1 to correct the unintended omission of the trip setpoint parameter during preparation of the Improved Technical Specifications. This change will fill in the omitted parameter with the correct parameter of NRTP that is also consistent with the high logarithmic power trip setpoint parameter in Table 3.3.2–1.

These changes do not constitute a physical change to the Unit or make changes in the RPS instrumentation setpoints, system logic or manual actuation. In addition, these changes do not alter physical plant equipment or the way in which plant equipment is operated. The proposed change does not introduce any new modes of plant operation or new accident precursors. This change is editorial in that it corrects the TS wording to match the appropriate power

parameter that was originally intended and required by safety analyses, and that has been implemented since original licensing of the PVNGS plants. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change would replace the words ''THERMAL POWER'' with ''logarithmic power'' for the 1E–4% RTP level threshold in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnote (d) for the RPS instrumentation. The purpose of the 1E–4% RTP threshold is to (1) specify the power, below which, the logarithmic power level trip is required to be operable and surveilled, and (2) specify the power, above which, the LPD and DNBR trips are required to be operable. For these purposes, the appropriate power threshold should be logarithmic power, which is the power indicated on the logarithmic nuclear instrumentation, and not thermal power. Thermal power is defined in TS section 1.1 as the total reactor heat transfer rate to the reactor coolant, and would include decay heat. Thermal power would therefore not drop to 1E–4% RTP for a considerable period of time after shutdown, and would not provide the plant protective function correlation required at 1E–4% neutron RTP. However, logarithmic power, which is indicated by neutron flux, does provide the plant protective function correlation required at 1E–4% neutron RTP for the required reactor trips as required by safety analyses.

The proposed editorial amendment would also replace ''RTP'' with ''NRTP,'' in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnotes (c) and (d). A definition would be added for NRTP (nuclear rated thermal power) in section 1.1 as the indicated neutron flux at RTP. These editorial clarifications will reflect the fact that the logarithmic power level of 1E–4% is not a percentage of the ''total reactor core heat transfer rate to the reactor coolant of 3876 MWt,'' as RTP is defined in section TS 1.1, but is instead a percentage of the indicated neutron flux at RTP.

An editorial change is also proposed to specify NRTP as the ''ALLOWABLE VALUE'' parameter for the high logarithmic power level trip setpoint in Table 3.3.1–1 to correct the unintended omission of the trip setpoint parameter during preparation of the Improved Technical Specifications. This change will fill in the omitted parameter with the correct parameter of NRTP that is also consistent with the high logarithmic power trip setpoint parameter in Table 3.3.2–1.

These changes do not constitute a physical change to the Unit or make changes in the RPS instrumentation setpoints, system logic or manual actuation. In addition, these changes do not alter physical plant equipment or the way in which plant equipment is operated. This change is editorial in that it corrects the TS wording to match the appropriate power parameter that was originally intended and required by safety analyses, and that has been implemented since original licensing of the PVNGS plants. 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: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

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: October 14, 1998.

Description of amendment request: The proposed change will revise the H. B. Robinson, Unit 2, Technical Specification (TS) on Residual Heat Removal Isolation Valve Interlock. The requested change modifies the acceptance criterion for surveillance requirement (SR) 3.4.14.2 from setpoint value to the analytical limit for overpressurization of the Residual Heat Removal System.

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 HBRSEP [H. B. Robinson Steam Electric Plant], Unit No. 2 TS are proposed to be modified to increase the acceptance criterion for Surveillance Requirement (SR) 3.4.14.2 from a RCS [reactor coolant system] pressure of 465 psig to 474 psig. Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specifications (TS) change and has concluded that it does not involve a significant hazards consideration. The conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration is discussed below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change increases the acceptance criterion for the Residual Heat Removal (RHR) System interlock from 465 psig to 474 psig. The new value of 474 psig is the analytical limit for the RHR System interlock setpoint that corresponds to the highest RCS pressure that is allowable in the RHR System without overpressurizing the RHR System above its design pressure. The RHR System interlock prohibits remote manual operation of the RHR Pressure Isolation Valves (PIVS) from the control room when Reactor Coolant System (RCS) pressure is greater than the RHR System interlock setpoint to avoid inadvertent overpressurization of the RHR System due to operator action. Operating procedures prohibit opening of the RHR PIVs when RCS pressure is greater than 375 psig. Therefore, the probability of overpressurization of the RHR System resulting in a Loss-of-Coolant Accident (LOCA) is not affected by the change. The RHR System interlock provides no actuation function to mitigate the consequences of a LOCA as a result of open RHR PIVs with RCS pressure greater than the RHR System interlock setpoint. Therefore, the consequences of overpressurization of the RHR System is not affected by the change. Therefore, the proposed change does not involve any increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures, or components. The proposed change increases the acceptance criterion for the RHR System interlock SR from 465 psig to the analytical limit of 474 psig. Performance of a SR at the new acceptance criterion does not introduce any new accident initiation scenarios since the SR is performed at acceptable RCS pressure conditions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change results in a new SR acceptance criterion that corresponds to the analytical limit for the RHR System interlock setpoint. The RHR System interlock is redundant to administrative controls which prohibit opening the RHR System PIVs under RCS pressure conditions which would overpressurize the RCS System. Therefore, the proposed change does 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: 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: Frederick J. Hebdon.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendment request: October 13, 1998.

Description of amendment request: The proposed amendments would change the Dresden, Quad Cities, and LaSalle Technical Specifications (TS) to reflect the use of Siemens Power Corporation (SPC) ATRIUM–9B fuel. Specifically the proposed amendments incorporate the following into the TS: (a) new methodologies that will enhance operational flexibility and reduce the likelihood of future plant derates; (b) administrative changes that eliminate the cycle-specific implementation of ATRIUM–9B fuel and adopt Improved Standard Technical Specification language where appropriate; and (c) changes to the Minimum Critical Power Ratio (MCPR). This amendment request supplements the submittal of August 14, 1998 (63 FR 48258). Changes in this supplement include only a change in reference to a recently NRC-approved additive constant uncertainty (ACU) generic methodology for ATRIUM–9B fuel (ANF–1125(P)(A), Supplement 1, Appendix E) from Appendix D which provided an interim value for ACU.

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 probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. These changes do not affect the operability of plant systems, nor do they compromise any fuel performance limits.

a. Addition of SPC Revised Jet Pump Methodology (LaSalle Units 1 and 2)

The Reference 1 [ANF–91–048(P)(A), Supplement 1 and Supplement 2, ''BWR Jet Pump Model Revision for RELAX,'' October 1997 and NRC SER, ''Review of Siemens Topical Report ANF–91–048(P), BWR Jet Pump Revisison for RELAX (TAC No M995381), T.H. Essig to H.D. Curet, September 19, 1997] methodology to be added to the Technical Specifications is used as part of the LOCA [loss-of-coolant accident] analysis and does not introduce physical changes to the plant. The Reference 1 revised jet pump model changes the calculational behavior of the jet pump under reversed drive flow conditions. The revised jet pump model methodology makes the LOCA model behave more realistically and calculates small break LOCA PCTs [peak cladding temperature] that are comparable to the large break LOCA results. Therefore, this change only affects the methodology for analyzing the LOCA event and determining the protective APLHGR [average planar linear heat generation rate] limits. The Technical Specification requirements for monitoring APLHGR are not affected by this change. The revised method will result in higher APLHGR limits, thus the SPC fuel will be allowed to operate at higher nodal powers. The approved methodology, however, still protects the fuel performance limits specified by 10 CFR 50.46. Therefore, the probability or consequences of an accident previously evaluated will not change.

b. Addition of SPC Generic Methodology for Application of ANFB [Advanced Nuclear Fuel for Boiling Water Reactors] Critical Power Correlation to Non-SPC Fuel (Quad Cities Units 1 and 2 and LaSalle Units 1 and 2)

The probability or consequences of a previously evaluated accident are not increased by adding Reference 3 [EMF–1125(P)(A), Supplement 1 Appendix C, ''ANFB Critical Power Correlation Application for Coresident Fuel,'' August 1997, and NRC SER, ''Acceptance for Referencing of Licensing Topical Report EMF–1125(P), Supplement 1 Appendix C, ''ANFB Critical Power Correlation Application for Co-Resident Fuel,'' J.E. Lyons to R. A. Copeland, May 9, 1997] to Section 6.9.A.6.b of the Quad Cities Technical Specifications and Bases Section 2.1.2 and Section 6.6.A.6.b of the LaSalle Technical Specifications. Reference 3 determines the additive constants and the associated uncertainty for application of the ANFB correlation to the coresident GE [General Electric Co.] fuel. Therefore, it provides data that is used in the determination of the MCPR Safety Limit. This approved methodology for applying the ANFB critical power correlation to the GE fuel will protect the fuel from boiling transition. Operational MCPR limits will also be applied to ensure that the MCPR Safety Limit is protected during all modes of operation and anticipated operational occurrences. Because Reference 3 contains conservative methods and calculations and because the operability of plant systems designed to mitigate any consequences of accidents have not changed, the probability or consequences of an accident previously evaluated will not increase.

c. Addition of SPC Topical for Revised ANFB Correlation Uncertainty (Quad Cities Units 1 and 2, Dresden Units 2 and 3, and LaSalle Units 1 and 2)

The probability or consequences of a previously evaluated accident are not increased by adding Reference 7 [ANF–1125(P), Supplement 1, Appendix E, ''ANFB Critical Power Correlation Determination of ATRIUM–9B Additive Constant Uncertainties,'' and NRC SER, ''Acceptance for Referencing of Licensing Topical Report ANF–1125(P), Supplement 1, Appendix E, ''ANFB Critical Power Correlation Determination of ATRIUM–9B Additive Constant Uncertainties'' (TAC No. MA2437), T.H. Essig to H.D. Curet, September 23, 1998] to Section'' 6.9.A.6.b of the Quad Cities and Dresden Technical Specifications and Bases Section 2.1.2 and Section 6.6.A.6.b of the LaSalle Technical Specifications. Reference 7 documents the additive constant uncertainty for the SPC ATRIUM–9B fuel design with an internal water channel. This methodology is used to determine an input to the MCPR Safety Limit calculations, which ensures that at least 99.9 percent of the fuel rods avoid transition boiling during normal operation as well as anticipated operational occurrences. This change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. This methodology for determining the ATRIUM–9B additive constant uncertainty for the MCPR Safety Limit calculation will continue to support protecting the fuel from boiling transition. Operational MCPR limits will be applied to ensure the MCPR Safety Limit is not violated during all modes of operation and anticipated operational occurrences. Therefore, no individual precursors of an accident are affected and the operability of plant systems designed to mitigate the probability or the consequences of an accident previously evaluated is not affected by these changes.

d. Change to Minimum Critical Power Ratio Safety Limit (Quad Cities Units 1 and 2, Dresden Unit 3, and LaSalle Units 1 and 2)

Changing the MCPR Safety Limit at Quad Cities Units 1 and 2, Dresden Unit 3, and LaSalle Units 1 and 2 will not increase the probability or the consequences of an accident previously evaluated. The MCPR Safety Limits for Quad Cities Units 1 and 2, Dresden Unit 3, and LaSalle Units 1 and 2 are anticipated to be conservative and acceptable for future cycles. Cycle specific MCPR Safety Limit calculations will be performed, consistent with SPC's approved methodology, to confirm the appropriateness of the MCPR Safety Limit. Additionally, operational MCPR limits will be applied that will ensure the MCPR Safety Limit is not violated during all modes of operation and anticipated operational occurrences. The MCPR Safety Limits are being set at the CPR [critical power ratio] value where less than 0.1 percent of the rods in the core are expected to experience boiling transition. These Safety Limits are expected to be applicable for future cycles of ATRIUM–9B. Therefore the probability or consequences of an accident will not increase.

e. Removal of Footnotes Limiting Operation with ATRIUM–9B Fuel Reloads (Quad Cities Unit 2 and Dresden Units 2 and 3)

The removal of footnotes from the Quad Cities and Dresden Technical Specifications does not involve any significant increase in the probability or consequences of an accident previously evaluated. The footnotes were added to clarify that cycle specific methods were used until the generic methodology was approved by the NRC. Since the NRC has approved SPC's generic methodology for application of the ANFB correlation to the coresident GE fuel (Reference 3) and SPC has addressed the concerns regarding the database used to calculate the ATRIUM–9B additive constant uncertainties (Reference 7), the footnotes are no longer necessary. The removal of the Unit 2 specific ''a'' pages, 2–1a and B2–3a, in the Quad Cities Technical Specifications is justified by the removal of the footnotes. Therefore, removing these footnotes and ''a'' pages does not require any physical plant modifications, nor does it physically affect any plant components or entail changes in plant operation. Therefore, the probability or consequences of an accident previously evaluated are not expected to increase.

f. Revision to Thermal Limit Descriptions (Quad Cities Units 1 and 2, Dresden Units 2 and 3, and LaSalle Units 1 and 2)

The revision to the Section 3 Technical Specification description of the APLHGR limits has no implications on accident analysis or plant operations. The purpose of the revision is to allow flexibility for the MAPLHGR [maximum planar linear heat generation rate] limits and their exposure basis to be specified in the COLR [core operating limit report] and to establish consistency with approved methodologies currently utilized by Siemens Power Corporation, which calculate MAPLHGR limits based on bundle or planar average exposures. This revision also provides for consistency in the APLHGR limit Technical Specification wording between the ComEd BWRs. The revision to the 3.11.D SLHGR [steady state linear heat generation rate] Technical Specification for Dresden also has no implications on accident analysis or plant operations. The purpose of this revision is to allow flexibility for the LHGR [linear heat generation rate] limits and their exposure basis to be specified in the COLR. This revision makes the Dresden LHGR definition consistent with NUREG 1433/1434, Revision 1 wording. The definition of the Average Planar Exposure is deleted, because the exposure basis of the APLHGR and LHGR is being removed. Therefore, no plant equipment or processes are affected by this change. Thus, there is no alteration 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:

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications to the plant configuration, including changes in allowable modes of operation. This Technical Specification submittal does not involve any modifications to the plant configuration or allowable modes of operation. No new precursors of an accident are created and no new or different kinds of accidents are created. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

a. Addition of SPC Revised Jet Pump Methodology (LaSalle Units 1 and 2)

The revised jet pump model methodology will be used to analyze the LOCA for LaSalle Units 1 and 2, and does not introduce any physical changes to the plant or the processes used to operate the plant. This change only affects the methods used to analyze the LOCA event and determine the MAPLHGR limits. Therefore, the possibility of a new or different kind of accident is not created.

b. Addition of SPC Generic Methodology for Application of ANFB Critical Power Correlation to Non-SPC Fuel (Quad Cities Units 1 and 2 and LaSalle Units 1 and 2)

Addition of the generic methodology for the application of the ANFB critical power correlation to GE fuel in Section 6.9.A.6.b of the Quad Cities Technical Specifications and Bases Section 2.1.2 and Section 6.6.A.6.b of the LaSalle Technical Specifications does not introduce any physical changes to the plant, the processes used to operate the plant, or allowable modes of operation. This change only involves adding an NRC approved methodology, which is used to determine the additive constants and additive constant uncertainty for GE fuel, to Section 6 of the Technical Specifications. Therefore, no new precursors of an accident are created and no new or different kinds of accidents are created.

c. Addition of SPC Topical for Revised ANFB Correlation Uncertainty (Quad Cities Units 1 and 2, Dresden Units 2 and 3, and LaSalle Units 1 and 2)

Addition of the Reference 7 methodology to Section 6.9.A.6.b of the Quad Cities and Dresden Technical Specifications and Bases Section 2.1.2 and Section 6.6.A.6.b of the LaSalle Technical Specifications will not create the possibility of a new or different kind of accident from any accident previously evaluated. This methodology describes the calculation of an input to the MCPR Safety Limit—the ATRIUM–9B additive constant uncertainty. This change does not introduce any physical changes to the plant, the processes used to operate the plant, or allowable modes of operation. Therefore, no new precursors of an accident are created and no new or different kinds of accidents are created.

d. Change to Minimum Critical Power Ratio Safety Limit (Quad Cities Units 1 and 2, Dresden Unit 3, and LaSalle Units 1 and 2)

Changing the MCPR Safety Limit will not create the possibility of a new accident from an accident previously evaluated. This change will not alter or add any new equipment or change modes of operation. The MCPR Safety Limit is established to ensure that 99.9 percent of the rods avoid boiling transition.

The MCPR Safety Limit is changing for Quad Cities, Dresden Unit 3 and LaSalle due to the revised ATRIUM–9B additive constants and the ATRIUM–9B additive constant uncertainty calculated in Reference 7. The new MCPR Safety Limit for Quad Cities Units 1 and 2, Dresden Unit 3, and LaSalle Units 1 and 2 are greater than the current values at Quad Cities Units 1 and 2, Dresden Unit 3, and LaSalle Units 1 and 2 and are being increased now in anticipation of bounding future reloads of ATRIUM–9B. This change does not introduce any physical changes to the plant, the processes used to operate the plant, or allowable modes of operation. Therefore, no new accidents are created that are different from any accident previously evaluated.

e. Removal of Footnotes Limiting Operation with ATRIUM–9B Fuel Reloads (Quad Cities Unit 2 and Dresden Units 2 and 3)

The removal of the footnotes from the Quad Cities and Dresden Technical Specifications does not create a new or different kind of accident from any accident previously evaluated. The removal of the footnotes does not affect plant systems or operation. The footnotes were temporarily established to implement a conservative cycle specific MCPR Safety Limit until the SPC generic methodology was approved. With the approval of References 3 and 7, these footnotes are no longer applicable. Removing these footnotes does not introduce any physical changes to the plant, the processes used to operate the plant, or allowable modes of operation. The removal of the Unit 2 specific ''a'' pages, 2–1a and B2–3a, in the Quad Cities Technical Specifications, which is justified by the removal of the footnotes, also does not create a new or different kind of accident from any accident previously evaluated.

f. Revision to Thermal Limit Descriptions (Quad Cities Units 1 and 2, Dresden Units 2 and 3, and LaSalle 1 and 2)

The revision of the APLHGR and LHGR limit descriptions will not create the possibility of a new or different kind of accident from any accident previously evaluated. This revision will not alter any plant systems, equipment, or physical conditions of the site. This revision allows the flexibility of the APLHGR and the LHGR limits to be specified in the COLR and to maintain consistency with the calculated results of methodologies currently used to determine the APLHGR. The definition of the Average Planar Exposure is deleted, because it is being removed from LHGR and APLHGR Technical Specifications. This change does not introduce any physical changes to the plant, the processes used to operate the plant, or allowable modes of operation. Therefore this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety for the following reasons:

a. Addition of SPC Revised Jet Pump Methodology (LaSalle Units 1 and 2)

The revised jet pump model methodology, and the MAPLHGRs, resulting from the revised jet pump methodology, will continue

to ensure fuel design criteria and 10 CFR 50.46 compliance. The results of LOCA analyses performed with this methodology must continue to comply with the requirements of 10 CFR 50.46. Therefore, there is no significant reduction in the margin of safety.

b. Addition of SPC Generic Methodology for Application of ANFB Critical Power Correlation to Non-SPC Fuel (Quad Cities Units 1 and 2 and LaSalle Units 1 and 2)

The margin of safety is not decreased by adding Reference 3 to Section 6.9.A.6.b of the Quad Cities Technical Specifications and Bases Section 1.2 and Section 6.6.A.6.b of the LaSalle Technical Specifications. Siemens Power Corporation methodology for application of the ANFB Critical Power Correlation to coresident GE fuel is approved by the NRC and is the same methodology used in the cycle specific topicals for coresident fuel (References 4 [EMF–96–021(P), Revision 1, Application of the ANFB Critical Power Correlation to Coresident GE fuel for LaSalle Unit 2 Cycle 8,'' February 1996, and NRC SER, ''Safety Evaluation for Topical Report EMF–96–021(P), Revision 1, 'Application of the ANFB Critical Power Correlation to Coresident GE Fuel for LaSalle Unit 2 Cycle 8' (TAC NO. M94964),'' D.M. Skay to I. Johnson, September 26, 1996] and 5 [EMF–96–051(P), ''Application of the ANFB Critical Power Correlation to Coresident GE Fuel for Quad Cities Unit 2 Cycle 15,'' May 1996, and NRC SER, ''Approval of Topical Report EMF–96–051(P)—Quad Cities, Unit 2 (TAC NO. M96213),'' R. Pulsifer to I. Johnson, May 16, 1997]). The MCPR Safety Limit will continue to ensure that greater than 99.9 percent of the rods in the core avoid boiling transition. Additionally, operating limits will be established to ensure the MCPR Safety Limit is not violated during all modes of operation.

c. Addition of SPC Topical for Revised ANFB Correlation Uncertainty (Quad Cities Units 1 and 2, Dresden Units 2 and 3, and LaSalle Units 1 and 2)

The MCPR Safety Limit provides a margin of safety by ensuring that less than 0.1 percent of the rods are expected to be in boiling transition if the MCPR Safety Limit is not violated. This Technical Specification amendment request proposes to insert the topical report that describes SPC's calculation of the ATRIUM–9B additive constant uncertainty. The new ATRIUM–9B additive constant uncertainty calculation is conservative and is based on a larger database than previous calculations. Because the criteria of ensuring that 99.9 percent of the rods are expected to avoid boiling transition has not been changed and a conservative method is used to calculate the ATRIUM–9B additive constant uncertainty, a decrease in the margin to safety will not occur due to adding this methodology to the Technical Specifications. In addition, operational limits will be established to ensure the MCPR Safety Limit is protected for all modes of operation. This revised methodology will ensure that the appropriate level of fuel protection is being employed.

d. Change to Minimum Critical Power Ratio Safety Limit (Quad Cities Units 1 and 2, Dresden Unit 3, and LaSalle Units 1 and 2)

Changing the MCPR Safety Limit for Quad Cities Units 1 and 2, Dresden Unit 3, and LaSalle Units 1 and 2 will not involve any reduction in margin of safety. The MCPR Safety Limit provides a margin of safety by ensuring that less than 0.1 percent of the rods are calculated to be in boiling transition if the MCPR Safety Limit is not violated. The proposed Technical Specification amendment request reflects the MCPR Safety Limit results from conservative evaluations by SPC using the ANFB critical power correlation with the ATRIUM–9B additive constant uncertainty calculated in Reference 7.

Because a conservative method is used to apply the ATRIUM–9B additive constant uncertainty in the MCPR Safety Limit calculation, a decrease in the margin to safety will not occur due to changing the MCPR Safety Limit. The revised MCPR Safety Limit will ensure the appropriate level of fuel protection. Additionally, operational limits will be established based on the proposed MCPR Safety Limit to ensure that the MCPR Safety Limit is not violated during all modes of operation including anticipated operation occurrences. This will ensure that the fuel design safety criterion of more than 99.9 percent of the fuel rods avoiding transition boiling during normal operation as well as during an anticipated operational occurrence is met.

e. Removal of Footnotes Limiting Operation with ATRIUM–9B Fuel Reloads (Quad Cities Unit 2 and Dresden Units 2 and 3)

The removal of the cycle specific footnotes in Quad Cities and Dresden Technical Specifications does not impose a change in the margin of safety. These footnotes were added due to concerns regarding the calculation of the additive constant uncertainty for the ATRIUM–9B fuel and the cycle specific application of the ANFB critical power correlation to coresident GE fuel in Quad Cities Unit 2 Cycle 15. Because the generic ANFB application to coresident GE fuel MCPR methodology (Reference 3) has received NRC approval and the topical report describing the increased database used to calculate the additive constant uncertainties for ATRIUM–9B (Reference 7) has also received NRC approval and both are proposed to be added to the Technical Specifications in this amendment request, there is no reason for the footnotes to remain. Removal of the Unit 2 specific ''a'' pages, 2–1a and B2–3a, in the Quad Cities Technical Specifications is justified by the removal of the footnotes. Therefore, the removal of the ''a'' pages, 2–1a and B2–3a, also does not impose a change in the margin of safety.

f. Revision to Thermal Limit Descriptions (Quad Cities Units 1 and 2, Dresden Units 2 and 3, and LaSalle Units 1 and 2)

The revision to the APLHGR and LHGR limit descriptions will not involve a reduction in the margin of safety. The methodology used to calculate the APLHGR must comply with the guidelines of Appendix K of 10 CFR Part 50, and the APLHGR and LHGR will still be required to be maintained within the limits specified in the COLR. The surveillance requirements for these two thermal limits remain unchanged. Thus, there will be no 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: For Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021; and for LaSalle, the Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603. *NRC Project Director:* Stuart A. Richards.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: September 30, 1998.

Description of amendment request: The proposed amendment would increase the maximum fuel rod internal pressure in the spent fuel pool from 1200 pounds per square inch gauge (psig) to 1300 psig by changing the Updated Final Analysis Report (UFSAR) reference to the computer code used to determine the fuel rod internal pressure (TACO3 computer code would be added) in UFSAR Chapter 15. The proposed amendment would also provide justification for not increasing the overall effective decontamination factor for iodine as a consequence of a fuel handling accident. In addition, the term ''fuel assembly gap gas pressure'' would be changed to ''fuel rod internal pressure'' to correct an UFSAR error.

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 following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92 (c) requirements to demonstrate that all three standards for no significant hazards consideration are satisfied. A no significant hazards consideration is indicated if

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.

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The increase in maximum rod internal pressure in the spent fuel pool from 1200 psig to 1300 psig does not result in a significant change in the calculated overall effective decontamination factor for iodine (described in Attachment 1) [of the licensee's submittal]. Therefore, the continued use of an overall effective decontamination factor for iodine of 89 can be justified. Therefore, there is no significant increase in the dose consequences for a fuel handling accident at Oconee Nuclear Station.

Implementation of the BAW–10183P-A (Reference 4) methodology, which allows fuel rod internal pressure to exceed system pressure, also increases the fuel rod pressure at spent fuel pool conditions. The fuel is currently licensed to rod internal pressure of system pressure plus a proprietary amount above system pressure. This criteria represents a separate limit from the maximum internal pressure in the spent fuel pool criteria. Thus, an increase in the maximum rod internal pressure in the spent fuel pool does not affect the mechanical design limit specified in Reference 4. Therefore, an increase in the maximum internal pressure in the spent fuel pool does not constitute a significant increase in the probability of an accident previously evaluated.

Second Standard

Implementation of this amendment will not create the possibility of a new or different kind of accident from any previously evaluated. The fuel handling accident is the bounding accident. Implementation of this amendment will not impact any plant systems that are accident initiators. No other modifications are being proposed in the plant which would result in the creation of a new accident mechanism. Also, no changes are being made to the way the plant is operated; therefore, no new failure mechanisms will be initiated.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. As discussed in Attachment 1 [of the licensee's submittal], the overall effective decontamination factor (DF) of 522 was determined for a rod internal pressure of 1200 psig, and a DF of 443 for a rod internal pressure of 1300 psig based on a spent fuel pool depth of 21.34 feet. Both of these factors are well above the DF of 89 currently used in the fuel handling accident analyses. The margin of safety is a factor of 5.

Based upon the preceding analysis, Duke proposes that ample margin is retained to justify the continued use of a DF of 89 at a maximum rod internal pressure of 1300 psig. Therefore, Duke has concluded that the proposed amendment does not involve a significant hazards consideration.

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: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry III, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Project Director: Herbert N. Berkow.

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania.

Date of amendment request: September 24, 1998.

Description of amendment request: The proposed amendment would revise technical specification (TS) 3.1.2.8 in two places to change the term ''contained volume'' to ''usable volume.'' This change would eliminate the potential for a non-conservative interpretation of the specification values for the Refueling Water Storage Tank and Boric Acid Storage System (BAT) and would eliminate the need for plant administrative controls, which currently interpret these volumes as usable volumes.

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 Limiting Condition for Operation (LCO) change will assure that the Refueling Water Storage Tank (RWST) minimum usable volume is maintained consistent with that required by accident analysis. The safety function of the RWST will not differ in any way from its normal operational mode. The normal operation of plant equipment is not a precursor to any accident. Therefore, operation of equipment under this change will not increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment will not change the physical plant or the modes of plant operation defined in the operating license. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. The proposed change will help to ensure that the analysis value of minimum contained volume is available, so that the RWST can perform its safety function.

Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

RWST: The basis for TS 3.1.2.8.b is to ensure adequate water for the Emergency Core Cooling System to respond to a Large Break Loss Of Coolant Accident; supply the containment with cooling spray flow; supply the containment sump with adequate water for Recirculation Spray pump suction head concerns; and to provide adequate boron to shut down the core. This change will ensure that the proper tank volume is maintained to support the Design Basis Accident (DBA) analysis.

BAT: These tanks are credited for ensuring adequate Shutdown Margin in the event that the unit has to initiate an emergency shutdown. Additional requirements are derived for the postulated Anticipated Transient Without Scram event. This change will ensure that the proper tank volume is maintained to support the DBA analysis.

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: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 1500l.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: October 16, 1998.

Description of amendment request: The proposed amendment would extend on a one time only basis, the surveillance interval for technical specifications (TSs) 4.8.1.1.1.b and 4.8.1.2 from its current due date of January 30, 1999, to the first entry into Mode 4 following the seventh refueling outage (2R7), but not later than May 1, 1999, by adding a new License Condition 2.C(12). The purpose of TSs 4.8.1.1.1.b and 4.8.1.2 is to demonstrate the ability to transfer the unit power

supply from the unit circuit to the system circuit.

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 is temporary and allows a one time extension of the automatic transfer function 18 month surveillance requirement specified in Surveillance Requirement (SR) 4.8.1.1.1.b. This surveillance requirement is also referenced in SR 4.8.1.2. The proposed surveillance interval extension will not cause a significant reduction in system reliability nor affect the ability of a system to perform its design function. The proposed change does not affect the UFSAR [Updated Final Safety Analysis Report] accident analyses since a loss of offsite power is assumed during a design basis accident. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Extending the surveillance interval for the performance of specific testing will not create the possibility of any new or different kind of accidents. No change is required to any system configurations, plant equipment or analyses. The UFSAR accident analyses assume a loss of offsite power; therefore, loss of the automatic bus transfer feature will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Extending the surveillance interval for the automatic transfer function will not impact any plant safety analyses since the UFSAR accident analyses assume the loss of offsite power. The safety limits assumed in the accident analyses and the design function of the equipment required to mitigate the consequences of any postulated accidents will not be changed since only the 18 month surveillance test interval is being extended. Based on engineering judgment, extending the surveillance test interval for the performance of this specific test could slightly reduce the margin of safety derived from the required surveillances. However, past experience has shown that the system which automatically transfers power from the unit to the system circuit supply is reliable. The manual transfer requirement of SR 4.8.1.1.1.b demonstrates that the breakers relied upon for the transfer of power are functional and provides an opportunity to identify potential equipment degradation. The manual transfer requirement of SR 4.8.1.1.1.b will continue to be completed within the required surveillance interval. Therefore, the plant will be maintained within the analyzed limits and the proposed extension will not significantly reduce 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: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 1500l.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 22, 1998.

Description of amendment request: The proposed amendment would delete license conditions associated with the River Bend Station (RBS) Transamerica Delaval, Inc. (TDI) emergency diesel generators (EDGs), which prescribe certain inspection requirements associated with various overload conditions experienced by the EDGs. Current license requirements were issued following publication of NUREG–1216, which called for extensive periodic engine tear-downs as the major part of a maintenance and surveillance program for TDI engines. The proposed removal of license conditions appears to be consistent with the NRC's approval of Generic Topical Report TDI–EDG–001–A ''Basis for Modification to Inspection Requirements for Transamerica Delaval, Inc., Emergency Diesel Generators''. EOI currently inspects and maintains its EDGs in accordance with Technical Requirements Manual (TRM) surveillance requirement TSR 3.8.1.21. Periodicity of planned inspections and maintenance are based upon the manufacturer's recommendations for standby service.

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 the consequences of an accident previously evaluated:

Diesel generators are not accident initiating equipment. Elimination of the non-routine tear-downs and inspections will not adversely affect the probability of an accident occurring. Regular maintenance programs (which may include periodic tear-downs and inspections) in lieu of this specific license condition would decrease the consequences of an accident because of the availability of the engines will increase as a result of the less frequent tear-downs. (See Generic Topical Report TDI–EDG–001–A, ''Basis for Modification to Inspection Requirements for Transamerica Delaval, Inc., Emergency Diesel Generators'') Additionally, the high average reliability of the TDI engines will not be negatively affected due to this change. NRC research has shown there is a period of decreased reliability immediately following intrusive tear-downs (break-in period), followed by a long period of high reliability. Continued monitoring and maintenance as implemented by Technical Requirements Manual (TRM) surveillances will contribute to continued high reliability of the EDGs.

2. Create the possibility of a new or different kind of accident from any previously evaluated:

The proposed amendment does not affect the design or function of any plant structure, system, or component, nor does it change the way plant systems are operated. The proposed amendment will not cause any physical change to the plant or the design or operation of the diesel units. This change will only affect the frequency of tear-down inspections of the EDGs, and not the physical activities performed during such inspections. Therefore, the removal of the existing condition from the operating license will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant decrease in the margin of safety.

The proposed amendment does not affect parameters which would result in a significant reduction in margin of safety. Operating experience and data have shown increased reliability can be achieved by eliminating unnecessary tear-down inspections, such as those prescribed by this license condition. Maintenance of the EDGs is presently scheduled in accordance with the vendor's recommendations. The RBS corrective action program provides a means to evaluate future operational events and take the appropriate actions. Therefore, the proposed amendment does not involve a significant decrease 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: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005.

NRC Project Director: John N. Hannon.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 28, 1998.

Description of amendment request: This amendment requests changes to Technical Specification 3.7.1.2 and Surveillance Requirement 4.7.1.2 for the Emergency Feedwater System. The amendment will expand and clarify the current specification. A change to Technical Specification Bases 3/4.7.1.2 has been included to support the changes.

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. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes included in this amendment request are being made to the Emergency Feedwater (EFW) System Technical Specification. These changes include clarification of the LCO [limiting conditions for operation], a 7 day allowed outage time for an inoperable steam supply, additional ACTION requirements for inoperable flow path(s), a requirement to test the pumps pursuant to Specification 4.0.5, and rewording of numerous Surveillance Requirements consistent with NUREG–1432, ''Standard Technical Specifications Combustion Engineering Plants.''

The administrative and more restrictive changes will not affect the assumptions, design parameters, or results of any accident previously evaluated. The accident mitigation features of the plant are not affected by these proposed changes. The proposed changes do not add or modify any existing equipment. The administrative change to test EFW pumps pursuant to the Inservice Test Program will ensure the EFW pumps are tested against the more restrictive of the data points required by either the safety analysis or the Inservice Test Program. Therefore, the proposed administrative changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The less restrictive changes (allowing 7 days for an inoperable pump due to an inoperable steam supply, performing Surveillance Requirements during other than shut down conditions, allowing the use of actual actuation signals in addition to test signals, and delaying the requirement to complete Surveillance Requirement ''d'' to just prior to Mode 2) will not affect the assumptions, design parameters, or results of any accident previously evaluated. The accident mitigation features of the plant are not affected by these proposed changes. The proposed changes do not add or modify any existing equipment. Therefore, the proposed less restrictive changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No.

The proposed changes included in this amendment request are being made to the EFW System Technical Specification. These changes include clarification of the LCO, a 7 day allowed outage time for an inoperable steam supply, additional ACTION requirements for inoperable flow path(s), a requirement to test the pumps pursuant to Specification 4.0.5, and rewording of numerous Surveillance Requirements consistent with NUREG–1432. These changes do not alter the design nor configuration of the plant. There has been no physical change to plant systems, structures, or components. The proposed changes will not reduce the ability of any of the safety-related equipment required to mitigate Anticipated Operational Occurrences or accidents. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes included in this amendment request are being made to the EFW System Technical Specification. These changes include clarification of the LCO, a 7 day allowed outage time for an inoperable steam supply, additional ACTION requirements for inoperable flow path(s), a requirement to test the pumps pursuant to Specification 4.0.5, and rewording of numerous Surveillance Requirements consistent with NUREG–1432.

The proposed change to the LCO requiring three pumps and two flow paths be OPERABLE maintains the functionality of the EFW such that it is capable of performing its design function as assumed in the Updated Final Safety Analysis Report. If the functionality of the system is not maintained, Technical Specifications require ACTIONs be taken, within specified time limitations, to restore EFW to OPERABLE status or shut down the reactor. This action is consistent with the existing Technical Specification and NUREG–1432.

The allowed outage time for one inoperable steam supply has been increased from 72 hours to 7 days in accordance with NUREG–1432. This is acceptable due to the redundant OPERABLE steam supply, the availability of redundant OPERABLE motor-driven EFW pumps, and the low probability of an event requiring the inoperable steam supply. This change is consistent (other than format) with NUREG–1432 and has therefore been previously approved by the NRC.

The ACTION for one flow path inoperable (but capable of delivering 100% flow) as proposed will allow a 72 hour completion time for an inoperable flow path. This change is acceptable based on the availability of at least two OPERABLE EFW pumps, a redundant OPERABLE flow path capable of feeding the other steam generator and the capability of the inoperable flow path to deliver 100% of the required EFW flow to the affected steam generator.

The ACTION for one flow path inoperable (not capable of delivering 100% flow) as proposed requires a unit shutdown be initiated immediately. This change is appropriate due to the seriousness of the condition and is acceptable due to the availability of the remaining operable flow path to support the unit shut down.

The ACTION for two flow paths not capable of delivering 100% flow is the same as that for three pumps inoperable. With two flow paths inoperable such that neither flow path is capable of delivering 100% flow the unit is in a seriously degraded condition just as it is with all three pumps inoperable. The ACTION as proposed requires that immediate action be taken to restore one flow path to OPERABLE status. This change is consistent with the intent of the current EFW Technical Specification.

Testing pursuant to Specification 4.0.5 (Inservice Testing Program) as proposed for Surveillance Requirement 'b' will ensure the EFW pumps are tested against the more restrictive of the data points required by either the safety analysis or ASME Section XI.

The remaining changes to the EFW Technical Specification are consistent (other than format) with NUREG–1432 and have therefore been previously approved by the NRC.

Therefore, based on the above discussion, the proposed change will 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: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005–3502.

NRC Project Director: John N. Hannon.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 28, 1998.

Description of amendment request: In 1997 Northeast Nuclear Energy Company (the licensee) changed the Final Safety Analysis Report (FSAR) Section 8.7.3.1 electrical separation requirements from 12 inches to 6

inches. At that time, the licensee concluded that the FSAR changes did not involve an unreviewed safety question. Therefore, the licensee did not request a license amendment to implement the FSAR change. The licensee has since determined that, although the changes were safe, an unreviewed safety question was involved. Therefore, the licensee is now requesting NRC's review and approval, through an amendment to Operating License No. DPR–65 pursuant to 10 CFR 50.90, regarding the separation requirement of 6 inches in Millstone Unit No. 2 FSAR (which is applied to redundant vital cables, internal wiring of redundant vital circuits, and associated devices).

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:

In accordance with 10CFR50.92, NNECO [Northeast Nuclear Energy Company] has reviewed the proposed changes and has concluded that they do not involve a Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The FSAR changes reduce the minimum allowable separation between redundant vital wires/devices of different channels from twelve inches to six inches. Reducing the physical separation between wires/devices does not in itself increase the probability of any credible event that would challenge circuit operability since the wire/device characteristics have not changed and there is no change in the circuit the wires/devices are in. The probability that an accident could occur due to the change in separation is not increased since the remaining separation will still prevent adverse channel interactions (i.e. short circuit, etc.). The six inch standard is acceptable in accordance with IEEE standard 384–1981 [IEEE standard 384–1981, ''Standard Criteria for Independence of Class 1E Equipment and Circuits''], sections 6.6.2 and 6.6.5, and IEEE standard 420–1982, [IEEE standard 420–1982, ''Design Standards and Qualification of class 1E Control Boards, panels, and Racks Used in Nuclear Power Generating Stations''], sections 4.3.1, 4.3.2, and 4.3.3 which have been endorsed by the NRC in Regulatory Guide 1.75 [Regulatory Guide 1.75, ''Physical Independence of Electrical Systems'']. Therefore, these changes will not significantly increase 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 FSAR changes reduce the minimum allowable separation between redundant vital wires/devices of different channels from twelve inches to six inches. The new minimum allowable separation will not introduce any new or unanalyzed failure modes of equipment or systems, and does not change the configuration of the plant. These changes will not require any new or unusual operator actions, alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. Therefore, there are no new or different types of failures of systems or equipment important to safety which could cause a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The FSAR changes reduce the minimum allowable separation between redundant vital wires/devices of different channels from twelve inches to six inches. The probability that a single wire/device failure could cause the failure of redundant vital channels may be increased. However, the new minimum allowed separation has been found acceptable by IEEE standard 384–1981, sections 6.6.2 and 6.6.5, and IEEE standard 420–1982, sections 4.3.1, 4.3.2, and 4.3.3 which have been endorsed by the NRC in Regulatory Guide 1.75. The new minimum allowed separation does not change any plant equipment configuration, does not change the functionality of any equipment, and does not change any operating setpoints. This change does not alter the acceptance limits of the safety parameters of the accident analyses stated in the FSAR. No new analysis assumptions are required based on this change (e.g. common-cause failures). Therefore, there is no impact on 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: 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 Project Director: William M. Dean.

Public Service Electric & Gas Company, Docket No. 50–311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: October 12, 1998.

Description of amendment request: The proposed amendment would allow a one-time extension of the Technical Specification (TS) surveillance interval to the end of fuel cycle 10 for certain TS surveillance requirements (SRs). Specifically, SR 4.3.2.1.3 requires the instrumentation response time testing of each engineered safety features actuation system function at least once per 18 months and SRs 4.8.2.3.2.f and 4.8.2.5.2.d require that the 125 volt DC and the 28 volt DC distribution system batteries, respectively, be capacity service tested at least once per 18 months, during shutdown. Additionally, SR 4.8.2.5.2.c.2 requires that the 125 volt DC battery connections be verified clean, tight, and coated with anti-corrosion material at least once per 18 months. Because of the length of the last outage and delays in restart, the SRs will be overdue prior to reaching the next refueling outage (2R10). The SRs are to be completed during the 2R10 outage, prior to returning the unit to Mode 4 (hot shutdown) upon outage completion.

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:

4.3.2.1.3 (Instrumentation, Engineered Safety Feature Actuation System Instrumentation)

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The deferral of the surveillance requirement does not involve any physical changes to the plant nor does it change the way the plant is operated. Thus, the proposal does not increase the probability of an accident previously evaluated.

The SEC [safeguard equipment control] automatic self-test feature, the monthly functional surveillance testing and the positive surveillance testing history provide sufficient assurance of the operability of the system. These features also provide assurance that a degraded condition, if it did occur, would be detected.

Thus, it is reasonable to conclude that this proposal represents no significant increase in the consequences of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Deferral of the surveillance requirement does not involve any physical changes to the plant nor does it change the way the plant is operated.

Thus, it can be concluded that deferring the surveillance requirement to the refueling outage cannot create the possibility of a different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Deferral of the surveillance requirement does not involve any physical changes to the plant nor does it change the way the plant is operated. The self-test feature and the monthly functional testing will provide reasonable assurance that the SECs will remain operable during the few weeks of deferral to the refueling outage. Also the ability to detect a degraded condition in the SEC will not be affected during the deferral period.

Therefore, the plant's response to accident conditions during the period of deferral will not be affected.

Thus, it can be reasonably concluded that this proposal to amend the Salem Unit 2 Technical Specifications, on a one-time basis, to defer surveillance requirement 4.3.2.1.3 does not involve a significant reduction in any margin of safety.

4.8.2.3.2.f, (Electrical Power Systems, 125 Volt D.C. Distribution), and 4.8.2.5.2.c.2 and 4.8.2.5.2.d (Electrical Power Systems, 28 Volt D.C. Distribution)

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The deferral of the battery service tests to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. Therefore, the probability of an accident previously evaluated is not increased.

Weekly and quarterly testing and performance monitoring by the system manager along with the current condition of the batteries (past test results demonstrating above 100% capacity) provide assurance that battery condition and performance will not deteriorate during the deferral period. Other positive industry experience for similar batteries on 24 month cycles also support this assurance. Therefore, the consequences of a loss of power accident will not be increased due to the deferral of the surveillance requirements.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The deferral of the battery service tests to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. No new failure mechanisms will be introduced by the surveillance deferral. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The deferral of the battery service tests to the refueling outage does not involve any physical changes to the power plant or to the manner in which the power plant is operated. Continuing weekly and quarterly testing and performance monitoring along with the current condition of the batteries provides assurance that battery condition and performance will not deteriorate to an unacceptable level during the deferral period and that any degradation that may occur will be detected. Therefore, the plant's response to accident conditions during the period of deferral will not be affected.

Thus, it can be reasonably concluded that this proposal to amend the Salem Unit 2 Technical Specifications, on a one-time basis, to defer surveillance requirements 4.8.2.3.2.f and 4.8.2.5.2.d does not involve a significant reduction in any 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: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: Robert A. Capra.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment request: May 7, 1998.

Description of amendment request: This change would revise the reference for obtaining the thyroid dose conversion factors used in the definition of Dose Equivalent Iodine 131 (I–131) in Technical Specification (TS) Section 1.1, ''Definitions'' for each plant. Specifically, the reference to ''Table E–7 of Regulatory Guide 1.109, Rev. 1, NRC 1977'' is to be replaced with a reference to the International Commission on Radiological Protection Publication 30 (ICRP–30), Supplement to Part 1, Pages 192–212, Tables titled, ''Committed Dose Equivalent in Target Organs or Tissues per Intake of Unit Activity.''

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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change, which utilizes International Committee on Radiological Protection (ICRP)–30 methodology for determining dose equivalent Iodine-131, and therefore for evaluating thyroid dose consequences, does not involve any change to the method of operation of any plant equipment, nor does it modify any plant equipment. In addition, utilization of the ICRP–30 Dose Conversion Factors (DCFs) will effectively reduce calculated thyroid dose consequences of design basis accidents, thereby decreasing the calculated thyroid dose consequences of previously evaluated accidents.

Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not modify the configuration of the units, involve any change to plant equipment or change the method of plant operation. The utilization of the ICRP methodology for determining DCFs uses more recent data which only affects calculations for determining thyroid dose consequences.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The change to utilize the ICRP methodology for determining DCFs allows the use of more recent data which only affects calculations for determining thyroid dose consequences. ICRP–30 is recognized in Revision 1 of NUREG–1432, ''Standard Technical Specifications, Combustion Engineering Plants,'' as an acceptable source document for DCFs. The new methodology will result in more accurate DCFs that will be used in the determination of dose consequences. Utilization of the ICRP–30 DCFs will effectively reduce calculated thyroid dose consequences of design basis accidents, thereby providing additional design margin.

Therefore, the proposed 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 30, 1998.

Description of amendment request: Revises Units 1 and 2 Technical

Specification (TS) Section 3/4.4.5, ''Steam Generator'' Surveillance Requirements. The installation of the new Delta 94 steam generators at the South Texas Project Units 1 and 2 necessitates changes to the steam generator tube sample selection and inspection requirements; inservice inspection frequencies; acceptance criteria; and inspection reporting requirements.

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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Eliminating provisions in the Technical Specifications for applications of the voltage-based repair criteria, the F* alternate repair criteria, and laser-welded sleeves for the Delta 94 steam generators is an administrative adjustment, since the voltage-based repair criteria, the F* alternate repair criteria, and laser-welded sleeves are not applicable to the Delta 94 steam generators.

The Delta 94 steam generator tubing is designed and evaluated consistent with the margins of safety specified in ASME Code Section III.

The program for periodic inservice inspection of steam generators monitors the integrity of the steam generator tubing to ensure that there is sufficient time to take proper and timely corrective action if tube degradation is present.

The ASME Section XI basis for the 40% through-wall plugging limit is applicable to the Delta 94 steam generators just as it was applicable to the Model E steam generators prior to the implementation of voltage-based repair criteria, F* alternate repair criteria, and laser-welded sleeves. In addition, analysis per Regulatory Guide 1.121 (WCAP–15095/WCAP–15096) has confirmed the applicability of the 40% plugging limit for the Delta 94 steam generators.

The changes also clarify that inservice inspection is required following steam generator replacement, and that inservice inspection is not required during the steam generator replacement outage. This is an administrative change in that it only provides clarification of requirements written without steam generator replacement considerations, and therefore, reduces the possibility for confusion in the application of the subject technical specification provisions. Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Eliminating provisions in the Technical Specifications for application of the voltage-based repair criteria, the F* alternate repair criteria, and laser-welded sleeves to the Delta 94 steam generators is an administrative adjustment, since the voltage-based repair criteria, the F* alternate repair criteria, and laser-welded sleeves are not applicable to the Delta 94 steam generators.

The changes also clarify that inservice inspection is required following steam generator replacement, and that inservice inspection is not required during the steam generator replacement outage. These are administrative changes in that they only provide clarification of requirements written without steam generator replacement considerations, and therefore, reduce the possibility for confusion in the application of the subject technical specification provisions. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

Eliminating provisions in the Technical Specifications for applications of the voltage-based repair criteria, the F* alternate repair criteria, and laser-welded sleeves for the Delta 94 steam generators is an administrative adjustment, since the voltage-based repair criteria, the F* alternate repair criteria, and laser-welded sleeves are not applicable to the Delta 94 steam generators.

The Delta 94 steam generator tubing is designed and evaluated consistent with the margins of safety specified in ASME Code Section III. The program for periodic inservice inspection of steam generators monitors the integrity of the steam generator tubing to ensure that there is sufficient time to take proper and timely corrective action if tube degradation is present.

The ASME Section XI basis for the 40% through-wall plugging limit is applicable to the Delta 94 steam generators just as it was applicable to the Model E steam generators prior to the implementation of voltage-based repair criteria, F* alternate repair criteria, and laser-welded sleeves. In addition, analysis per Regulatory Guide 1.121 (WCAP-15095/WCAP–15096) has confirmed the applicability of the 40% plugging limit for the Delta 94 steam generators.

The changes also clarify that inservice inspection is required following steam generator replacement, and that inservice inspection is not required during the steam generator replacement outage. These are administrative changes in that they only provide clarification of requirements written without steam generator replacement considerations, and therefore, reduce the possibility for confusion in the application of the subject technical specification provisions. Therefore, these 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 standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 20, 1996 (TS 96–09).

Brief description of amendments: The amendments would change the Sequoyah Nuclear Plant (SQN) Technical Specifications by clarifying the types of work shifts that are acceptable when considering the requirements to ensure heavy use of overtime is not used routinely by unit staff. The current ''8-hour day'' criteria in Section 6.2.2.g will be expanded to include 10-hour and 12-hour allowances. In addition, the ''40-hour week'' criteria will be changed to a ''nominal 40-hour week'' to provide the necessary flexibility associated with the use of the proposed shift durations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change affects the requirements that ensure unit staff personnel do not routinely incur heavy use of overtime. These requirements are not changed by the proposed revision, but are clarified to accommodate the various shift durations used at SQN. The overtime usage by unit staff is not considered to be the initiator for any postulated accident; therefore, the clarification of associated requirements will not increase the probability of an accident. Limiting the use of overtime by staff personnel enhances the operation and maintenance of critical plant equipment that are necessary to mitigate accidents. The proposed revision clarifies these provisions, but does not reduce their adequacy. Therefore, the proposed revision 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 analyzed.

This change only affects the clarification of shift durations use by unit staff and is not associated with the initiators of accidents. Therefore, the possibility of a new or different kind of accident from any previously analyzed is not created by the proposed clarifications.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not affect plant equipment setpoints or operating policies at SQN. The overtime provisions that ensure the unit staff are capable to operate and maintain the plant in an acceptable manner to provide safe operation and mitigation of accidents is maintained by this change. Therefore, the margin of safety is not reduced by the proposed changes.

The NRC 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: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: October 2, 1998.

Brief description of amendments: The proposed change would revise Technical Specification (TS) 4.0.6, ''Steam Generator Surveillance Requirements,'' to add definitions required for the F* alternate steam generator tube plugging criterion and identify the portion of the tube subject to the criteria.

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The supporting technical evaluation of the subject criterion [Westinghouse WCAP–15004, listed as Reference 1 (Proprietary)], demonstrates that the presence of the tubesheet enhances the tube integrity in the region of the hardroll by precluding tube deformation beyond its initial expanded outside diameter. The result of hardrolling of the tube into the tubesheet is an interference fit between the tube and the tubesheet. A tube rupture cannot occur because the contact between the tube and tubesheet does not permit sufficient movement of tube material. In a similar manner, the tubesheet does not permit sufficient movement of tube material to permit buckling collapse of the tube during postulated LOCA loadings. Analysis and testing have been done to determine the resistive strength of roll expanded tubes within the tubesheet. This evaluation provides the basis for the acceptance criterion for tube degradation subject to the F* criterion. The F* distance of roll expansion is sufficient to preclude tube axial translation or pullout from tube degradation located below the F* distance, regardless of the extent of the tube degradation. The necessary engagement length applicable to the Comanche Peak Unit 1 steam generators is determined to be 1.13 inches, plus an allowance for eddy current measurement uncertainty, based on preload analyses. Verification that this value is significantly conservative was demonstrated by both pullout and hydraulic proof testing. Application of the F* criterion provides a level of protection for tube degradation in the tubesheet region commensurate with that afforded by RG 1.121. Leakage testing of roll expanded tubes indicates that for roll lengths approximately equal to the F* distance, any postulated faulted condition primary to secondary leakage from F* tubes would be insignificant. No leakage occurred from any of the hydraulic proof test specimens for pressures up to and exceeding faulted condition events. The existing Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged.

Based on the above, it is concluded that the proposed F* criterion does not adversely impact any other previously evaluated design basis accidents and operation of Comanche Peak Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Implementation of the proposed F* criterion does not introduce any significant changes to the plant design basis. Use of the F* criterion does not provide a mechanism to result in an accident initiated outside of the region of the tubesheet expansion. Even if it is postulated that a circumferential separation of a F* tube were to occur below the F* distance, tube structural and leakage integrity will be maintained consistent with the assumptions of the design basis accidents during all plant conditions. Verification of the F* distance of non-degraded tube roll expansion prevents a postulated separated tube from lifting out of the tubesheet during all plant conditions. The F* criterion does not create a possibility for simultaneous failures of multiple tubes. Any other hypothetical accident as a result of any degradation in the expanded portion of the tube would be bounded by the existing steam generator tube rupture accident analysis.

Therefore, it is concluded that the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Do the proposed changes involve a significant reduction in a margin of safety?

The use of the F* criterion has been demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of RG 1.121 (intended for indications in the free span of tubes) and the primary to secondary pressure boundary under normal and postulated accident conditions. Acceptable tube degradation for the F* criterion is any degradation indication in the tubesheet region, more than the F* distance below the bottom of the transition between the roll expansion and the unexpanded tube or the bottom of the tubesheet (whichever is lower). The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in steam generator design. The F* distance has been verified by pullout and hydraulic proof testing of tubes in tubesheet simulating collars to be greater than the length of roll expansion required to preclude both tube pullout and significant leakage during normal and postulated accident conditions. Resistance to tube pullout is based upon the primary to secondary pressure differential as it acts on the surface area of the tube, which includes the tube wall cross-section, in addition to the inner diameter based area of the tube. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the Technical Specifications and the leakage assumptions used in the FSAR accident analyses.

Implementation of the proposed F* criterion will decrease the number of tubes which must be taken out of service with tube plugs. Plugged tubes reduce the RCS flow margin, thus implementation of the F* alternate plugging criterion will maintain the margin of flow that would otherwise be reduced in the event of increased plugging.

Therefore, it is concluded that the proposed change does not result in a significant reduction in margin to plant safety as defined in the Final Safety Analysis Report or the bases of the Technical Specifications.

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 Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: September 12, 1996, as supplemented April 24, 1997, and September 24, 1998.

Description of amendment request: The staff had previously published a Notice of Consideration of Amendments and Proposed No Significant Hazards Consideration Determination for the licensee's September 12, 1996, application in the **Federal Register** on April 23, 1997 (62 FR 19835). As a result of the staff's requests for additional information, the licensee supplemented its original proposal to relocate the fire protection requirements from the Technical Specifications (TS) to the Updated Final Safety Analysis Report (UFSAR) by letters dated April 24, 1997, and September 24, 1998. The April 24, 1997, letter corrected two minor administrative oversights and does not affect the No Significant Hazards Consideration Determination (NSHCD). However, the September 24, 1998, letter revised the original application to require the Station Nuclear Safety and Operating Committee to submit recommended changes to the offsite review group. In addition, a requirement was added for the establishment, implementation, and maintenance of the Fire Protection Program and implementing procedures. The NSHCD for these changes, as provided in the September 24, 1998, letter, is addressed below.

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:

Since these two changes only deal with administrative requirements, neither of these two specific changes would result in a significant hazards consideration. Therefore, the operation of Surry Power Station with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident is not increased as a result of this Technical Specifications change request. This is an administrative change and merely incorporates two additional requirements for ensuring that the Fire Protection Program and implementing procedures are appropriately established, implemented and maintained, and that changes to the Program and implementing procedures receive the appropriate offsite review. The consequences of an accident previously evaluated are not increased since the station will not be operated differently, and no physical modifications are being made to plant systems or components.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

A new or different type of accident is not being created since this TS change request is administrative. As noted above, the station will not be operated differently, and no physical modifications are being made to plant systems or components. Administrative revisions regarding the establishment, implementation and maintenance of a TS requirement for a Fire Protection Program and implementing procedures and the imposition of an offsite review for changes thereto [do] not create a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin of safety as defined in the Technical Specifications is not reduced since system/component performance as assumed in the existing safety analyses is not being affected by the proposed TS change. The TS change is administrative in nature and, as such, has no effect on station operation. The Fire Protection Program is being retained and maintained in the UFSAR and station procedures.

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: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia.

NRC Project Director: Herbert N. Berkow.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Illinois Power Company, Docket, No. 50–461, Clinton Power Station, DeWitt County, Illinois

Date of application for amendment: October 5, 1998.

Brief description of amendment request: The proposed amendment requests deferral of the next scheduled local leak rate test for valve 1MC–042 until the seventh refueling outage.

Date of publication of individual notice in **Federal Register**: October 23, 1998 (63 FR 56949).

Expiration date of individual notice: November 23, 1998.

Local Public Document Room location: Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

Northeast Nuclear Energy Company, Docket No. 50–423, Millstone Nuclear Power Station, Unit 3, New London County, Connecticut

Date of amendment request: August 6, 1998, as supplemented by letters dated September 3 and 21, 1998.

Description of amendment request: The proposed amendment allows a one-time extension to the steam generator tube inspection surveillance interval until the next refueling outage or July 1, 1999, whichever date is earlier.

Date of publication of individual notice in **Federal Register**: August 17, 1998 (63 FR 43964).

Expiration date of individual notice: September 16, 1998.

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.

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. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: August 27, 1998, as supplemented by letter dated October 1, 1998.

Brief description of amendment: This amendment revises Technical Specifications (TS) 3.0.4 and 4.0.4 in accordance with the guidance provided in Generic Letter 87–09. The revision to TS 3.0.4 removes the need to explicitly reference its applicability for certain TS. As a result, several other TS were also amended by deleting references to TS 3.0.4.

Date of issuance: October 20, 1998.

Effective date: October 20, 1998.

Amendment No: 84.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: September 8, 1998 (63 FR 47529).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: August 23, 1996.

Brief description of amendments: The amendments revise the Technical Specifications related to the Non-Accessible Area Exhaust Filter Plenum Ventilation System to reflect the design lineup and to make provisions for the performance of maintenance and testing.

Date of issuance: October 15, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 105; 105 & 97; 97.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 12, 1997 (62 FR 11488).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 16, 1996, as supplemented by letters dated December 22, 1997, and May 27, 1998.

Brief description of amendment: The amendment changes the Appendix A Technical Specifications by relocating certain administrative controls to Quality Assurance Program Manual as described in Administrative Letter 95–06, ''Relocation of Technical Administrative Controls related to Quality Assurance;'' changing shift coverage from 8-hour day, 40-hour weeks to an option of 8 or 12 hour days and nominal 40-hour weeks; and making editorial changes to the titles of certain organizational positions.

Date of issuance: October 19, 1998.

Effective date: October 19, 1998, to be implemented within 60 days.

Amendment No.: 146.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 9, 1997 (62 FR 17233).

The December 22, 1997, and May 27, 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 October 19, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendment: June 21, 1995.

Brief description of amendment: The amendments revise the Technical Specification action statements and certain surveillances of TS 3/4.5.1, Safety Injection Tanks (SITs). These revisions include a two-tiered extension of the action completion/allowed outage time for the SITs. The revisions are also consistent with the guidance provided in Generic Letter 93–05, ''Line-Item Technical Specifications Improvements to Reduce surveillance requirements for Testing During Power Operation.''

Date of Issuance: October 16, 1998.

Effective Date: To be implemented within 30 days from date of receipt.

Amendment Nos.: 157 and 96.

Facility Operating License No. NPF–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 27, 1995 (60 FR 49936).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: October 31, 1996, supplemented October 31, 1997, May 27, 1998, and September 25, 1998.

Description of amendment request: The amendments revise the administrative control specifications to reduce the administrative burden carried by the Facility Review Group and the Plant General Manager by making more efficient use of site personnel possessing the requisite experience and qualifications in the review and approval process for plant procedures.

Date of Issuance: October 16, 1998.

Effective Date: October 16, 1998.

Amendment Nos.: 158 and 97.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of Initial Notice in **Federal Register**: December 18, 1996 (61 FR 66707) The October 31, 1997, May 27, 1998, and September 25, 1998, submittals provided clarifying information that did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: August 21, 1998.

Brief description of amendment: The amendment removes the requirement for the Automatic Depressurization System function of the Electromatic Relief Valves to be operable during Reactor Vessel Pressure Testing. Additionally, it clarifies Note h of Technical Specification Table 3.1.1.

Date of Issuance: October 14, 1998.

Effective date: October 14, 1998, to be implemented within 30 days.

Amendment No.: 199.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 10, 1998 (63 FR 48527).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: May 28,1998.

Brief description of amendment: The amendment revises Technical Specification 4.5.A.1 such that the first Type A test required by the primary containment leakage rate testing program be performed during refueling outage 18 rather than refueling outage 17.

Date of Issuance: October 15, 1998.

Effective date: October 15, 1998, to be implemented within 30 days.

Amendment No.: 200.

Facility Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 15, 1998 (63 FR 38201).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois.

Date of application for amendment: May 4, 1998, as supplemented September 23, 1998.

Brief description of amendment: The amendment incorporates Technical Specification requirements for the protection systems for the new static VAR compensators.

Date of issuance: October 9, 1998.

Effective date: October 9, 1998.

Amendment No.: 117.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 3, 1998 (63 FR 30264).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut.

Date of application for amendment: May 9, 1997, as supplemented August 4, 1998.

Brief description of amendment: The amendment revises the shutdown margin requirements and adds Technical Specification 3/4.3.5 to provide the limiting condition for operation and surveillance requirements for the shutdown margin monitors. The amendment also makes administrative changes and revises the associated Bases section.

Date of issuance: October 21, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days from the date of issuance.

Amendment No.: 164.

Facility Operating License No. NPF–49: Amendment revised the Facility Operating License and the Technical Specifications.

Date of initial notice in **Federal Register**: June 18, 1997 (62 FR 33129).

The August 4, 1998, letter provided clarifying information that did not change the scope of the May 9, 1997, application, and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1998.

No significant hazards consideration comments received: No.

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.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 11, 1995.

Brief description of amendment: The amendment revises Technical Specifications (TS) 2.3(2)f and 2.3(2)g to increase allowed outage times for the safety injection tanks (SIT).

Date of issuance: October 19, 1998.

Effective date: October 19, 1998.

Amendment No.: 186.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 2, 1995 (60 FR 39447). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 3, 1997, as supplemented by letter dated May 18, 1998.

Brief description of amendment: The amendment revises Technical Specifications (TS) 3.9 to clarify required flow paths for testing the auxiliary feedwater system (AFW) and to delete specific AFW pump discharge pressure.

Date of issuance: October 19, 1998.

Effective date: October 19, 1998, to be implemented 30 days from the date of issuance.

Amendment No.: 187.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63982).

The May 18, 1998, supplemental letter provided additional clarifying information that did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: July 10, 1998, as supplemented by two letters dated September 11, 1998. The supplemental letters provided clarifying information but did not change the initial no significant hazards consideration determination.

Brief description of amendment: This amendment revises the Technical Specifications for safety limit Minimum Critical Power Ratio from its current value of 1.11 to 1.10 for two recirculation loop operation, and from 1.13 to 1.12 for single recirculation loop operation.

Date of issuance: October 26, 1998.

Effective date: As of date of issuance, to be implemented prior to startup for Cycle 13 operations, scheduled for October 1998.

Amendment No.: 226.

Facility Operating License No. DPR–44: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48261).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: March 16, 1998, as supplemented by letters dated May 22, August 10, and September 17, 1998, and also by letter dated February 9, 1998.

Brief description of amendments: The amendment authorized changes to the Final Safety Analysis Report to incorporate the increases in the main steam line radiation monitor setpoint and allowable values and the change to the design basis of the offgas system to a detonation resistant design.

Date of issuance: October 13, 1998.

Effective date: October 13, 1998.

Amendment Nos.: 179 and 152.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Final Safety Analysis Report.

Date of initial notice in **Federal Register**: May 20, 1998 (63 FR 27764).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 23, 1998.

Brief description of amendments: These amendments change the name ''Pennsylvania Power & Light Company'' to ''PP&L, Inc.'' in the operating licenses and appendices to reflect the licensee's corporate name change.

Date of issuance: October 19, 1998.

Effective date: Both units, as of the date of issuance to be implemented within 30 days.

Amendment Nos.: 180 and 153.

Facility Operating License Nos. NPF–14 and NPF–22. The amendments revised the operating licenses and Appendix B to each licensee and Attachment 1 to the Unit 1 license.

Date of initial notice in **Federal Register**: July 1, 1998 (63 FR 35993).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 19, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: February 25, 1997, as supplemented September 8 and November 18, 1997 and January 8 and July 2, 1998. The supplemental letters provided clarifying information and did not change the initial proposed no significant hazards consideration determination.

Brief description of amendments: These amendments revise the Facility Operating Licenses, Technical Specifications, and Environmental Protection Plans to reflect a corporate name change, remove obsolete information, and correct typographical errors.

Date of issuance: October 23, 1998.

Effective date: Both units, as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 131 and 92.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications and Licenses.

Date of initial notice in **Federal Register**: June 4, 1997 (62 FR 30642).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

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 application for amendment: June 25, 1997, as supplemented August 3, 1998.

Brief description of amendment: The amendment allows the use of zirconium or stainless steel filler rods in fuel assemblies to replace failed or damaged fuel rods.

Date of issuance: October 8, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 183.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 17, 1998 (63 FR 33107).

The August 3, 1998, submittal fell within the scope of, and did not change, the initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 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.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: August 8, 1997, as supplemented by letters dated March 9, May 6, July 6, July 31, September 4, and September 11, 1998.

Brief description of amendments: The amendments revise the Technical Specifications to accommodate an increase in the maximum licensed thermal power level from 2558 megawatts thermal (MWt) to 2763 MWt.

Date of issuance: October 22, 1998.

Effective date: As of the date of issuance to be implemented on Unit 1 prior to startup from the next refueling outage and on Unit 2 prior to startup from the current refueling outage.

Amendment Nos.: Unit 1–214; Unit 2–155.

Facility Operating License Nos. DPR–57 and NPF–5: The amendments revised the Technical Specifications and Operating Licenses.

Public comments requested as to proposed no significant hazards consideration: Yes. (63 FR 53730 dated October 6, 1998.) The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by November 5, 1998, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendments.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated October 22, 1998.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: May 27, 1997.

Brief Description of amendments: The amendments revise the Technical Specifications (TSs) to change the Applicable Modes for Source Range (SR) Nuclear Instrumentation (NI) (TS ¾.3.1, ''Reactor Trip System Instrumentation''), provide allowances for an exception to the requirements for the state of the power supplies for residual heat removal discharge to charging pump suction valves following Mode changes (TS ¾.5.2, ''ECCS Subsystems—T_{avg}>350°F'' and ¾.5.3, ''ECCS Subsystems—T_{avg}<350°F''), and delete cycle-specific guidance concerning manual engineered safety feature functional input checks.

Date of issuance: October 15, 1998.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–138; Unit 2–130.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: June 18, 1997 (62 FR 33134).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: June 5, 1997, as supplemented April 21 and August 12, 1998.

Brief description of amendment: The requested changes would revise the Technical Specifications (TS) to allow testing of diesel generators, pursuant to Surveillance Requirement (SR) 3.8.1.14, during operational modes 1 or 2. The requested changes would also revise the TS to allow testing of the diesel generator batteries and associated battery chargers, pursuant to SRs 3.8.4.12, 3.8.4.13 and 3.8.4.14 during operational modes 1, 2, 3 or 4.

Date of issuance: October 19, 1998.

Effective date: October 19, 1998.

Amendment No.: 12.

Facility Operating License No. NPF–90: Amendment revises the TS.

Date of initial notice in **Federal Register**: July 29, 1998 (63 FR 40561).

The supplemental letter dated August 12, 1998, contained clarifying information and did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 1998.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: April 8, 1998, as revised by letter dated August 27, 1998.

Brief description of amendment: The amendment reduces the allowable reactor coolant system specific activity from 1.0 microcurie/gram to 0.20 microcurie/gram dose equivalent I–131, a means described by Generic Letter 95–05 to support the reduction of reactor coolant system specific activity limits.

Date of issuance: October 27, 1998.

Effective date: October 27, 1998.

Amendment No.: 140.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 14, 1998 (63 FR 49137).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Notice of Issuance of Amendment to Facility Operating License and Final No Significant Hazards Consideration Determination

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

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 for the amendment 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective 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 application for amendment, (2) the amendment to Facility Operating License, 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 room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By December 4, 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Arizona Public Service Company, et al., Docket No. STN 50–530, Palo Verde Nuclear Generating Station, Unit No. 3, Maricopa County, Arizona

Date of application for amendment: October 6, 1998

Brief description of amendment: The amendment revises TS 3.3.1, ''Reactor Protective System (RPS) Instrumentation—Operation,'' and TS 3.3.2, ''Reactor Protective System (RPS) Instrumentation—Shutdown.'' The proposed amendment would clarify the power level threshold at which certain RPS instrumentation trips must be enabled and may be bypassed, and would clarify that this level is a percentage of the neutron flux at rated thermal power (RTP). The bypass power level, 1E–4% RTP, would be specified as logarithmic power instead of thermal power.

Date of issuance: October 19, 1998.

Effective date: October 19, 1998.

Amendment No.: 119.

Facility Operating License No. NPF–74: The amendment revised the Technical Specifications.

Press release issued requesting comments as to proposed no significant hazards consideration: Yes. October 13, 1998. Arizona Republic Newspaper (Arizona).

Comments received: No. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Arizona and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 19, 1998.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

Dated at Rockville, Maryland, this 28th day of October 1998.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–29433 Filed 11–3–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23511; 812–11252]

FPA Capital Fund, Inc.; Notice of Application

October 29, 1998.

AGENCY: Notice of application under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant, FPA Capital Fund, Inc. (''Fund''), seeks an order to permit an in-kind redemption of shares of the Fund by an affiliated person of the Fund.

FILING DATES: The application was filed on August 6, 1998 and amended on October 20, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 23, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 11400 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Attorney-Adviser, (202) 942–0574 or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management,

Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (tel. no. 202–942–8090).

Applicant's Representation

1. The Fund, organized as a Maryland corporation, is registered under the Act as an open-end management investment company. First Pacific Advisors, Inc. (''Adviser''), registered under the Investment Advisers Act of 1940 (''Advisers Act''), is the Fund's investment adviser.

2. ICMA Retirement Trust (''Affiliated Shareholder'') is a retirement trust for deferred compensation plans and qualified retirement plans established by state and local governments and their agencies and instrumentalities for their employees. The Affiliated Shareholder is not registered under the Act in reliance upon section 2(b) of the Act. The ICMA Retirement Corporation (''Retirement Corporation''), registered under the Advisers Act, serves as the investment adviser to the Affiliated Shareholder. The Affiliated Shareholder owns approximately 13.33% of the outstanding shares of the Fund.

3. The Retirement Corporation, acting in its fiduciary capacity with respect to the Affiliated Shareholder, has concluded that the assets of the Affiliated Shareholder invested in the Fund should be managed directly by the Adviser. Consequently, the Affiliated Shareholder has notified the Fund that it expects to redeem all of its shares of the Fund and place the proceeds in a separate account managed by the Retirement Corporation and subadvised by the Adviser. On August 3, 1998, the Fund's board of directors, including all of the independent directors, determined that it would be in the best interests of the Fund and its shareholders to redeem the shares of the Affiliated Shareholder in-kind.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, acting as principal, from knowingly purchasing any security from the company. Section 2(a)(3)(A) of the Act defines ''affiliated person'' of another person to include any person owning 5% or more of the outstanding voting securities of the other person.

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicant states that the Affiliated Shareholder is an affiliated person of the Fund under section 2(a)(3)(A) of the Act because it owns beneficially in excess of 5% of the Fund's shares. To the extent that the proposed in-kind redemption would be considered to involve the ''purchase'' of the Fund's portfolio securities by the Affiliated Shareholder, applicant states that the proposed in-kind redemption would be prohibited by section 17(a)(2) of the Act.

4. Applicant submits that the terms of the proposed in-kind redemption meet the standards set forth in section 17(b) of the Act. Applicant asserts that neither the Adviser nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicant further states that the portfolio securities to be distributed to the Affiliated Shareholder will be valued according to an objective, verifiable standard and that the in-kind redemption is consistent with the investment policies of the Fund. Applicant also states that the proposed in-kind redemption is consistent with the general purposes of the Act.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities of the Fund distributed to the Affiliated Shareholder pursuant to the in-kind redemption (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by the Fund on a pro rata basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; and (b) certain portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Fund will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares, and accruals on such securities.

3. The In-Kind distributed to the Affiliated Shareholders will be valued in the same manner as they would be valued for purposes of computing the Fund's net asset value which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the most recent bid price.

4. The Fund will maintain and preserve for a period of not less that six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in as easily accessible place, a written record of the redemption setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Security.

[FR Doc. 98–29511 Filed 11–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23509; 812–11350]

Hilliard-Lyons Growth Fund, Inc., et al.; Notice of Application

October 28, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of new investment advisory agreements (the ''New Advisory Agreements''), for a period of up to 60 days following the later of the dates on which Hilliard

Lyons, Inc., the corporate parent of J.J.B. Hilliard, W.L. Lyons, Inc. (the ''Adviser''), consummates its merger with PNC Bank Corp., or the date on which the requested order is issued (but in no event later than January 31, 1999) (the ''Interim Period''). The order also would permit the Adviser to receive all fees earned under the New Advisory Agreements during the Interim Period following shareholder approval.

APPLICANTS: Hilliard-Lyons Growth Fund, Inc. (the ''Growth Fund''), Hilliard-Lyons Government Fund, Inc. (the ''Government Fund'') (together, the ''Funds,''), and the Adviser.

FILING DATES: The application was filed on October 8, 1998, and amended on October 26, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 20, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, Hilliard-Lyons Growth Fund, Inc., *et al.*, Hilliard Lyons Center, Louisville, KY 40202.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, (202) 942–0562, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Funds are registered under the Act as an open-end management investment companies. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Funds under existing investment advisory agreements (the ''Existing Advisory Agreements'').

2. On August 20, 1998, PNC Bank Corp. (''PNC'') entered into a merger agreement with Hilliard-Lyons, Inc. (''Hilliard-Lyons''), the parent of the Adviser, under which Hilliard-Lyons would be merged into PNC (the ''Merger''). Upon consummation of the Merger, PNC will own all of the outstanding capital stock of Hilliard-Lyons. Applicants expect consummation of the Merger (the ''Closing Date'') on or before November 30, 1998.[1]

3. Applicants state that the Merger will result in the assignment and the automatic termination of the Existing Advisory Agreements. Applicants request an exemption to permit (a) the implementation during the Interim Period, prior to obtaining shareholder approval, of the New Advisory Agreements, and (b) the Adviser to receive from each Fund, upon approval of that Fund's shareholders, any and all fees payable under the New Advisory Agreement during the Interim Period. The requested exemption would cover the Interim Period of not more than 60 days beginning on the later of the Closing Date or the date on which the requested order is issued, and continuing with respect to each Fund through the date on which each New Advisory Agreement is approved or disapproved by the shareholders of each Fund (but in no event later than January 31, 1999). The New Advisory Agreements will contain terms and conditions identical to those of the Existing Advisory Agreements, except for the effective dates, termination dates, and escrow provisions.

4. On September 17, 1998 and September 21, 1998, the boards of directors (the ''Boards''), including a majority of the members who are not ''interested persons'' as defined in section 2(a)(19) of the Act (the ''Independent Directors''), of the Government Fund and the Growth Fund, respectively, voted in accordance with section 15(c) of the Act to approve the New Advisory Agreements, and to submit them to the Funds' shareholders. The shareholder meetings are scheduled to be held on November 6, 1998 for the Government Fund, and on November 19, 1998 for the Growth Fund (the ''Meetings''). Applicants state that proxy materials for the Meetings were mailed to the Government Fund's shareholders on October 15, 1998, and to the Growth Fund's shareholders on October 22, 1998. Applicants state that the Boards will meet in person prior to the commencement of the Interim Period to approve the escrow provisions of the New Advisory Agreements in accordance with section 15(c) of the Act.

5. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to the Adviser during the Interim Period under the New Advisory Agreements would be paid by the Funds into an interest-bearing escrow account. The escrow agent would release the monies held in the escrow account (including any interest earned): (a) to the Adviser only upon approval of the relevant New Advisory Agreement by the relevant fund's shareholders in accordance with section 15 of the Act; or (b) to the relevant Fund if the Interim Period has ended and the New Advisory Agreement has not received the requisite shareholder approval. Before any such release is made, the Board of the relevant fund would be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Applicants state that the Merger will result in an ''assignment'' of the Existing Advisory Agreements, and that the Existing Advisory Agreements will terminate by their terms and in accordance with the Act.

2. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with an investment company is terminated, the adviser may continue to serve for 120 days under a written contract that has not been approved by the investment company's shareholders, provided that: (a) The new contract is approved by the board of

[1] Applicants state that if the Merger precedes the issuance of the requested order, the Adviser will continue to serve as investment adviser after the Merger and prior to the issuance of the order in a manner consistent with its fiduciary duty to continue to provide advisory services to the Funds even though shareholder approval of the new arrangements has not yet been secured. Applicants also state that the Funds may be required to pay, with respect to the period until receipt of the order, no more than the actual out-of-pocket cost to the Adviser for providing advisory services.

directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation which would have been paid under the contract most recently approved by shareholders of the investment company; and (c) neither the adviser nor any controlling person of the investment adviser ''directly or indirectly receives money or other benefit'' in connection with the transaction. Applicants state that they may not rely on rule 15a–4 because the Adviser and its affiliates may be deemed to receive a benefit in connection with the Merger.

3. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief satisfies this standard.

4. Applicants assert that the terms and timing of the Merger were determined by Hilliard-Lyons and PNC in response to a number of factors beyond the scope of the Act and unrelated to the Funds and the Adviser. Applicants state that a proxy solicitation is a time consuming task, and that it is possible that an insufficient number of votes will have been received by the Meeting, and it may be necessary to adjourn for a period to permit additional shareholders to vote their shares by proxy.

5. Applicants state that the requested relief will allow continuity in investment management services to the Funds during the Interim Period. Applicants state that, during the Interim Period, the Funds would receive the same advisory services, provided in the same manner and at the same fee levels, by substantially the same personnel as they received before the Merger.

Applicant's Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. The New Advisory Agreements will have the same terms and conditions as the Existing Advisory Agreements, except for the effective dates, termination dates, and escrow provisions.

2. Advisory fees earned by the Adviser during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account, (including interest earned on such amounts), will be paid (a) to the Adviser in accordance with the relevant New Advisory Agreement, after the requisite shareholder approval is obtained, or (b) to the relevant Fund, in the absence of such approval with respect to such Fund.

3. The Government Fund and the Growth Fund will hold meetings of shareholders to vote on approval of the New Advisory Agreements on November 6, 1998, and November 19, 1998, respectively, or within the 60-day period following the commencement of the Interim Period (but in no event later than January 31, 1999).

4. The Funds will not bear the costs of preparing and filing the application, or any costs relating to the solicitation of shareholder approval necessitated by the consummation of the Merger.

5. The Adviser will take all appropriate steps to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Board, including a majority of the Independent Directors, to the scope and quality of services provided under the Existing Advisory Agreement. In the event of any material change in personnel providing services pursuant to the New Advisory Agreements, the Adviser will apprise and consult with the Boards to assure that the Boards, including a majority of the Independent Directors, are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29469 Filed 11–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23510; 812–11146]

Merrill Lynch Private Equity Trust I, et al.; Notice of Application

October 29, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from section 17(e) of the Act and under rule 17d–1 under the Act to permit certain joint transactions in accordance with section 17(d) and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to co-invest with other investment vehicles managed by the same investment adviser, and the investment adviser to receive certain compensation in connection with these transactions.

APPLICANTS: ML Private Equity Inc. (together with any investment adviser controlling, controlled by, or under common control with ML Private Equity Inc., the ''Advisers'') and Merrill Lynch Private Equity Trust I (the ''Fund'' and together with any future registered closed-end investment company advised by the Advisers, the ''Funds'').

FILING DATE: The application was filed on May 15, 1998, and amended on September 2, 1998. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 23, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: South Tower, World Financial Center, New York, New York 10080.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. The fund will be a Delaware business trust and a privately offered closed-end investment company registered under the Act. ML Private Equity Inc. will register as an investment adviser under the

Investment Advisers Act of 1940 and will serve as the Fund's investment adviser. The Adviser also may serve as investment adviser to private accounts on a discretionary basis and as manager and/or investment adviser to other investment vehicles excepted from the definition of investment company by section 3(c)(1) or 3(c)(7) of the Act (''Private Funds'').[1]

2. ML Private Equity Inc. is a wholly-owned subsidiary of Merrill Lynch & Co., Inc. (''ML & Co.''). Merrill Lynch, Pierce, Fenner & Smith Incorporated (''Merrill Lynch''), also a wholly-owned subsidiary of ML & Co., will act as placement agent for the Fund's shares.

3. The Fund will have at least four trustees who are natural persons (''Individual Trustees'') and, in addition, the Adviser may serve as a trustee. Under the Fund's declaration of trust, the Individual Trustees will perform the duties imposed by the Act or the rules under the Act on directors of registered investment companies organized in corporate form and the Adviser as trustee will not be entitled to vote on any matters related to these duties.

4. The Fund will invest in institutional investment funds excepted from the definition of investment company by section 3(c)(1) or 3(c)(7) of the Act (''Underlying Funds''). The Underlying Funds may include real estate partnerships, venture capital funds, leveraged buyout funds, and hedge funds. The Underlying Funds will be managed by individuals or entities that are not affiliated with the Adviser.

5. Merrill Lynch will act as placement agent and financial adviser to the Underlying Funds and their sponsors. Merrill Lynch will receive compensation for its services from the sponsors (but not from the Underlying Funds). In general, fees for the combined financial advice and placement agency services range up to 2 percent of the proceeds of the offering for a new Underlying Fund, together with reimbursement of out-of-pocket transaction expenses.

6. The Fund proposes to make investments in the Underlying Funds concurrently with one or more other Funds, the Private Funds, and ''ML Entities'' (''Co-Investments'').[2] The Fund will not invest in an Underlying Fund unless at least 70 percent of the capital committed to the Underlying Fund is committed by investors that are not Funds, Private Funds, or ML Entities.

Applicants' Legal Analysis

A. Co-Investments

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter (''second-tier affiliate''), acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates unless the Commission by order approves the transaction. Under section 2(a)(3) of the Act, an affiliated person of another person includes any person directly or indirectly controlling, controlled by, or under common control with the other person and the investment adviser to an investment company. Applicants request an order pursuant to section 17(d) and rule 17d–1 to permit the Co-Investments.

2. In determining whether to approve a transaction under rule 17d–1, the SEC considers whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participation. For the reasons stated below, applicants believe that the Co-Investments meet these standards.

3. Applicants state that the proposed Co-Investments will not be less advantageous to any Fund than they are to any other Fund, Private Fund, or ML Entity since each Fund will be offered the opportunity to participate in the Co-Investments with each other participating Fund, Private Fund, or ML Entity on an identical basis. In addition, applicants state that oversight by the Individual Trustees as provided for in the conditions below will protect the Fund from overreaching by any affiliated person in a Co-Investment.

B. Payment of Compensation to Advisers

1. Section 17(e) of the Act places limitations on the types and amounts of compensation that an affiliated person or second-tier affiliate of a registered investment company, acting as agent, may receive with respect to purchases and sales of securities by the investment company. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act.

2. Applicants request an exemption under section 6(c) from section 17(e) to the extent that the section is applicable to compensation received by Merrill Lynch or an affiliate attributable to the purchase of the Underlying Funds by the Funds. The exemption would only be available to purchases of an Underlying Fund by a Fund in which neither Merrill Lynch nor any affiliate receives any commissions, fees, or other compensation from a Fund or an Underlying Fund in connection with the purchase.

3. Applicants state that the limitations in section 17(e) were designed to prevent affiliates of registered investment companies from receiving excessive compensation attributable to portfolio transactions conducted by the investment companies. Applicants state that fees received by Merrill Lynch from a sponsor of an Underlying Fund will be identical with respect to each investor in an Underlying Fund for which Merrill Lynch acts as placement agent, regardless of the identity of the purchaser or whether it is affiliated with Merrill Lynch.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. A majority of the Individual Trustees of each Fund will not be ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund.

2. A fund will not invest in an Underlying Fund unless at least 70 percent of the capital committed to the Underlying Fund is committed by investors that are not Funds, Private Funds, or ML Entities.

3. The Individual Trustees of each Fund participating in a Co-Investment in an Underlying Fund, including a majority of the non-interested Individual Trustees, will approve Co-Investments in advance. To facilitate the Individual Trustees' determinations, the

[1] Private Funds may include certain employees' securities companies formed for the benefit of employees of Merrill Lynch & Co., Inc. If the Adviser acts as the general partner of a Private Fund, it may make a capital contribution in connection with the organization of the Private Fund and maintain an interest in the Private Fund.

[2] ''ML Entities'' refers to the Advisers, ML & Co., any other entity controlling, controlled by, or under common control with ML & Co. and other entities (other than the Funds or the Private Funds) with respect to which ML & Co., or any entity controlling, controlled by, or under common control with ML & Co., is authorized to cause the entity to provide the opportunity for a Fund to participate in the sale of an investment as contemplated by condition 6 below.

Adviser will provide the Individual Trustees of a Fund with periodic information listing all investments suitable for investment by the Fund which have been entered into by another Fund or, to the knowledge of the Adviser, a Private Fund or an ML Entity.

4. (a) Before making a Co-Investment, the Adviser will make a preliminary determination as to whether each particular Co-Investment opportunity meets the Fund's investment objective, policies, and restrictions. The Adviser will maintain written records of the factors considered in any preliminary determination.

(b) Following the making of the determination referred to in (a), information concerning the proposed Co-Investment will be distributed to the Individual Trustees. This information will be presented in written form and will include the name of each Fund, each Private Fund, and each ML Entity that, to the knowledge of the Adviser, may participate and the maximum amount offered to each entity.

(c) Information regarding the Adviser's preliminary determinations referred to in (a) will be reviewed by the Individual Trustees, including a majority of the non-interested Individual Trustees. The Individual Trustees, including a majority of the non-interested Individual Trustees, will make an independent decision as to whether to participate and the extent of participation in a Co-Investment in an Underlying Fund based on the factors as are deemed appropriate under the circumstances. If a majority of the non-interested Individual Trustees of the Fund determines that the amount proposed to be invested by the Fund is not sufficient to obtain an investment position that they consider appropriate under the circumstances, the Fund will not participate in the Co-Investment. Similarly, the Fund will not participate in a Co-Investment if a majority of the non-interested Individual Trustees of the Fund determines that the amount proposed to be invested is an amount in excess of that which is determined to be appropriate under the circumstances, although the non-interested Individual Trustees may make a determination that the Fund take other than their allotted portion of an investment. A Fund will only make a Co-Investment if a majority of the non-interested Individual Trustees of the Fund prior to making the Co-Investment in an Underlying Fund conclude, after consideration of all information deemed relevant (including the extent to which such participation is on a basis different from or less advantageous than that of other participants and the extent to which an ML Entity has or will provide investment banking or other services to the Underlying Fund), that the investments by any other Fund, Private Fund, and/or ML Entity, as applicable, would not disadvantage the Fund in the making of the investment, in maintaining its investment position or in disposing of the investment, and that participation by the Fund would not be on a basis different from or less advantageous than that of the other Fund, Private Fund, and/or any ML Entity, as applicable. The non-interested Individual Trustees will maintain at the Fund's office written records of the factors considered in any decision regarding the proposed Co-Investment.

(d) The non-interested Individual Trustees will, for purposes of reviewing each recommendation of the Adviser, request additional information from the Adviser as they deem necessary for the exercise of their reasonable business judgment, and they will also employ such experts, including lawyers and accountants, as they deem appropriate for the reasonable exercise of this oversight function.

5. Co-Investments in equity interests in an Underlying Fund by a Fund with any other Fund, any Private Fund, and/or any ML Entity, as applicable, will consist of the same class of securities, including the same registration rights (if any), and other related rights, and will be purchased at the same unit consideration, and the approval of these transactions, including the determination of the terms of the transactions by the Fund's non-interested Individual Trustees, will be made in the same time period.

6. A Fund will not participate in a Co-Investment in an Underlying Fund with another Fund, a Private Fund, or an ML Entity unless each other party agrees to permit the Fund to participate, in the manner set forth in this condition, in the disposition of (a) an interest in each Underlying Fund or (b) securities received through an in-kind distribution by the Underlying Fund. If a Fund, a Private Fund, or an ML Entity proposes to dispose of a security described in the preceding sentence, notice of the proposed sale will be given to the non-interested Individual Trustees of the relevant Fund(s) at the earliest practical time. A Fund will participate in the disposition of the security on a lock-step basis with any other Fund, Private Fund, or an ML Entity, unless the non-interested Individual Trustees of a Fund determine that the Fund should not participate in the sale or not participate on a lock-step basis. A Fund need not participate on a lock-step basis in the disposition of securities sold by any other Fund, a Private Fund, or an ML Entity if the non-interested Individual Trustees of the Fund find that the retention or sale, as the case may be, of the securities is fair to the Fund and that the Fund's participation or choice not to participate in the sale on a lock-step basis is not the result of overreaching by any other Fund, any Private Fund, and/or an ML Entity, as applicable. If this finding is not made, then the relevant Fund must participate in the sale on the basis of a lock-step disposition. If at any time the result of a proposed disposition of any portfolio security held by a Fund would alter the proportionate holdings of each class of securities held by the other Funds, Private Funds, and/or an ML Entity, as applicable, holding the Co-Investment, then the non-interested Individual Trustees of the Fund or Funds involved must determine that this result is fair to the relevant Fund(s) and is not the result of overreaching by any other Fund, Private Fund, and/or ML Entity, as applicable. The non-interested Individual Trustees will record in the records of the Fund the basis for their decisions as to whether to participate in the sale.

7. A decision by the Individual Trustees of a Fund (a) not to participate in a Co-Investment or (b) not to sell, exchange, or otherwise dispose of a Co-Investment in the same manner and the same time as another Fund, Private Fund, or ML Entity will include a finding that the decision is fair and reasonable to the Fund and not the result of overreaching of the Fund or its share holders by the other Fund, Private Fund and/or ML Entity, as applicable. The non-interested Individual Trustees of each Fund will be provided quarterly for review all information concerning Co-Investments made by the Funds, the Private Funds, and/or ML Entities, as applicable, including Co-Investments in which the Fund declined to participate, so they may determine whether all Co-Investments made during the preceding quarter, including those Co-Investments they declined, complied with the conditions set forth above. In addition, the non-interested Individual Trustees of each Fund will consider at least annually the continuing appropriateness of the standards established for Co-Investments by the Fund, including whether the use of these standards continues to be in the best interest of the Fund and its share holders and does not involve overreaching of the Fund or its share holders on the part of any party concerned.

8. No non-interested Individual Trustee of a Fund will be an affiliated person of a Private Fund or Underlying

Fund or have had, at any time since the beginning of the last two completed fiscal years of any Private Fund or Underlying Fund, a material business or professional relationship with any Private Fund or Underlying Fund.

9. A Fund, each Private Fund, and/or ML Entity, as applicable, will bear its own expenses associated with the disposition of portfolio securities. The expenses, if any, of distributing and registering securities under the Securities Act of 1933 sold by the Fund, one or more Private Funds, and/or the ML Entity, as applicable, at the same time will be shared by the Fund, the selling Private Fund(s), and or each ML Entity, as applicable, in proportion to the relative amounts they are selling.

10. Merrill Lynch and its affiliates will receive no commissions, fees, or other compensation from a Fund or an Underlying Fund in connection with a purchase by the Fund of an interest in the Underlying Fund.[3]

11. The Fund will maintain all records required of it by the Act, and all records referred to or required under these conditions will be available for inspection by the Commission. The Fund will also maintain the records required by section 57(f)(3) of the Act as if the Fund was a business development company and the Co-Investments were approved by the non-interested Individual Trustees under section 57(f).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[3] This condition does not limit arrangements in which an Underlying Fund initially pays a placement fee to Merrill Lynch but is reimbursed or credited with such amount so that the sponsor of the Underlying Fund effectively bears the cost of the placement fee.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40606; File No. SR–NASD–98–51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiatives-Amendments to NASD Rules 6530 and 6540

October 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 20, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On October 7, 1998, the NASD filed with the Commission Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing amendments to NASD Rules 6530 and 6540 to limit quotations on the OTC Bulletin Board® (''OTCBB'') to the securities of issuers that are current in their reports filed with the SEC or other regulatory authority, and to prohibit a member from quoting a security on the OTCBB unless the issuer has made current filings, respectively. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

6530. OTCBB Eligible Securities

A Member shall be permitted to quote the [The] following categories of securities [shall be eligible for quotation] in the Service:

(a) any domestic equity security that *satisfies the requirements of paragraph (1) and either paragraph (2) or (3) or (4) below;*

(1) the security is not listed on The Nasdaq Stock Market (''Nasdaq'') or a registered national securities exchange in the U.S., except that *an* equity *security* [securities that are] *shall be considered eligible if it*:

(*A*[1]) *is* listed on one or more regional stock exchanges, *and*

(*B*[2]) [do] *does* not qualify for disseminating of transactions reports via the facilities of the Consolidated Tape [shall be considered eligible.]*; and*

(2) the issuer of the security is required to file reports pursuant to Section 13 or 15(d) of the Act or the security is described in Section 12(g)(2)(B) of the Act, and, subject to a thirty calendar day grace period, the issuer of the security is current in its reporting obligations, or

(3) the security is described in Section 12(g)(2)(G) of the Act and, subject to a sixty calendar day grace period, the issuer or the security is current in its reporting obligations, or

(4) the issuer of the security is a bank or savings association that is not required to file reports with the Commission pursuant to Section 13 or 15(d) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current with all required filings with its appropriate Federal banking agency or State bank supervisor (as defined in 12 U.S.C. 1813).

(b) any foreign equity security or American Depositary Receipt (ADR) that *meets all of the following criteria*:

(1) [prior to April 1, 1998, is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall be considered eligible if it is:

(A) listed on one or more regional stock exchanges, and

(B) does not qualify for dessimination of transaction reports via the facilities of the Consolidated Tape.

(2) after March 31, 1998,] *the security* is registered with the Securities and Exchange Commission pursuant to Section 12 of the [Securities Exchange Act] Act [of 1934] *and the issuer of the security is current in its reporting obligating; or the security satisfies the requirements of paragraph (a)(2*) or (3) or (4) above*;* and

(2) the security is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall [be considered eligible] *meet this subparagraph (2)*[4] if it is:

(A) listed on one or more regional stock exchanges, and

(B) does not qualify for dissemination of transaction reports via the facilities the Consolidated Tape.

(c) any equity security that [is] *meets the following criteria*:

(1) *the security is* undergoing delisting from either the New York Stock Exchange, Inc. (NYSE) or the American Stock Exchange, Inc. (AMEX) for non-compliance with maintenance-of-listing standards; and

(2) *the security is* subject to a trading suspension imposed by the NYSE or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Robert E. Aber, General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 7, 1998 (''Amendment No. 1''). The substance of Amendment No. 1 is incorporated into this notice.

[4] The proposed rule text was changed from ''subparagraph (3)'' to ''subparagraph (2)'' to correct the internal cross-reference. Telephone conversation between Sara Nelson Bloom, Associate General Counsel, Nasdaq, and Robert B. Long, Attorney, Division Commission, on October 28, 1998.

AMEX preceding the actual delisting; and

(3) the security satisfies the requirements of paragraph (a)(2) or (3) or (4) above.

(d) any *Direct* [District] Participation Program as defined in Rule 6910 that is not listed on Nasdaq or a registered national securities exchange in the U.S. *and that satisfies the requirements of paragraph (a)(2) or (3) or (4) above.*

(e) Paragraphs (a)(2) and (3) and (4) above will not apply with respect to any domestic equity security quoted in the Service on the effective date of this rule change until six months after that date.

* * * * *

Rule 6540. Requirements Applicable to Market Makers

(a) No change.

(b) No change.

(1) Permissible Quotation Entries: no change.

(2) Impermissible Quotation Entries.

(A) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including ''bid wanted'' or ''offer wanted'' indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security that does not satisfy the requirements of Rule 6530.

(B) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including ''bid wanted'' or ''offer wanted'' indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security of an issuer that does not make filing with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system (or in paper format, if specifically permitted by Commission Rules) unless the member:

(i) notifies the Association of the issuer of the security's schedule for the filing of all periodic reports or financial reports required pursuant to the Act or regulatory authority, respectively, and the identity of the regulatory authority with which such reports are filed, or ensures that such notice is provided; and

(ii) provides to the Association the issuer's periodic reports required pursuant to the Act, or the issuer's financial reports required by regulatory authority, prior to the expiration of the grace period described in Rule 6530(a)(3), or ensures that the required periodic reports are provided to the Association within that time period.

(3) [(2)] Voluntary Termination of Registration

No change.

(4) [(3)] More Than One Trading Location

No change.

(5) [(4)] Clearance and Settlement

No change.

(c) Compliance With Market Maker Requirements

Failure of a member or a person associated with a member to comply with this Rule may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD has actively studied the OTC market in an effort to address abuses in the trading and sales of thinly traded, thinly capitalized (microcap) securities. These securities are not listed on Nasdaq or any exchange and trade on the OTCBB, in the ''pink sheets'' published by the National Quotation Bureau, Inc. (''Pink Sheets''), and in other quotation media where there are no listing requirements. With respect to its examination of the OTCBB in particular, the NASD noted the lack of reliable and current financial information about the issuers, and the perception by the public that the OTCBB is similar to a highly regulated market, such as the registered exchanges or Nasdaq.[5]

The OTCBB provides a real-time quotation medium that NASD member firms can use to enter, update, and retrieve quotation information (including unpriced indications of interest) for equity securities trade over-the-counter that are neither listed on Nasdaq nor on a primary national securities exchange. Eligible securities include national, regional, and foreign equity issues, warrants, units. Direct Participation Programs (''DPPs''),[6] and American Depositary Receipts (''ADRs'')[7] not listed on any other U.S. national securities market or exchange. Unlike Nasdaq or registered exchanges where individual companies apply for listing on the market—and must meet and maintain strict listing standards—there are no listing standards for the OTCBB, and there currently is no requirement that issuers of securities on the OTCBB make current, publicly-available reports with the SEC or other regulator. In fact, over half of the companies that are currently quoted on the OTCBB are not subject to any public reporting requirements.

The proposed rule change was developed in an effort to balance the benefits that the transparency of the OTCBB provides with the public need for information about the issuers being quoted. The NASD is concerned that where there is no public information available regarding a security, the broad-based automated display of quotations in that security creates an unjustified perception of reliability. While the NASD realizes that the new rule may result in the lack of real-time quotations for those securities that become ineligible for the OTCBB, it believe that this loss is outweighed by the benefit to investors who would, under the proposed rule, have access to information about the companies in which they may invest. In addition, transactions in securities ineligible for the OTCBB would still be subject to real-time last sale trade reporting. These reports are publicly disseminated through market data vendors on a real-time basis.

Amendment to Rule 6530

This proposed amendment to rule 6530 would limit quotations on the OTCBB to the securities of issuers that make current filings pursuant to

[5] In addition, the NASD has filed a proposed rule change through its subsidiary, NASD Regulation, to require a member to review current financial statements and other business information about the issuer of a security that is not listed on Nasdaq or a national securities exchange before that member could recommend a transaction to a customer in the security and to provide certain disclosure information on the trade confirmation for all customer transactions (solicited and unsolicited) in such securities. *See* SR–NASD–98–50.

[6] DPPs are securities offerings that permit investors to directly participate in the cash flow and tax consequences of the underlying investments. DPPs provide for the ''flow through'' of tax results. Thus, gains and losses are taxed to the investor not the issuer of the security.

[7] ADRs are receipts for shares of foreign corporations that are held by U.S. banks and bought and sold in the U.S. by investors, without utilizing overseas markets.

Sections 13[8] and 15(d) of the Act,[9] securities of depository institutions that are not required to make filings under the Act, but file publicly-available reports with their appropriate regulatory agencies, registered closed-end investment companies, and insurance companies that are exempt from registration under Section 12(g)(2)(G) of the Act.[10]

To remain eligible for quotation on the OTCBB, as issuer must remain current in its filings with the SEC or applicable regulatory authority. A member would be required to inform the NASD of the issuer's reporting schedule. Based upon that schedule, the NASD will affix a modifier on the security's symbol if the NASD has not received information that the report was timely filed.[11] The addition of the modifier to the symbol, as well as any changes to the symbol necessary to accommodate the modifier, will be publicly reported on the OTCBB Daily List, which is available to market makers and investors through the OTCBB web site as http://www.otcbb.com. Once an issuer is delinquent in filing a required report (*e.g.*, Form 10–K, Form 10–Q, Form 20–F, Insurance Company Annual Statement, or call report), a security of the issuer may continue to be quoted on the OTCBB for a 30 or 60 calendar day grace period from the due date of the report, depending on the type of issuer. After the grace period, quotations in the security of the delinquent issuer would not be permitted on the OTCBB.

Filings for most OTCBB issuers are available through the SEC's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system.[12] Foreign issuers are generally permitted to file in paper format and copies of these filings are available from the Commission. Exchange Act filings of banks and thrifts are available upon filing from the financial institution's primary bank regulatory agency. The grace period for these issuers is 30 days. In the case of banks and thrifts that are not required to make Exchange Act filings, members can obtain call report information from the National Information Center of Banking Information website (http://www.ffiec.gov/nic) or the Federal Deposit Insurance Corporation's website (http://www.fdic.gov). Call reports are filed 30 days after the end of each calendar quarter and are available to the public within 15 days of filing. Insurance companies file annual statements with the National Association of Insurance Commissioners (''NAIC'') by March 1 of each year. This information is released to the public by NAIC by April 1. Because of the delay in the availability of call reports and insurance company annual statements, the proposed rule permits a 60 calendar day grace period for the quotation of securities of these companies after the deadline for the issuer to submit a report to the appropriate regulator.

Amendment to Rule 6540

This proposed amendment to Rule 6540 would prohibit member firms from quoting an issuer's security if the issuer has not made current reports with the SEC or the appropriate regulatory authority. Members must also provide such reports to the NASD, although the reports may be provided by any market maker in the security. The NASD is exploring ways to reduce the burden of this requirement for members, particularly with respect to issuers who are EDGAR filers. As discussed above, the NASD will affix a modifier to the security's symbol if the NASD has not received information that the report was timely filed. This indication will provide members with notice that the NASD has not received information that the issuer's report was timely filed. Once the NASD provides this notice, the member will have the opportunity to acquire the necessary report and provide it to the NASD before the end of the grace period.

Phase-In

The new requirements will be immediately effective upon approval of the rule for securities not previously quoted on the OTCBB. Securities quoted on the OTCBB on the date the rule becomes effective will be afforded at least six months to comply with the new requirements. Specifically, and in order to accommodate the resource demands that may be placed upon the SEC when certain issuers elect to file current public reports, the new requirements will be applied in a month-by-month staggered manner for a period from six to eighteen months from the date the rule is approved. The NASD will apply the new rule to approximately the same number of issuers for each month during that period in order to evenly distribute the SEC's anticipated work load. The delayed effectiveness of the rule should also enable market makers, investors, and issuers to take appropriate action. It should be noted that for issuers who file a Form 10 or Form 10SB with the SEC to register under Section 12(g) of the Exchange Act,[13] all SEC comments, if any, must be cleared with the SEC before securities can be quoted on the OTCBB.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[14] of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, Section 15A(b)(11)[15] of the Act requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. The NASD believes the proposed rule change, which will address actual and potential fraud in the quotation and trading of non-listed securities and the investor perception that the OTCBB is equivalent to Nasdaq or exchange markets in terms of standards, regulatory structure and oversight, will accordingly protect investors and the public interest. Further, the NASD believes limiting the OTCBB to companies that provide public information will prevent fictitious and misleading quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 98–14 (''Notice'' or ''NTM'') in January, 1998. A total of 44 comments were received in response to the Notice.

Of the 44 responses received, 18 responses (or 41%) were from broker/dealer firms or registered persons and the balance of 26 comments (or 59%) were from individual investors, issuers, various state agencies, trade associations, and other interested parties. In providing comments, a majority of commenters expressed a

[8] 15 U.S.C. 78m.

[9] 15 U.S.C. 78*o*–(d).

[10] 15 U.S.C. 78(g)(2)(G).

[11] It is contemplated that the modifier will be affixed one to two days after the report is due.

[12] EDGAR is the SEC system for the receipt, acceptance, and review of documents submitted in electronic format.

[13] 15 U.S.C. 78*l*(G).

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 15 U.S.C. 78*o*–3(b)(11).

position (*i.e.*, approval or disapproval) regarding each specific proposal. Other commenters did not provide a stated position on each proposal, but identified particular issues with certain proposals and provided written comment.

Twenty-two commenters opposed the proposal, 19 commenters supported it, and three did not take a definitive position. Those commenters who disapproved of the proposed changes generally believed that the changes would decrease transparency and liquidity and would increase the regulatory burden that small issuers face. One commenter opined that the annual cost to an issuer to comply with the Exchange Act reporting requirements would be $150,000.

Those commenters supporting the proposed changes generally felt the changes will help eliminate fraud by providing investors with reliable information. These commenters thought the deterrence of fraud and increased availability of information outweighed the increase burden on companies.

Commenters indicated that the rule as proposed in the Notice should be modified to recognize issuers filing under Section 15(d) of the Exchange Act.[16] A commenter encouraged the NASD to accept reports filed with regulatory agencies outside of the Exchange Act, such as call reports filed by financial institutions. The rule as published in the Notice would have permitted members to maintain quotes in a security in which an issuer is delinquent in its reports with the SEC or regulatory authorities for a period of ten days. Other commenters supported an expansion of the grace period for filing a report with the SEC to 30 days after its due date.

After the public comment process, the staff recommended and the Boards of the NASD and Nasdaq approved the following modifications to the proposed rules. As to NASD Rule 6530, the proposed delinquency grace period was expanded from ten days to thirty days for issuers filing Exchange Act forms and to sixty days for insurance companies and financial institutions that do not file Exchange Act forms. This extended grace period is consistent with the proposed review period in the SEC's Rule 15c2–11 proposal.[17] Further, in the original Notice, the staff solicited comment on whether certain non-Exchange Act depository institutions that provide publicly-available financial reports to banking regulators should be eligible for quotation on the OTCBB. Based on the comments received, the nature of the issuers, the independent oversight of banking regulators, and the SEC's position that reports filed with federal or state bank supervisory agencies contain information analogous to Exchange Act reports,[18] the proposed rule allows securities of these issuers to be quoted on the OTCBB if the issuer provides timely reports to the appropriate Federal banking agency or State bank supervisor and the information is publicly available. Finally, consistent with comments received, the proposed rule includes securities of issuers who are currently filing reports with the SEC pursuant to Section 15(d) of the Act as eligible securities for the OTCBB. An issuer becomes subject to Section 15(d) as a result of registering securities under the Securities Act of 1933 (''Securities Act'') and is thereby required to make timely filings with the SEC such as Forms 10–K, 10–Q, and 8–K or 20–F for at least a year following the Securities Act registration.[19]

The staff and the NASD and Nasdaq Boards considered commenters' objection that the proposed rule would decrease transparency for securities no longer eligible for the OTCBB. However, this objection was outweighed by the benefit of ensuring that there was publicly-available information regarding issuers that are afforded the visibility and credibility of the OTCBB. In this regard, the NASD considered that in granting permanent approval to the OTCBB, the SEC noted: ''As a general matter, transparency benefits the markets. However, in the context of the inclusion of unregistered foreign securities on the OTCBB, the benefits may be outweighed by the potential harm from including unregistered securities on a visible U.S. market operated by a self-regulatory organization.'' [20] The SEC also noted that ''the OTCBB may be inconsistent with the full disclosure goals of the securities laws in allowing a regulated public marketplace for unregistered securities.'' [21] While these comments were made in the context of unregistered foreign securities, the NASD believes that the same concerns exist with respect to domestic securities for which no public information is available.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File SR–NASD–98–51 and should be submitted by November 25, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29467 Filed 11–3–98; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78*o*–(d).

[17] Exchange Act Release No. 39670 (February 17, 1998), 63 FR 9661 (February 25, 1998).

[18] *Id.* 9667–68.

[19] In addition to its requirements under Section 15(d), an issuer may voluntarily register under Section 12(g) or be required to register under Section 12(g) if it has 500 or more shareholders of record and total assets of more than $10 million. Under both scenarios, the issuer's securities would continue to qualify as eligible securities for purposes of the OTCBB Rules if the issuer maintains current filings with the SEC.

[20] Exchange Act Release No. 38456 (March 31, 1997), 62 FR 16635 at 16638 (April 7, 1997).

[21] *Id.*

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40615; File No. SR–NASD–98–56]

Self-Regulatory Organizations; Order Granting Partial Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Small Firm Representative on NASD Board Portion of the Proposed Rule Change Relating to Amendment to Composition of NASD Board to Include Members of New Amex LLC and for Other Purposes

October 28, 1998.

On August 10, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] In its proposal, among other matters, the NASD proposed revision of its by-laws to reserve one Industry Governor position on the NASD Board of Governors (''Board'') for a representative of smaller NASD member firms. Notice of the proposal was published in the **Federal Register** on August 26, 1998 (''Notice'').[3] The Commission received one comment letter on the filing.

I. Introduction and Description of the Proposal

In 1997, the NASD reorganized its corporate governance structure in connection with a revision of its disciplinary process following issuance of the Commission's Report Pursuant to Section 21(a) of the Act and related order and undertakings.[4] The changes streamlined the NASD's decisionmaking process, improved communication among members of the Board and Association staff and enabled the Association to act quickly and decisively when appropriate.[5] After the reorganization, the NASD established the Small Firm Advisory Board [6] to address concerns raised by a number of smaller member firms about their representation within the new NASD corporate structure.

The Notice indicated that the NASD's experience under the new corporate structure suggested that further participation by the small member firm community in matters affecting their business and their customers would be desirable. To provide this, the NASD filed the proposed rule change, seeking amendment of its by-laws to include one representative of member firms with 150 or fewer registered representatives among the Industry positions on the Board of Governors.[7]

II. Summary of Comments

The Commission received one comment letter from the Independent Broker-Dealer Association (''IBDA'').[8] The NASD responded to this letter.[9]

The comment letter expresses numerous concerns about the representation of small firms within the NASD.[10] Primarily, the comment letter questions whether the proposed ''small firm Board position,'' combined with the current Small Firm Advisory Board, adequately represent the IBDA members within the NASD. The letter stresses the need for enhanced representation of small firms and asserts that IBDA members have been hurt by the lack of adequate representation. The comment letter suggests that IBDA members would be better represented if they were able to elect the members of the Small Firm Advisory Board and the small firm Board representative directly. The comment letter also suggests that the maximum number of registered representatives allowed by the proposed definition of a small firm should be reduced, to more adequately represent the majority of smaller firms.

Responding to the IBDA's concerns, the NASD points out that the Commission approved its 1997 corporate structure and in doing so, found the restructuring to be consistent with the requirements of Section 15A of the Act, including the provisions requiring fair representation of members in the governance of the NASD.[11] In particular, the Association responds that the Commission assessed the 1997 corporate structure changes in terms of the fair representation requirement before reservation of a small firm Board position. Additionally, the NASD asserts that the Small Firm Advisory Board was voluntarily established by the Board of Governors to provide a more effective voice for the small firm member community, notwithstanding the minimum requirements of the Act. Moreover, the NASD points out that, regardless of the proposed definition, the current nominee for the small firm Governor position is associated with a member firm of eight registered representatives,[12] and that eight of the twelve members of the Small Firm

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40399 (August 19, 1998), 63 FR 22839 (File No. SR–NASD–98–56).

[4] Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (August 8, 1996) and Securities Exchange Act Release No. 37538 (August 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc. Administrative Proceeding File No. 3–9056), respectively. The undertakings were included in the SEC Order.

[5] *See* Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997) (File Nos. NASD–97–71, 96–29 and 96–20).

[6] Press Release, National Association of Securities Dealers, NASD Creates Small Firm Advisory Board (Feb. 17, 1998).

[7] To qualify for this position, a proposed nominee must be associated with a member firm of 150 or fewer registered representatives. The definition of an Industry Governor is set forth in Article I of the NASD By-laws.

[8] *See* Letter from Bill T. Singer, Singer Fumiento LLP to The Secretary, Securities and Exchange Commission, dated September 11, 1998. The comment letter is composed of a cover letter from Mr. Singer, counsel to the IBDA and a report to Alan Davidson, President of the IBDA from Mr. Singer, addressing the small firm representative and other issues, dated September 10, 1998.

[9] *See* Letter from T. Grant Callery, General Counsel, NASD to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated October 22, 1998.

[10] The comment letter also questioned: (a) certain aspects of the proposed NASD/Amex combination; (b) inclusion of the small firm representative vote in the same filing as the combination; and (c) the effects of the post 21(a) Report enhancement of the NASD disciplinary process on OBDA members. That portion of SR–NASD–98–56 regarding the NASD/Amex combination, and any comment letters received thereto, will be separately addressed by the Commission at a later date, in connection with review of all filings addressing the combination. *See, e.g.,* Securities Exchange Act Release No. 40426 (September 10, 1998) (*Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to Changes to the Combination of the American Stock Exchange, Inc. and the National Association of Securities Dealers, Inc.* File No. SR–AMEX–98–32) and Securities Exchange Act Release No. 40443 (September 16, 1998.) (*Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Policies Regarding Authority Over American Stock Exchange LLC and Composition of Board of Governors of American Stock Exchange LLC,* File No. SR–NASD–98–67).

The Association has indicated to the Commission that the small firm representative Board member vote was included in the same ballot as the NASD/Amex combination issues as a cost-savings mechanism, to avoid incurring the expense of separate mailings to the NASD membership on each issue. Conversation between Philip Rosen, Associate General Counsel, Office of General Counsel, NASD and Mandy S. Cohen, Special Counsel, Division of Market Regulation, Commission, on October 26, 1998.

The comments on the post 21(a) Report disciplinary process enhancements do not relate to the subject of SR–NASD–98–56, the proposal currently under consideration. The Commission notes, however, that enhancement of the disciplinary process is a favorable outcome of the 21(a) Report and SEC Order.

[11] *See* 15 U.S.C. 78*o*(b)(4).

[12] *See, e.g.,* Notice To Members 98–80 (Sept. 29, 1998); *supra* note 9.

Advisory Board are from member firms with fewer than twenty registered representatives. Finally, the NASD notes that its by-laws allow for the nomination of dissident candidates for specific positions, such as the small firm representative, through the by-laws' contested election procedures.[13]

III. Discussion

As discussed below, the Commission has determined to approve the Association's proposal incorporating a small firm Board representative. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of Section 15A of the Act[14] and the rules and regulations thereunder that govern the NASD.[15] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.[16]

The Commission believes the creation of a small firm representative is consistent with that portion of Section 15A requiring fair member representation in the governance of the NASD.[17] As discussed above, the Association made substantial changes to its corporate governance structure in 1997, many of which responded to the Commission's 21(a) Report and related documents. After these changes, the NASD created the Small Firm Advisory Board to address concerns raised by small firms about their ability to participate in the new NASD corporate structure. Today, the Commission approves the reservation of a Governor position to represent member firms with 150 or fewer registered representatives. The Commission agrees with the NASD that the changes, as proposed, will enhance the representation of small firms within the NASD corporate governance structure by inserting a small firm representative into the center of the decisionmaking process, the NASD Board of Governors. As a member of the Board of Governors, the small firm representative, unlike a member of the Small Firm Advisory Board, will have an opportunity to actively participate in the governance of the NASD and keep abreast of the Association's new initiatives.

Additionally, the Commission believes that the NASD acted within its discretion by defining a small member firm as one having 150 or fewer registered representatives. Approval of the exercise of this discretion is supported by the fact that the NASD by-laws include contested election provisions approved in connection with the 1997 restructuring. These provision will allow organizations such as the IBDA to present candidates for the NASD Board of Governors to the NASD membership during the regular election process, if they do not like those nominated by the NASD Nominating Committee. The existence of these contested election procedures further supports the finding that the amendments approved today satisfy the fair representation requirements of the Act discussed above, since these provisions permit presentation of an alternative nominee for the small firm representative Board position.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.[18] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[19]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the portion of the proposed rule change (SR–NASD–98–56) relating to reservation of a small firm representative on the NASD Board of Governors, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29513 Filed 11–3–98; 8:45 am]

BILLING CODE 8010–01–M

[13] *See* Article VII, Section 10 to the NASD by-laws. In this context, dissident candidates are those not nominated by the NASD Nominating Committee.

[14] 15 U.S.C. 78*o*–3.

[15] 15 U.S.C. 78s(b).

[16] 15 U.S.C. 78*o*–3.

[17] 15 U.S.C. 78*o*(b)(4).

[18] 15 U.S.C. 78*o*–3.

[19] 15 U.S.C. 78(c)f.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40614; File No. SR–NSCC–98–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Mutual Fund Profile Service

October 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 22, 1998, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to increase the information available through NSCC's Mutual Fund Profile Service.

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 its 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

Currently, MFPS provides NSCC's members with an automated method of transmitting and receiving information pertaining to mutual funds through a centralized and standardized facility.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by the NSCC.

[3] For a complete description of MFPS, refer to Securities Exchange Act Release No. 37171 (May 14, 1996), 61 FR 24343 [File No. SR–NSCC–96–04] (order approving the proposed rule change establishing the daily price and rate file phase of MFPS).

Under the proposed rule change, NSCC will expand the information available through MFPS to include a member profile, security issue profile, and distribution declaration information profile.

The ''member profile'' will provide members with fund data including personnel contacts, telephone numbers, addresses, commission payment procedures, processing capabilities, and information regarding NSCC members which act as agents for other NSCC members.

The ''security issue profile'' will provide members with minimum purchase or maintenance requirements, fund features, and various fund processing characteristics for all the individual funds included in MFPS.

The ''distribution declaration information profile'' will provide members with projected and/or actual record dates, ex-dates, and reinvestment and payable dates for dividend and capital gain payments, and it may also include Rule 12b–1 plan and other commission payout information.

NSCC expects to implement the new profiles in December 1998 and will notify its members of the new services when they become available.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act[4] and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and pursuant to Rule 19b–4(e)(4)[6] promulgated thereunder because the proposal effects a change in an existing service that does not adversely effect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., 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 Section, 450 Fifth Street, N.W., Washington, DC 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–98–09 and should be submitted by November 25, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29468 Filed 11–3–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(e)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40618; File No. SR–NSCC–98–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Expanding the Fund/Serv Service

October 29, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 30, 1998, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change expands NSCC's Fund/Serv service to permit the transfer of eligible assets in all types of retirement plan accounts.[2]

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. 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 statement.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 15, 1996, the Commission approved NSCC's rule filing to allow members to transfer assets held in an individual retirement account (''IRA'') to another mutual fund

[1] 15 U.S.C. 78s(b)(1).

[2] Fund/Serv, which is part of NSCC's Mutual fund Services, permits NSCC members to process and to settle on an automated basis mutual fund purchase and redemption orders and to transmit registration instructions.

[3] The Commission has modified the text of the summaries prepared by NSCC.

through Fund/Serv.[4] Consistent with NSCC's original intentions, this proposed rule change expands NSCC's Fund/Serv to permit transfers of eligible assets held in all types of retirement accounts, not just assets held in IRAs.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act[5] and the rules and regulations thereunder because it will help foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and will help remove impediments to the prompt and accurate clearance and settlement of securities transactions.

(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 the Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and pursuant to Rule 19b–4(e)(4)[7] promulgated thereunder because the proposal effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street 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–98–12 and should be submitted by November 25, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29512 Filed 11–3–98; 8:45 am]

BILLING CODE 8010–01–M

[4] Securities Exchange Act Release No. 37959 (November 15, 1996), 61 FR 59478 [File No. SR–NSCC–96–16].

[5] 15 U.S.C. 79q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(e)(4).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s).

1. *Statement of Death by Funeral Director—0960–0142.* The Social Security Administration (SSA) uses the information collected on Form SSA–721 to verify the death of an individual insured under the Social Security Act and to determine if there is a survivor eligible for a lump-sum death payment. The respondents are funeral directors with knowledge of the death of a person insured for Social Security benefits.

Number of Respondents: 900,000.

Frequency of Response: 1.

Average Burden Per Response: 3.5 minutes.

Estimated Average Burden: 52,500 hours.

2. *Statement Regarding Marriage—0960–0017.* SSA uses the information collected on Form SSA–753 to make determinations regarding entitlement to spouse's benefits when a common-law marriage is alleged. The respondents are third parties who can supply evidence concerning the existence of a common-law marriage.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden Per Response: 9 minutes.

Estimated Average Burden: 6,000 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB.

1. *Modified Benefits Formula Questionnaire, Employer—0960–0477.* The information collected on Form SSA–50 is used by SSA to verify that a pension based on noncovered employment after 1956 was allegedly received by the claimant. The form also shows whether or not the individual became eligible for that pension before 1985. The respondents are persons who are eligible for both Social Security benefits and a pension from noncovered employment after 1985.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Average Burden: 10,000 hours.

2. *Report of Continuing Disability Interview—0960–0072.* SSA uses the information collected on Form SSA–454 to determine whether a person who receives Social Security Disability benefits is still unable to work because of an existing disability. The form will also be used to make a determination as

to whether the disability benefits should continue or be terminated. The respondents are Social Security Disability benefit recipients.

Number of Respondents: 830,175.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 415,088 hours.

3. *Statement by School Official About Student's Attendance; Statement to U.S. Social Security Administration by School Outside the U.S. About Student's Attendance—0960–0090.* The information collected on Forms SSA–1371 and SSA–1371–FC is used by SSA to verify a student's alleged full-time attendance at an educational institution, in order to determine the student's eligibility for Social Security student benefits. The respondents are the school officials who provide the information on these forms.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 833 hours.

4. *Reconsideration Disability Report—0960–0144.* SSA uses the information collected on Form SSA–3441 to determine if the claimant's medical or vocational situation changed after the initial disability determination, when the claimant requests a reconsideration of a denied disability claim. The form also elicits additional sources of medical and vocational evidence, which was not considered in the initial determination. The respondents are disability beneficiaries who request a reconsideration.

Number of Respondents: 400,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 200,000 hours.

5. *Agreement to Sell Property—0960–0127.* The information on Form SSA–8060–U3 is used by SSA field office personnel to authorize payment of conditional benefits to individuals or couples who are otherwise eligible for Supplemental Security Income (SSI) benefits (but whose resources exceed the allowable limit), and at the end of the conditional payment period, to institute overpayment recovery procedures. Form SSA–8060–U3 documents this agreement and ensures that the individuals understand their obligations. The respondents are applicants for and recipients of SSI benefits.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 3,333 hours.

6. *Modified Benefit Formula Questionnaire—0960–0395.* The information collected on Form SSA–150 is needed by SSA to determine the correct formula to use in computing Social Security benefits for someone who also receives benefits from employment not covered by Social Security. The respondents consist of claimants for Social Security benefits who are also entitled to benefits not covered by Social Security.

Number of Respondents: 90,000.

Frequency of Response: 1.

Average Burden Per Response: 4 minutes.

Estimated Average Burden: 6,000 hours.

7. *Application for Survivors Benefits—0960–0062.* SSA collects the information on Form SSA–24 to determine whether insured status exists in order for the claimant to complete the appropriate SSA survivor application. If entitlement does not exist, SSA may disallow the claim. If an SSA survivor application has already been filed, Form SSA–24 is treated as a duplicate application. The respondents are survivors of military service veterans filing for Social Security benefits.

Number of Respondents: 3,200.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Average Burden: 800 hours.

8. *Medical Report (Individual With Childhood Impairment)—0960–0102.* The information collected on Form SSA–3827 is used by SSA to determine whether an individual with a childhood impairment medically qualifies for benefits or payments under the provisions of the Social Security Act, based on the medical aspects of an individual's claim or application. The respondents are attending physicians/medical sources.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 6,000 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the address listed above.

Dated: October 29, 1998.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–29508 Filed 11–3–98; 8:45 am]

BILLING CODE 4190–29–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Submissions for OMB Review

The information collection package listed below has been submitted to the Office of Management and Budget (OMB) for clearance, in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

Information Collections Conducted by State Disability Determination Services (DDS) on Behalf of SSA—0960–0555. The State DDSs collect certain information to administer SSA's disability program. The information collected is as follows: (1) medical evidence requirements (MER)—DDSs use MER information to determine a person's physical and/or mental status prior to making a disability determination; (2) consultative exam (CE) provider information—DDSs use the CE provider information to verify medical providers' credentials and licenses before hiring them to conduct CEs; (3) CEs—DDSs use CE information to make disability determinations when the claimant's own medical sources cannot or will not provide the information; DDSs use the information obtained from claimants under the CE process to obtain release of medical information to personal physicians and to confirm scheduled CE appointments; (4) activities of daily living—this information and other medical evidence are part of the evidentiary documentation used by the DDS's in evaluating a person's disability; and (5) pain information—this information is used by the DDSs to assess the effects of symptoms on functionality for determining disability. The respondents are medical providers and disability claimants.

MER: (Respondents-Medical Providers)

Number of Responses: 9,182,836.
Frequency of Response: Unknown.
Average Burden Per Response: 15 minutes.
Estimate Annual Burden: 2,295,709 hours.

CE: (Respondents-Medical Providers)

Number of Responses: 3,001,500.
Frequency of Response: Unknown.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 1,500,750 hours.

CE: (Respondents-Claimants)

	Appointment form	Medical release
Number of Respondents.	750,375 ..	1,500,750.
Frequency of Response.	2	2.
Average Burden Per Response.	5 minutes	5 minutes.
Estimated Annual Burden.	125,062 hours.	250,125 hours

CE Providers (Respondents-Medical Providers)

Number of Responses: 6,300.
Frequency of Response: 1.
Average Burden: 20 minutes.
Estimated Annual Burden: 2,100 hours.

ADL: (Respondents-Claimants)

Number of Responses: 2,264,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 566,000 hours.

Pain: (Respondents-Claimants)

Number of Responses: 1,000,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Average Burden: 250,000 hours.

In addition to your comments on the accuracy of the Agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB), Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the address listed above.

Dated: October 27, 1998.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–29323 Filed 11–3–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2918]

Shipping Coordinating Committee; Subcommittee on Ship Design and Equipment; Meeting Notice

The Shipping Coordinating Committee will conduct an open meeting at 9:30 am on Tuesday, November 24, 1998, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to prepare for the forty second session of the Subcommittee on Ship Design and Equipment of the International Maritime Organization (IMO) which is scheduled for March 8–12, 1999, at IMO Headquarters in London, England.

Among other things, items of particular interest are: revision of the High Speed Craft Code; emergency towing arrangements for tankers; safety aspects of ballast water management; guidelines on helicopter landing areas; prohibition of the use of asbestos on board new ships; development of a code on polar navigation; development on requirements for wing-in-ground craft; international approval procedures for life-saving appliances; standards and requirements for thermal protective litojackets; and guidelines under MARPOL Annex VI on prevention of air pollution from ships.

IMO works to develop international agreements, guidelines, and standards for the marine industry. In most cases, these form the basis for class society rules and national standards/regulations. Such an open meeting supports the U.S. Representative to the IMO Subcommittee in developing the U.S. position on those issues at the IMO Subcommittee meetings. This open meeting serves as an excellent forum for the U.S. maritime industry to express their ideas and participate in the international rulemaking process. All members of the maritime industry are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within the IMO.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Wayne Lundy, U.S. Coast Guard Headquarters, Commandant (G–MSE–3), 2100 2nd Street, SW, Washington, DC 20593–0001 or by calling: (202) 267–2206.

Dated: October 26, 1998.

Stephen M. Miller,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98–29464 Filed 11–3–98; 8:45 am]

BILLING CODE 4710–70–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request For Public Comment With Respect To The Annual National Trade Estimate Report on Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 303 of the Trade and Tariff Act of 1984, as amended, USTR is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested parties to assist it in identifying significant barriers to U.S. exports of goods, services and overseas direct investment for inclusion in the NTE. Particularly important are impediments materially affecting the actual and potential financial performance of an industry sector. The TPSC invites written comments that provide views relevant to the issues to be examined in preparing the NTE.

DATES: Public comments are due not later than December 4, 1998.

ADDRESSES: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW, Room 501, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Gloria Blue, Office of Policy Coordination, Office of the United States Trade Representative, (202) 395–3475.

SUPPLEMENTARY INFORMATION: Last year's report may be found on USTR's Internet Home Page (www.ustr.gov) under the section on Reports. This year we have added the following African countries to the report: the Southern African Customs Union (Botswana, Lesotho, Namibia, Swaziland (in addition to South Africa)); the West African Economic and Monetary Union (Benin, Burkina Faso, Cote d'Ivoire, Mali, Niger, Senegal and Togo); and the Customs and Economic Union of Central Africa (Cameroon, Central African Republic, Chad, Republic of Congo, Equatorial Guinea, and Gabon).

In addition, the new Internet Tax Freedom Act has added a new section to the NTE relating to U.S. electronic commerce. Finally, in order to ensure compliance with the statutory mandate for reporting foreign trade barriers that are significant, we will focus particularly on those restrictions where there has been active private sector interest.

The information submitted should relate to one or more of the following ten categories of foreign trade barriers:

(1) import policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);

(2) standards, testing, labeling, and certification (including unnecessarily restrictive application of phytosanitary standards, refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards, and environmental restrictions);

(3) government procurement (e.g., ''buy national'' policies and closed bidding);

(4) export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(5) lack of intellectual property protection (e.g., inadequate patent, copyright, and trademark regimes);

(6) services barriers (e.g., limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by professionals (e.g., lawyers, doctors, accountants, engineers, nurses, etc.));

(7) investment barriers (e.g., limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);

(8) anticompetitive practices with trade effects tolerated by foreign governments (including anticompetitive activities of both state-owned and private firms that apply to services or to goods and that restrict the sale of U.S. products to any firm, not just to foreign firms that perpetuate the practices;

(9) trade restrictions affecting electronic commerce (e.g., tariff and non-tariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation; and

(10) other barriers (i.e., barriers that encompass more than one category, e.g., bribery and corruption, or that affect a single sector).

As in the case of last year's NTE, we are asking that particular emphasis be placed on any practices that may violate U.S. trade agreements. We are also interested in receiving any new or updated information pertinent to the barriers covered in last year's report as well as new information. Please note that the information not used in the NTE will be maintained for use in future negotiations.

It is most important that your submission contain estimates of the potential increase in exports that would result from the removal of the barrier, as well as a clear discussion of the method(s) by which the estimates were computed. Estimates should fall within the following value ranges: less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million. Such assessments enhance USTR's ability to conduct meaningful comparative analyses of a barrier's effect over a range of industries.

Please note that interested parties discussing barriers in more than one country should provide a separate submission (i.e., one that is self-contained) for each country.

Written Comments

All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW, Room 501, Washington, DC 20508.

All submissions must be in English and should conform to the information requirements of 15 CFR 2003. A party must provide ten copies of its submission which must be received at USTR no later than December 4, 1998.

If the submission contains business confidential information, ten copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Written comments submitted in correction with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection shortly after the filing deadline. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 98–29506 Filed 11–3–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Williamson County, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Major Investment Study (MIS) and Environmental Impact Statement (EIS) will be prepared for a proposed U.S. Highway 183 corridor improvement project in Williamson County, Texas. The study corridor includes the existing U.S. Highway 183 alignment and the general area located east of existing U.S. Highway 183. The study limits extend from approximately Lakeline Boulevard, located north of RM 620 and south of the City of Cedar Park, to north of the City of Leander, south of the San Gabriel River.

FOR FURTHER INFORMATION CONTACT: Walter C. Waidelich, District Engineer, Federal Highway Administration, Room 826, Federal Building, 300 East 8th Street, Austin, Texas 78701. Stacey Benningfield, Texas Turnpike Authority, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701–2483.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation, will prepare a joint MIS/EIS for a proposed project to relieve traffic congestion on U.S. Highway 183 and within the Cities of Cedar Park and Leander and adjacent portions of Williamson County, Texas. Alternatives to be considered for this project include upgrading the existing U.S. Highway 183 or constructing a traffic reliever route, known as U.S. Highway 183A, on new location. If ultimately selected as the recommended action, U.S. Highway 183A would be located parallel and northeast of existing U.S. Highway 183, beginning at Lakeline Boulevard, south of Cedar Park, Texas, and running north to a terminus with existing U.S. Highway 183 north of Leander, Texas. If constructed, the ultimate facility design for U.S. Highway 183A is anticipated to be a six-lane controlled access roadway with intermittent frontage roads and overpasses at major thoroughfares. The total length of U.S. Highway 183A would be approximately ten and one-half miles.

Other improvements to be considered within the U.S. Highway 183 corridor include implementing Transportation System Management (TSM) and/or Travel Demand Management (TDM) improvements for U.S. Highway 183. The TSM alternative would involve implementing only those activities which maximize the efficiency of existing U.S. Highway 183, such as improved traffic signal timing, more efficient accident removal, or the addition of turn lanes. TDM improvements could include strategies such as flex time, telecommuting, or other control measures to reduce travel time. Ongoing regional high occupancy vehicle (HOV) studies, toll road studies, as well as the combination of a fixed guideway facility (light rail) and/or commuter rail facility will be considered for integration with the proposed U.S. Highway 183A.

The MIS portion of the study will analyze the various mobility alternatives in the U.S. Highway 183 corridor as described above. Information on the costs, benefits, and impact of the alternatives will lead to decisions by TTA, FHWA, the Texas Department of Transportation and the Austin Transportation Study, the metropolitan planning organization for the Austin-area, on the design concept and scope of the investment.

For all alternatives being considered, the DEIS will include an analysis of the cost of the right-of-way, the numbers and types of relocations necessary, engineering constraints and limitations due to topography, and potential environmental impacts involving land use, socioeconomic conditions, water resources, air quality, noise, traffic, ecological/cultural resources and hazardous material sites. At the present stage of the planning process, no preferred alternative has been selected. More in-depth studies will be conducted after a preferred alternative is chosen to avoid and/or minimize impacts to human, cultural and ecological resources. All studies will be coordinated through appropriate local, state and federal agencies.

If construction of U.S. Highway 183A is ultimately selected as the preferred alternative, the TTA will conduct a toll feasibility study to evaluate the viability of developing U.S. Highway 183A as a toll road and financing it, in whole or in part, through the issuance of revenue bonds. The toll road designation will not influence the selection of a preferred alternative. Proposed alternatives, including alternative alignments for U.S. Highway 183A, will be evaluated for how well they meet the established purpose and need for the proposed project. Any impacts owing to the toll road designation will be discussed in the environmental impact statement.

An initial public meeting for the proposed U.S. 183 project was held in 1990. However, the project progression was slowed shortly after that meeting due to resource and budget shortfalls. In 1995, the project was revived and another public meeting was held on May 22, 1996. At the meeting, mobility concerns within the U.S. Highway 183 corridor were raised and a proposed corridor for U.S. Highway 183A was shown. A Major Investment Study public initiation meeting was held on May 12, 1998, in Cedar Park, Texas, that provided more information on the modal alternatives for the corridor, alternative alignments being considered for the corridor and some of the potential impacts associated with each alternative.

In continuation of the scoping process for the proposed project, on November 10, 1998, the TTA will conduct another public meeting to discuss the proposed improvements within the U.S. Highway 183 corridor. The purpose of the public meeting will be to receive comments on the proposed project and possible alignments for the U.S. 183A alternative. The meeting will be held in the gymnasium of Giddens Elementary School, 1500 Timberwood Drive, Cedar Park, Texas 78613. From 6 to 7 p.m., displays showing the project corridor and possible alignments for the U.S. Highway 183A alternative will be available for review. During this time, TTA staff will be available to answer questions. At 7 p.m. there will be a formal project presentation followed by a public comment period. All interested citizens are invited to attend this meeting.

A public hearing will be held after publication of the Draft MIS/EIS. Public notice will be given of the time and place of the hearing. The Draft MIS/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 MIS/EIS should be directed to the FHWA or TTA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Walter C. Waidelich,

District Engineer, Austin, Texas.

[FR Doc. 98–29526 Filed 11–3–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Transportation Equity Act for the 21st Century; Implementation Information for Innovative Bridge Research and Construction Program Funds

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This document publishes implementation information on the Transportation Equity Act for the 21st Century (TEA–21) enacted on June 9, 1998, for eligible candidate projects in Fiscal Years 1998 and 1999 concerned with the innovative bridge research and construction program. The FHWA is issuing this notice to specifically address the construction of bridges using innovative materials. Implementation information materials on this topic were issued to FHWA region and division offices on July 29, 1998. This material describes activities eligible for funding for the program, the application process, and criteria used to evaluate candidate projects. This notice further identifies all statutory and regulatory criteria applicable to the program.

FOR FURTHER INFORMATION CONTACT: For bridge program: Mr. George P. Romack, HNG–33, Office of Engineering, (202) 366–4606, or Mr. John Hooks, Office of Technology Applications, HTA–22, (202) 366–6712; for legal issues: Mr. Wilbert Baccus, HCC–32, Office of the Chief Counsel, (202) 366–1396, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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

Background

The TEA–21 (Pub. L. 105–178, 112 Stat.107) implementation material published in this notice is provided for informational purposes. Specific questions on any of the material published in this notice should be directed to the contact person named in the caption **FOR FURTHER INFORMATION CONTACT** for this program.

Publication of this implementation information for the innovative bridge research and construction program satisfies the requirement of section 9004(a) of the TEA–21 Restoration Act, Pub. L. 105–206, 112 Stat. 685 (1998).

(Authority: 23 U.S.C. 315 and 503; 49 CFR 1.48)

Issued on: October 28, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

The text of the FHWA implementation guidelines memorandum follows:

July 29, 1998.

(HNG–33)

Action: Request for Candidates Innovative Bridge Research and Construction Program (*Reply Due:* September 1, 1998)

Director, Office of Engineering
Regional Administrators
Division Administrators

The purpose of this memorandum is to solicit candidate projects from the States for using innovative materials in the repair, rehabilitation, replacement and new construction of bridges. The TEA–21 establishes Title V—Transportation Research and sets up substantial annual funding to demonstrate the application of innovative material technology for bridge construction. The new Section 503(b) provides for an Innovative Bridge Research and Construction program. Research, development and technology transfer portion of the program is funded at $1 million per year, and the construction portion at a level of $10 million in FY 1998 to a high of $20 million in FY 2003. These figures will be adjusted to reflect any obligation limitations.

The seven goals of the program are specified in 503(b)(2), and emphasize new materials and construction techniques to reduce maintenance and life-cycle costs. The construction provision specifies funding to the States to pay the Federal share of the cost of repair, rehabilitation, replacement, and new construction of bridges using innovative materials. The TEA–21 allows the Federal share to vary and instructs the Secretary of Transportation to determine the Federal share (percentage) of the cost of a project under this section. Actual percentages will depend on the number of projects, the types of innovative technologies, and the cost of the candidate projects.

We are requesting your assistance to identify candidate bridge projects to allocate FY 1998 and FY 1999 funds to demonstrate innovative bridge materials. For the remaining years of the program, annual solicitations will be made sufficiently in advance to allow allocation by the beginning of the fiscal year. Please discuss the program with your State transportation departments to determine their interest in the program and solicit their candidate projects. Examples of innovative materials include high performance concrete, high performance steel, aluminum and fiber reinforced polymer composites. It is likely there are other innovative materials that your State has considered or would like to consider.

Preliminary engineering and construction are eligible work, although construction projects will be given priority consideration. Also, the program would support projects to develop design standards, specifications, and material applications that would lead to continuing use of innovative materials. Bridges on all public roads, including State and locally funded projects, are eligible. These funds may be used for the Federal share of the cost of the construction of the ''innovative materials'' portion of the project. A consideration in the selection will also be a State's willingness to provide performance data for a reasonable period of time during and after construction. Examples of documentation during construction include photographs and written accounts of the methods and techniques used to incorporate the innovative material into the project.

Attached is an application form which is to be used for candidate projects. The State's application should describe the innovative material(s), how it is being used in the project, and how the project meets one or more of the program goals. The application should be completed and submitted along with supporting documents that provide a further description of the project including the scope of work. Please furnish your response by September 1, 1998.

In this initial call for candidate projects for the program, all project applications will be evaluated by the FHWA on a case-by-case basis and being [sic] guided by the goals set out in TEA–21. Thereafter, the FHWA will be working with States and industry partners to develop more definitive project selection methods and criteria for determining the appropriate Federal share of the project costs.

Any questions concerning this program should be addressed to George Romack of the Bridge Division at (202) 366–4606 or John Hooks of the Office of Technology Applications at (202) 366–6712.

Henry H. Rentz

APPLICATION

TECHNOLOGY DEPLOYMENT

INNOVATIVE BRIDGE CONSTRUCTION PROGRAM

State _____

Project Type (New construction, replacement, rehabilitation, or repair)

_____

NBI Structure No. _____

Location (e.g., county, city, route) _____

_____

Structure Description (e.g., spans, length, width, design, material)

_____

_____

_____

Innovative Material (Describe the material, how it is used and how the project meets one or more of the program goals)

_____

_____

_____

_____

Schedule for start of work (Month/year) ____

Cost Estimates

Total project cost _____

Cost of ''innovative material'' portion of construction project

_____

Preliminary engineering cost, if requested __

Cost of innovative material performance evaluation (e.g., a 2-year post-construction period)

Total funds requested _____

TECHNOLOGY DEPLOYMENT INNOVATIVE BRIDGE CONSTRUCTION PROGRAM FUNDING

Year	1998(TEA21)	1999	2000	2001	2002	2003
Authorization	$10M	$15M	$17M	$20M	$20M	$20M

• Section 5001 of the Transportation Efficiency Act for the 21st Century (TEA–21) authorized the sums shown to be available to the States for projects to demonstrate innovative materials relating to repair, rehabilitation, and construction of bridges.

• The Federal share of project costs may vary and is to be determined by the Secretary.

Eligibility

• Funds are available for bridge projects that meet one or more of the seven program goals listed in Section 503(b)(2) of TEA–21.

• The project may be on any public roadway, including State and locally funded projects.

• Funds are available for preliminary engineering, construction and project performance evaluations costs.

Selection Criteria

• For FY 1998 and 1999 allocations, the FHWA will select candidate projects using the following criteria:

(1) Projects which will meet one or more of the goals of the program
(2) Projects which will incorporate materials and/or products that are available
(3) Projects ready for or near the construction phase will be given priority consideration
(4) Projects that leverage Federal funds with other significant public or private resources will given preference
(5) Projects with designs that are repeatable or have wide spread application

• For subsequent years, the FHWA will select candidate projects utilizing input from a panel of experts from the States and industry using the criteria above.

Schedule

• The following is the schedule for the program:

8/98 Call for FY 1998–99 projects
12/98 Selection of FY 1998–99 project

• The following schedule will be used for subsequent years for the program:

4/99—02 Call for projects
10/99—02 Selection of projects

[FR Doc. 98–29484 Filed 11–3–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3983; Notice 2]

Mercedes-Benz of North America, Inc., Grant of Application for Decision of Inconsequential Noncompliance

Mercedes-Benz of North America, Inc. (Mercedes-Benz) of Montvale, New Jersey has determined that some 1998 Mercedes-Benz M-class vehicles fail to comply with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire selection and rims for vehicles other than passenger cars,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and noncompliance reports.'' Mercedes-Benz has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on July 13, 1998, in the **Federal Register** (63 FR 37620). NHTSA received no comments on this application during the 30-day comment period.

Mercedes-Benz states that 35,357 vehicles were produced from the beginning of production in January 1997 through April 13, 1998, which do not meet the labeling requirements stated in FMVSS No. 120. Mercedes-Benz equipped the vehicles with tire information labels on the fuel filler door that specify the tire size, rim size, and cold inflation pressure. The information is formatted differently than required by FMVSS No. 120. The size of the letters and numerals is also smaller than the required minimum of 2.4 millimeters. The label should have been affixed to the hinge pillar, the door-latch post, the door edge that meets the latch post, or next to the driver's seating position. If these locations are impractical, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. However, if all of the preceding locations are not practical, the manufacturer can notify NHTSA, in writing, and request approval for an alternate location in the same general location

Mercedes-Benz supported its application for inconsequential noncompliance with the following statements:

1. With regards to the content of the label, all the information required by FMVSS No. 120 is contained in the label including recommended tire size, rim size, and cold inflation pressure.

2. Although the height of the labeling is less than the required minimum of 2.4 mm, the letters in the labels are of sufficient size and color to be easily read.

3. With regards to the labeling format, Mercedes-Benz believes that placing the English units before the metric units is not a noncompliance that affects vehicle safety, because consumers in the U.S. are generally more familiar with English units of measurement than metric units.

4. Regarding the location of the tire information label, Mercedes-Benz believes that consumers interested in checking their tire pressure labels would likely perform this check at gas stations, convenience stores, or auto repair facilities. In some cases, this label's location serves as a reminder to check the tire pressure.

5. Based on the convenient location of the tire information label, the reference information in the owner's manual, and the maximum inflation pressure marked on the tire, Mercedes-Benz believes that the tire information label on the fuel filler door is an inconsequential noncompliance.

The purpose of FMVSS No. 120 is to provide safe operation of vehicles by ensuring that those vehicles are equipped with tires of appropriate size and load rating; and rims of appropriate size and type designation. Paragraph S5.3, Label information, of FMVSS No. 120 states that each vehicle shall show the appropriate tire information (such as: recommended cold inflation pressure) and rim information (such as: size and type designations) in the English language. This information must appear either on the certification label or a tire information label, lettered in block capitals and numerals not less

than 2.4 millimeters high, and in the prescribed format. In addition, FMVSS No. 120 requires that the label be affixed to the hinge pillar, the door-latch post, the door edge that meets the latch post, or next to the driver's seating position. If these locations are impractical, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. However, if all of the preceding locations are not practical, the manufacturer can notify NHTSA, in writing, and request approval for an alternate location in the same general location.

The agency agrees with Mercedes-Benz that the label on these M-class vehicles is likely to achieve the safety purpose of the tire label. First, all the information required by FMVSS No. 120 is correct and contained in the label including recommended tire size, rim size, and cold inflation pressure. Second, per the sample label provided by Mercedes-Benz, the letters can be easily read. Third, a vehicle owner will find the necessary and correct safety information in English units in the owner's manual, and the maximum inflation pressure properly marked on the tire.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, delegations of authority at 49 CFR 1.50 and 501.8).

Issued on October 30, 1998.

James R. Hackney,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 98–29519 Filed 11–3–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4209]

Red River Manufacturing, Inc., Grant of Application for Decision of Inconsequential Noncompliance

Red River Manufacturing, Inc. (Red River) of West Fargo, North Dakota, a manufacturer of trailers, has determined that since March 14, 1996, its tire and rim label information was not in full compliance with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire Selection and Rims for Vehicles Other Than Passenger Cars,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Red River has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on August 12, 1998, in the **Federal Register** (63 FR 43230). NHTSA received no comments on this application during the 30-day comment period.

Paragraph S5.3 of FMVSS No. 120 states that each vehicle shall show the information specified in both metric and English units. The standard also shows an example of the prescribed format.

Since the amendment requiring metric units went into effect on March 14, 1996, Red River manufactured and/or distributed 1,063 trailers that do not meet the requirements stated in the standard. The certification label affixed to Red River's trailers pursuant to 49 CFR Part 567 failed to comply with S5.3 of FMVSS No. 120 because of the omission of metric measurements, and Red River did not separately provide the metric measurements on another label, an alternative allowed by FMVSS No. 120.

Red River supports its application for inconsequential noncompliance with the following statements:

1. ''The label contained the correct English unit information.''
2. ''Red River had been unaware of the metric measurement requirement because Red River interpreted Part 567 as suggesting the use of metric measurements is permissive, not mandatory, and did not understand that FMVSS No. 120 made the use of certain metric measurements mandatory.''
3. ''FMVSS No. 120's metric measurement requirements were not mandated for safety purposes. Rather, in designating the metric system as the preferred system of weights and measures, Congress was concerned chiefly with the contributions that the metric system could make to the international competitiveness of U.S. industries and to the efficiency of governmental operations.''
4. ''The dual labeling requirement is to continue until consumers become familiar with metric measurements.''
5. ''The omission of metric measurements from Red River's FMVSS No. 120 certification label is highly unlikely to have any effect whatsoever on motor vehicle safety, both because the correct English units are used on Red River's labels and because of the small number of trailers involved.''
6. As soon as practicable upon learning of its noncompliance, Red River has converted its labels to metric measurements, in conformity with those requirements.

The purpose of labeling requirements in S5.3, Label information, of FMVSS No. 120 is to provide safe operation of vehicles by ensuring that those vehicles are equipped with tires of appropriate size and load rating; and rims of appropriate size and type designation. Section 5164 of the Omnibus Trade and Competitiveness Act (Pub. L. 100–418) makes it the United States policy that the metric system of measurement is the preferred system of weights and measures for U.S. trade and commerce. On March 14, 1995, NHTSA published in the **Federal Register** (60 FR 13693) the final rule that metric measurements be used in S5.3 of FMVSS No. 120. The effective date for this final rule was March 14, 1996.

Paragraph S5.3 states that each vehicle shall show the appropriate tire information (such as: recommended cold inflation pressure) and rim information (such as: size and type designations) in metric and English units. This information must appear either on the certification label or a tire information label, lettered in block capitals and numerals not less than 2.4 millimeters high, and in the prescribed format.

The agency agrees with Red River that the label on these trailers is likely to achieve the safety purpose of the required label. The vehicle user will have the correct safety information sans the metric conversion in the prescribed location. First, all the correct English unit information required by FMVSS No. 120 is provided on the certification label. Second, the information contained on the label is of the correct size. Third, the information contained on the label is in the prescribed format.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, delegations of authority at 49 CFR 1.50 and 501.8).

Issued on October 30, 1998.

James R. Hackney,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 98–29518 Filed 11–3–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

Federal Deposit Insurance Corporation

Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Treasury; and Federal Deposit Insurance Corporation (FDIC).

ACTION: Submission for OMB review; comment request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the OCC, OTS, and FDIC hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of an information collection titled: Interagency Bank Merger Act Application (BMA). In the case of the OCC, this collection is a part of the Comptroller's Corporate Manual. Also, the OCC is making other clarifying changes to the Comptroller's Corporate Manual. Additionally, the Board of Governors of the Federal Reserve System (Board) is reviewing the collection under its delegated authority from OMB and will publish a separate **Federal Register** Notice. The OCC, OTS, Board, and FDIC (collectively, the Agencies) may not conduct or sponsor, and respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before December 4, 1998.

ADDRESSES: Direct written comments as follows.

OCC: Communications Division, Office of the Comptroller of the Currency, Third Floor, 250 E Street, SW, Washington, DC 20219; Attention: 1557–0014. Comments also may be sent by facsimile transmission to (202)874–5274, or by electronic mail to: regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC 20219, between 9:00 a.m. and 5:00 p.m. on business days. Appointments for inspection of comments can be made by calling (202)874–5043.

OTS: Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention 1550–0016. These submissions may be hand-delivered to 1700 G Street, NW, from 9:00 a.m. to 5:00 p.m. on business days. They may be sent by facsimile transmission to (202)906–7755. Comments over 25 pages in length should be sent to Fax (202)906–6956. Comments will be available for inspection at 1700 G Street, NW, from 9:00 a.m. until 4:00 p.m. on business days.

FDIC: Steven F. Hanft, FDIC Clearance Officer, Office of the Executive Secretary, (202)898–3907, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. [Fax number (202)898–3838; Internet address: COMMENTS@FDIC.GOV].

A copy of the comments may also be submitted to the OMB Desk Officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the submission may be obtained by contacting:

OCC: Jessie Gates, OCC Clearance Officer, (202)874–5090, Legislative and Regulatory Activities Division; or Cheryl Martin, Senior Licensing, Policy, and Systems Analyst, Bank Organization and Structure, (202)874–5060.

OTS: Scott Ciardi, Financial Analyst, Corporate Activities, (202)906–6960, or Frances Augello, Senior Counsel, Business Transactions Division, (202)906–6151. Copies of the forms with instructions are available for inspection at 1700 G Street, NW, from 9 a.m. until 4 p.m. on business days or from PubliFax, OTS' Fax-on-Demand system, at (202)906–5660.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907.

SUPPLEMENTARY INFORMATION: Request to extend for three years with major revision the following currently approved collections of information.

Title: Interagency Bank Merger Act Application.

OCC's Title: Comptroller's Corporate Manual. The specific portions of the Comptroller's Corporate Manual covered by this notice are those that pertain to the Business Combination Application, Director Waivers, certain disclosures, and various portions to which the OCC is making technical clarifying changes.

OMB Number

OCC: 1557–0014
OTS: 1550–0016
FDIC: 3064–0015

Form Number

OCC: None
OTS: 1639 (formerly 1588)
FDIC: 6220/01 and 6220/07

Abstract: This submission covers a revision to make uniform among the Agencies the merger application forms for both affiliated and nonaffiliated institutions. The form name is the Interagency Bank Merger Act Application. The Agencies need the information collected to insure that the proposed transactions are permissible under law and regulation and are consistent with safe and sound banking practices. The Agencies are required, for example, under the Bank Merger Act, to consider financial and managerial resources, future prospects, convenience and needs of the community, community reinvestment, and competition.

Some agencies will collect limited supplemental information in certain cases. For example, the OCC and OTS will collect information regarding Community Reinvestment Act commitments, and all agencies will require additional information on the competitive impact of proposed mergers under separate instructions.

Further, the OCC is correcting its information collection inventory to cover certain disclosures required in the Manual. This is an administrative adjustment, and does not change, in any way, the requirements on national banks. Further, the OCC is making a change to its Director Waiver's booklet of the Comptroller's Corporate Manual, adding information regarding residency waivers and retitling the booklet from Citizenship Waiver to Director Waivers. Finally, the OCC is making technical and clarifying changes to various Manual booklets. These changes are not material. The changes are technical in nature.

Current Actions: A task force of the Federal Financial Institutions Examination Council (FFIEC) has adapted, reformatted, and retitled the collection: Interagency Bank Merger Act Application, pursuant to the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI). Comments were solicited in the **Federal Register** on January 21, 1998 (63 FR 3182). The agencies received five comments on the form. The comments

are summarized in each agency's OMB submission.

Type of Review: Revision of a currently approved collection.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit; individuals or households.

Estimated Number of Respondents

OCC:
BMA, Nonaffiliate—120; Affiliate—260.
Director Waivers, Citizenship: 6; Residency: 14.
OTS:
Nonaffiliate—60; Affiliate—5.
FDIC:
Nonaffiliate—240; Affiliate—290.

Estimated Total Annual Responses

OCC:
BMA, Nonaffiliate—120; Affiliate—260.
Director Waivers, Citizenship: 6; Residency: 14.
OTS:
Nonaffiliate—60; Affiliate—5.
FDIC:
Nonaffiliate—240; Affiliate—290.

Estimated Total Annual Burden Hours

OCC:
BMA, Nonaffiliate—3,320; Affiliate—4,520. Total: 7,840 burden hours.
Director Waivers, Citizenship: 9; Residency: 28.
OTS:
Nonaffiliate—1,800; Affiliate—90. Total: 1,890 burden hours.
FDIC:
Nonaffiliate—7,200; Affiliate—5,220. Total: 12,420 burden hours.

General Description of Report: This information collection is mandatory. 12 U.S.C. 1828(c).

Comments

Comments are invited on: (a) whether the proposed revisions to the following collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility; (b) the accuracy of the Agencies' estimate of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide the required information. Comments submitted in response to this notice are summarized in each Agency's OMB submission. All comments will become a matter of public record.

Dated: August 24, 1998.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated at Washington, D.C., this 17th day of September, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: August 24, 1998.

By the Office of Thrift Supervision.

Catherine C. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–29466 Filed 11–3–98; 8:45 am]

BILLING CODE 4810–33–P (34%); 6714–01–P (33%); 6720–01–P (33%)

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–28: OTS Nos. H–2049 and 06568]

First Capital, Inc., M.H.C., Corydon, Indiana; Approval of Conversion Application

Notice is hereby given that on October 26, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Capital, Inc., M.H.C., Corydon, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: October 30, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–29516 Filed 11–3–98; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 63, No. 213

Wednesday, November 4, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

President's Commission on the Celebration of Women in American History; Meeting

Correction

In notice document 98–28913, appearing on page 58052, in the issue of Thursday, October 29, 1998, in the second column, in the **SUMMARY** section, in the fifth line, ''9 a.m. to 4 p.m. on Monday'' should read ''1 p.m to 4 p.m. on Thursday''.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[SPATS No. IA-002-FOR]

Correction

Iowa Regulatory Program

Proposed rule document 98–27503 was inadvertently published in the Rules and Regulations section of the issue of Wednesday, October 14, 1998, beginning on page 55025. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Agency

[Docket No. 97-30]

Robert D. Iver, D.D.S. Continuation of Registration With Restrictions

Correction

In notice document 98–28175 beginning on page 56220, in the issue of Wednesday, October 21, 1998, make the following corrections:

1. On page 56221, in the first column, in the eighth line ''1998'' should read ''1988''.
2. On page 56221, in the first column, in the first full paragraph, in the ninth line, ''1998'' should read ''1988''.
3. On page 56222, in the second column, in the second full paragraph, in the 16th line, ''1998'' should read ''1988''.

BILLING CODE 1505-01-D

federal register

Wednesday
November 4, 1998

Part II

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Vietnam Era Veterans; Final Rule

41 CFR Part 60–741

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities; Final Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

RIN 1215–AA62

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Vietnam Era Veterans

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). VEVRAA requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. Today's rule generally conforms the VEVRAA regulations to the Office of Federal Contract Compliance Programs' regulations implementing Section 503 of the Rehabilitation Act of 1973, as amended (Section 503). The rule also withdraws portions of a final rule published by the Department of Labor on December 30, 1980 (which was subsequently suspended) concerning VEVRAA, Executive Order 11246, and Section 503. The withdrawal applies only to those provisions of the 1980 rule which pertain to VEVRAA.

DATES: The regulations are effective January 4, 1999. However, affected parties do not have to comply with the new recordkeeping requirements contained in the final rule until the Office of Management and Budget (OMB) completes its review under the Paperwork Reduction Act of 1995 and OFCCP publishes in the **Federal Register** valid OMB control numbers.

FOR FURTHER INFORMATION CONTACT: James I. Melvin, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, N.W., Room C3325, Washington, D.C. 20210. Telephone: (202) 693-0102 (voice), 1–800–326–2577 (TDD). Copies of this final rule, including copies in alternate formats, may be obtained by calling (202) 693–0102 (voice), 1–800–326–2577 (TDD). The alternate formats available are large print, an electronic file on computer disk and audiotape. The rule also is available on the Internet at http://www.dol.gov/dol/esa.

SUPPLEMENTARY INFORMATION:

Recent Legislative Developments

When OFCCP sent this final rule to the **Federal Register** for publication, both houses of Congress had passed S. 1021, the ''Veterans Employment Opportunities Act of 1998,'' but the bill had not yet been signed into law. If the bill becomes law it will require additional changes to the VEVRAA regulations, to increase the coverage threshold from a contract of $10,000 or more to a contract of $25,000 or more, and to add to the class of individuals protected under the law ''veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.'' OFCCP considered delaying publication of this final rule until regulatory provisions addressing the new legislation could be drafted and included in the rule. We rejected that approach, however, because it would unduly delay the implementation of the many important provisions contained in this final rule, without increasing the speed with which the revisions mandated by the new legislation could be published. OFCCP has already begun work on an additional regulatory document that would address the new legislation, and expects to publish that document in the near future.

Current Regulations and Rulemaking History

This final rule revises the current regulations (41 CFR Part 60–250) implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, as amended, 38 U.S.C. 4212 (Section 4212 or VEVRAA). VEVRAA requires parties holding a Government contract or subcontract of $10,000 or more to ''take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era.'' (VEVRAA, which was originally codified at 38 U.S.C. 2012, was redesignated as 38 U.S.C. 4212 by Section 5(a) of the Department of Veterans Affairs Codification Act, Pub. L. 102–83, August 6, 1991; no substantive change to VEVRAA resulted from this legislation.)

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), which has authority to enforce Section 4212, has published regulations implementing the Act at 41 CFR Part 60–250. These regulations, consistent with the statute's mandate, establish various affirmative action obligations for contractors (e.g., contractors are required to use effective practices to recruit special disabled veterans and veterans of the Vietnam era). The regulations require that contractors refrain from discriminating against special disabled veterans and veterans of the Vietnam era in all aspects of employment, inasmuch as this prohibition is an indispensable component of affirmative action. Another central requirement of the current regulations is that contractors make reasonable accommodation to the known physical or mental limitations of a qualified special disabled veteran applicant or employee, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. An accommodation is, for example, any change in the work environment (e.g., the modification or acquisition of equipment) or in the way a job customarily is performed (e.g., changes in work assignments) that enables a qualified special disabled veteran to enjoy equal employment opportunities.

On May 1, 1996, OFCCP published an interim rule revising 41 CFR 60–250.5(d), Invitation to self-identify, and Appendix A to Part 60–250, Sample Invitation to Self-Identify (61 FR 19366). The revision was published to be consistent with an analogous requirement in the Section 503 final rule, also published on May 1, 1996 (61 FR 19336).

On September 24, 1996, OFCCP published a notice of proposed rulemaking (NPRM)(61 FR 50080), proposing to revise the regulations implementing VEVRAA. A correction notice and extension of the comment period was published on October 28, 1996 (61 FR 55613). The comment period ended December 27, 1996. Two comments were submitted in response to the May 1, 1996, interim rule, and another seven comments were submitted in response to the September 24, 1996, NPRM, as corrected. In addition, five organizations expressed views on the proposal in a meeting with OFCCP held during the comment period. The comments represented the views of contractor advocacy organizations, veterans advocacy organizations, an employer, an attorney who advises employers, a state governmental agency, and two Federal agencies. All comments have been analyzed and considered in the development of this final rule.

Regulatory Revisions

Today's final rule is precipitated, in part, by OFCCP's publication of a final rule revising the regulations

implementing Section 503 of the Rehabilitation Act of 1973 (61 FR 19336, May 1, 1996). Section 503 requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. In turn, the revision to the Section 503 regulations was designed, in part, to conform those regulations to regulations published by the Equal Employment Opportunity Commission (EEOC) implementing Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq. See* 29 CFR Part 1630. Title I of the ADA, which is enforced by the EEOC, prohibits private and state and local governmental employers with 15 or more employees from discriminating against qualified individuals with disabilities in all aspects of employment. The ADA regulations establish comprehensive, detailed prohibitions regarding disability discrimination but do not require affirmative action.

OFCCP has modeled its regulations implementing 38 U.S.C. 4212 on those implementing Section 503. This reflects the close similarity between the statutes in terms of their substantive protections and jurisdictional requirements. For instance, Section 4212, like Section 503, protects disabled individuals, albeit a more narrow class of disabled persons—that is, ''special disabled veterans.'' The VEVRAA regulations being revised today were identical to the former Section 503 regulations, except where differences were necessary because of the nature of the protected class or differences in the statutes, to assure that covered contractors were subject to consistent requirements under both laws. In order to retain that consistency and avoid confusion and conflict, OFCCP believes that the Section 4212 regulations should continue to parallel the Section 503 regulations.

Accordingly, OFCCP has revised the Section 4212 regulations to conform them to the Section 503 final rule published in 1996. Thus, today's final rule, similar to the final Section 503 regulations, adopts the standards contained in the regulations implementing the ADA regarding disability discrimination, but applies these standards with respect to special disabled veterans and, to a more limited extent, to veterans of the Vietnam era.

Specific changes are discussed in the Section-by-Section Analysis below.

Partial Withdrawal of 1980 Final Rule

OFCCP also proposed to withdraw portions of a final rule published by the Agency on December 30, 1980 (45 FR 86215; corrected at 46 FR 7332, January 23, 1981), and deferred indefinitely on August 21, 1981 (46 FR 42865). That 1980 rule would have revised the regulations at 41 CFR Chapter 60 implementing Section 4212 as well as two other laws enforced by OFCCP—Executive Order 11246, as amended, and Section 503. Executive Order 11246 requires Government contractors and subcontractors to assure equal employment opportunity without regard to race, color, religion, sex and national origin. As noted above, Section 503 mandates similar requirements with regard to the employment of individuals with disabilities.

The December 30, 1980, rule was to take effect on January 29, 1981. On January 28, 1981, the Department of Labor published a document (46 FR 9084) delaying the effective date of the final rule until April 29, 1981, to allow the Department time to review the regulation fully. The Department published three subsequent deferrals of the rule in 1981 in order to fully review the OFCCP regulations in accordance with Executive Order 12291, to permit consultation with interested groups, and to comply with new intergovernmental review and coordination procedures. The Department again postponed the rule's effective date on August 25, 1981, until action could be taken on a proposed rule published on the same date (46 FR 42968).

The August 25, 1981, proposal would have revised a number of provisions contained in the December 30, 1980, final rule as well as a number of provisions in 41 CFR Chapter 60 which were not amended by that final rule. Final action has not been taken with respect to the proposed regulations issued on August 25, 1981, or, consequently, with respect to the 1980 final rule.

The substance of a number of the provisions contained in the 1980 final rule pertaining to the current Section 4212 regulations has been incorporated into today's final rule. However, OFCCP has determined not to go forward with some of the other revisions to the regulations. For instance, unlike today's final rule (and the current regulations), the 1980 final rule would have consolidated a number of the provisions of the Section 4212 regulations with common provisions implementing Executive Order 11246 and Section 503 into 41 CFR Part 60–1, which currently sets out the general obligations under the Executive Order.

The one comment received on the proposed withdrawal of the 1980 final rule is discussed in the Section-by-Section Analysis below. In order to avoid conflict between today's final rule and the 1980 final rule, OFCCP hereby withdraws all provisions of the 1980 rule that pertain to Section 4212.

Section-by-Section Analysis

This final rule consists of five subparts. Subpart A, ''Preliminary Matters, Equal Opportunity Clause,'' explains the purpose, application and construction of the regulations in general and contains an extensive definitions section. The definitions section incorporates the definitions contained in the Section 503 final rule which are relevant to the enforcement of Section 4212, as well as statutorily required revisions to the definitions of ''special disabled veteran'' and ''veteran of the Vietnam era.'' Subpart A also contains provisions relating to coverage under Section 4212, and coverage exemptions and waivers, as well as the equal opportunity clause, which delineates a covered contractor's general duties under the Act.

Subpart B is a new subpart, which specifies the employment actions that will be deemed to constitute prohibited discrimination under Section 4212. This subpart is substantially identical to the parallel provisions in the Section 503 final rule. Where appropriate, references to special disabled veterans and veterans of the Vietnam era have been substituted for the references in the Section 503 regulations to individuals with disabilities.

Subpart C, which governs the applicability of the written affirmative action program requirement, reorganizes, clarifies and strengthens the affirmative action provisions in the current regulations. These revisions parallel those found in the Section 503 final rule. As stated in § 60–250.40(a), the requirements of Subpart C apply only to Government contractors with 50 or more employees and a contract of $50,000 or more. All other subparts of the regulation are applicable to all contractors covered by Section 4212.

Subpart D covers general enforcement and complaint procedures. In order to help ensure that OFCCP uses consistent enforcement approaches under VEVRAA and Executive Order 11246, this subpart, again paralleling the changes in the Section 503 final rule, incorporates a number of provisions from the regulations implementing the Executive Order. Further, Subpart D's provisions regarding complaint procedures, like the counterpart provisions in the Section 503 final rule, are in part based on the procedural regulations applicable to the ADA. These procedures also are revised to reflect an amendment to Section 4212.

Subpart E, Ancillary Matters, incorporates revised provisions on recordkeeping (e.g., it extends the current one-year record retention period to two years for larger contractors and conforms the scope of the retention obligation to that applied by the EEOC under the ADA and by OFCCP under Section 503), adds a mandatory notice posting requirement, and makes other revisions.

Finally, this rule contains a new appendix which sets out guidance on the duty to provide reasonable accommodation under the Act. The appendix is substantially identical to the counterpart appendix contained in the Section 503 final rule. In turn, that appendix is consistent with the discussion of the issue of reasonable accommodation contained in the Interpretative Guidance on Title I of the Americans with Disabilities Act, which is set out as an appendix to the EEOC's ADA regulations. Accordingly, the EEOC appendix may be relied on for guidance with respect to parallel provisions of this final rule.

This rule uses a long form amending procedure in which all sections of the regulations are republished, including sections for which no changes were proposed and sections for which the only proposed change was the section number. Use of the long form procedure ensures maximum clarity. The discussion which follows identifies the comments received in response to the NPRM, provides OFCCP's responses to those comments, and explains any resulting changes to the proposed revisions.

Subpart A—Preliminary Matters, Equal Opportunity Clause

Section 60–250.1 Purpose, Applicability and Construction

The preamble to the NPRM pointed out that the 1980 final rule would have consolidated provisions (e.g., definitions) which are applicable to both Section 4212 and Executive Order 11246 into 41 CFR Part 60–1, and would have established some common enforcement procedures under all of the laws enforced by OFCCP by making certain procedures (e.g., the show cause notice), which were previously applicable only to the Executive Order, applicable to Section 4212. The VEVRAA NPRM proposed withdrawal of the 1980 final rule, and did not propose similar consolidations because OFCCP now believes that consolidation of provisions in this way is not practical.

One commenter objected to OFCCP's stated inclination not to consolidate common provisions. The commenter felt that OFCCP applies a low priority to veterans' employment rights, and suggested that consolidating common provisions would strengthen enforcement of VEVRAA and place it on a par with enforcement of Executive Order 11246.

OFCCP disagrees with the commenter's assessment that the agency applies low priority to enforcement of VEVRAA. Traditionally, whenever OFCCP has conducted a compliance review it has examined compliance with VEVRAA (and Section 503) as well as compliance with Executive Order 11246. OFCCP also investigates all complaints of discrimination filed under VEVRAA; by contrast, most complaints of discrimination under the Executive Order are not investigated by OFCCP but are referred to the EEOC for processing under Title VII of the Civil Rights Act of 1964.

Further, OFCCP does not agree with the commenter's premise that consolidating provisions would alter enforcement of VEVRAA. The vast majority of the consolidations made in the 1980 rule simply moved various provisions from Parts 60–250 and 60–741 into Part 60–1, without substantive change. The thinking at that time was that the regulations would be easier to use if fundamental elements (such as definitions) appeared in one place at the beginning of Chapter 60. Also, OFCCP hoped to shorten the regulations by reducing instances in which similar material (e.g., provisions on coverage and waivers) was repeated three times in three different Parts of Chapter 60. Upon reexamination in light of the comment, OFCCP concludes that consolidating provisions is not justified or necessary at this time. In OFCCP's view, consolidation would not strengthen enforcement of VEVRAA and could be confusing to readers of the regulations.

Paragraph (c)(2) of the proposal, and of the final rule, provides that the contractor may take an action which would violate Part 60–250, or refrain from taking an action required by that part, where such action or omission is required or necessitated by another Federal law or regulation. OFCCP stated in the preamble to the NPRM, as examples of this principle, that ''contractors would be permitted to comply with requirements relating to the collection, analysis and disclosure of certain medical information which are imposed by the Mine Safety and Health Act (MSHA) and the Occupational Safety and Health Act (OSHA) (**and related state laws** which have been approved by the Occupational Safety and Health Administration).'' (Emphasis added.)

The EEOC commented that they agree that contractors may rely on an OSHA-approved state law that is identical to its Federal counterpart, as a defense. However, they stated that they have not yet taken a position on the use of a conflicting OSHA-approved state safety and health law that is not identical to the Occupational Safety and Health Act, as a defense to a violation of the ADA. We agree that our NPRM preamble statement relating to reliance on a state law may be overly broad. At this time we will not permit a contractor to rely upon a state law which is not identical to the Occupational Safety and Health Act, as a defense to a violation of VEVRAA. Accordingly, we have deleted the parenthetical statement which appeared in the NPRM.

Section 60–250.2 Definitions

Section 60–250.2(h) Contract

OFCCP proposed that ''contract'' be defined to include ''any Government contract **or subcontract**.'' (Emphasis added.) One commenter suggested that it is inappropriate to include subcontracts within the definition of contract, because doing so would impede OFCCP's ability to identify subcontractors and therefore to enforce VEVRAA against subcontractors. OFCCP disagrees. The regulations continue to define the terms ''subcontract'' and ''subcontractor.'' See §§ 250.2(l) and (m). The purpose of including ''subcontract'' within the definition of ''contract'' is simply to eliminate the need to mention subcontracts in the regulatory text each time the regulation seeks to address both contracts and subcontracts. This change will not in any way affect OFCCP's ability to identify subcontractors or to enforce the law against subcontractors.

Section 60–250.2(o) Qualified Special Disabled Veteran

In the proposed rule the definition of qualified special disabled veteran cross-referenced § 60–250.3, which in the proposal contained exceptions to the definition of special disabled veteran and qualified special disabled veteran. As discussed below, we have not included the exceptions in the final rule. Accordingly, we have dropped the cross reference from this definition.

Section 60–250.2(p) Veteran of the Vietnam Era

One commenter pointed out that on October 9, 1996, the Veterans' Benefits Improvement Act of 1996 (Public Law 104–275, Sec. 505) amended VEVRAA by, among others things, changing the

definition of ''Vietnam era.'' Under the revised definition, the Vietnam era now extends from February 28, 1961, through May 7, 1975, for veterans who served in the Republic of Vietnam during that period, and from August 5, 1964, through May 7, 1975, in all other cases.

Revision of the statutory definition requires a corresponding revision of OFCCP's regulatory definition of ''Veteran of the Vietnam era.'' This revision is a nondiscretionary, ministerial action which merely incorporates, without change, the statutory amendment into a pre-existing regulation. Publication in proposed form would serve no useful purpose, and therefore is unnecessary under the Administrative Procedure Act (5 U.S.C. 553(b)(B)). Accordingly, we find good cause to waive notice of proposed rulemaking and to include the revision in this final rule.

Section 60–250.3 Exceptions to the Definitions of ''special disabled veteran'' and ''qualified special disabled veteran''

As proposed, this section would have excluded from the Act's protection of special disabled veterans and qualified special disabled veterans: (a) an alcoholic whose current use of alcohol prevents performance of the essential functions of the employment position in question or which would pose a direct threat to property or to health or safety; and (b) an individual with a currently contagious disease or infection who, by reason of the disease or infection, would constitute a direct threat to the health or safety of the individual or others or who, by reason of the disease or infection, is unable to perform the essential functions of the employment position in question. The two exclusions would have been carried over from the Section 503 rule.

A commenter objected to the proposal's exclusion of certain alcoholics from protection. The commenter was concerned that the provision might encourage stereotyping of disabled veterans.

Upon consideration of the proposed rule in light of the comment, OFCCP has decided to remove from the final rule both proposed exclusions. The exclusions must appear in the Section 503 rules, because Section 503 itself requires them. However, none of Section 503's exclusions from protection have been legislated into VEVRAA. Accordingly, in this final rule we do not adopt the exclusions which are found at 41 CFR 60–741.3 in the Section 503 rule. In order to preserve parallel section numbering between the VEVRAA and Section 503 rules, we have designated § 60–250.3 as ''Reserved.''

Section 60–250.5 Equal Opportunity Clause

Paragraph (a)2 of the proposal required that contractors immediately list their employment openings at an appropriate office of the state employment service system wherein the opening occurs. One commenter suggested that listing job openings with the Department of Labor's America's Job Bank should be deemed to satisfy the job listing requirement. America's Job Bank is a computerized, nationwide listing of job openings. The computerized network links the 1800 state employment service offices. Job seekers may access the Job Bank via the Internet at http://www.ajb.dni.us/, and on computer systems in public libraries, colleges and universities, high schools, shopping malls and other public places.

OFCCP agrees, along with the Veterans' Employment and Training Service, that listing jobs in America's Job Bank will satisfy a contractor's listing obligation. Therefore, we have supplemented paragraph (a)2 of the equal opportunity clause to reflect this additional method for listing jobs.

The same commenter also felt that the regulations ''are unclear as to whether an employer is required to list with a state employment agency positions normally filled through outside temporary employment agencies.'' The commenter apparently disagrees with the interpretation some OFCCP staff have given the corresponding provision of the existing regulation. OFCCP believes that the answer to this question depends upon the facts of each particular situation, and therefore is too detailed to be included in a regulation.

Section 702 of the Veterans' Benefits Improvements Act of 1994, Public Law 103–446, permits the exemption of the contractor's ''executive and top management'' positions from the mandatory job listing requirement. OFCCP proposed a definition of ''executive and top management'' that was based upon the definition of ''executive'' found in the Department of Labor's regulations implementing the Fair Labor Standards Act (FLSA), 29 CFR 541.1. One commenter objected to the proposed definition, claiming that it ''would serve to exempt all but the very lowest positions.''

As proposed, the full definition stated that in order to be considered ''executive and top management,'' and thus exempt from the mandatory listing requirement, a job must satisfy five factors: (a) the incumbent employee's primary duty must consist of the management of the enterprise or of a customarily recognized department or subdivision of the enterprise; (b) the employee must customarily and regularly direct the work of two or more other employees; (c) the employee must have the authority to hire or fire other employees, or his or her suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or other change of status will be given particular weight; (d) the employee must customarily and regularly exercise discretionary powers; and (e) with certain limited exceptions, the employee must not devote more than 20 percent (40 percent in retail and service establishments) of his or her hours of work to activities which are not closely related to the work described in (a) through (d).

The commenter took a portion of the test out of context, citing only one clause from factor (c) relating to the employee's authority to make recommendations and suggestions about personnel actions. In fact, the standard is quite stringent in that all five factors must be satisfied. Thus, for example, in a case under the FLSA, Assistant Managers in a fast-food restaurant were determined not to be executives because, despite many management responsibilities, they spent more than 40 percent of their time on production duties. *Donovan* v. *Burger King*, 675 F.2d 516 (2nd Cir., 1982). Similarly, a Warehouse Manager for a retail shoe chain was found to fall outside the ''executive'' exemption of the FLSA because he did not regularly exercise discretionary powers, and because the employer was unable to demonstrate that the Manager did not devote more than 20 percent of his working hours to activities not related to the performance of the work described in factors (a) through (d). *Wirtz* v. *C&P Shoe Corp.*, 336 F.2d (5th Cir., 1964). Accordingly, OFCCP has decided to adopt the definition of ''executive and top management'' as proposed.

Throughout the equal opportunity clause, and elsewhere in the regulation, we have used the term ''local employment service office'' to refer to the office with which jobs must be listed. This is the same term used in the statute. A proposed definition of the term ''appropriate local office of the state employment service system'' has been dropped as unnecessary, and the remaining definitions in section 6 of the equal opportunity clause have been renumbered accordingly.

Subpart C—Affirmative Action Program

Section 60–250.40 Applicability of the Affirmative Action Program Requirement

One commenter objected to the proposed standard (which is also the standard under the current rule) that the written affirmative action program requirement applies only to contractors with 50 or more employees and a contract of $50,000 or more. The commenter felt that this was at odds with the statutory requirement that ''[a]ny contract in the amount of $10,000 or more'' contain a provision requiring that the contractor take affirmative action to employ and advance in employment qualified special disabled and Vietnam era veterans.

OFCCP does not agree that the two provisions are at odds. All nonexempt contractors, that is, all contractors with a contract of $10,000 or more, are subject to the basic nondiscrimination and affirmative action requirements of VEVRAA. These requirements include the duty to list job vacancies with a local employment service office. In addition, those contractors who meet the stated 50 employee/$50,000 contract threshold must prepare a **written affirmative action program.** The written AAP contains additional affirmative action obligations for larger contractors with larger contracts, such as undertaking specified outreach and positive recruitment activities. See, for example, § 60–250.44(f). Accordingly, the rule is adopted as proposed.

Section 60–250.42 Invitation to Self-identify

On May 1, 1996, OFCCP published an interim rule amending § 60–250.5(d) of the then-current regulations relating to invitations to self-identify. The interim rule was intended to conform the invitation to self-identify requirement under VEVRAA with the requirement contained in the Section 503 final rule. The rule was published in response to concerns raised by representatives of Government contractors that if contractors were faced with a self-identification requirement under VEVRAA that was different than the requirement under Section 503, each contractor would have to revise its forms, notices and posters when the Section 503 final regulations took effect, and then change those same forms, notices and posters again when OFCCP promulgated its revisions to the VEVRAA regulations.

The NPRM published on September 24, 1996, mirrored the VEVRAA interim rule and the Section 503 final rule. It required the contractor, after making an offer of employment and before the applicant began his or her employment duties, to invite applicants to identify themselves as special disabled or Vietnam era veterans in order to benefit from the contractor's affirmative action program. As an exception to the general requirement that the invitation be extended after an offer of employment, the proposal permitted a pre-offer invitation in two limited circumstances: if the invitation was made when the contractor actually was undertaking affirmative action at the pre-offer stage; or if the invitation was made pursuant to a Federal, state or local law requiring affirmative action for special disabled or Vietnam era veterans. This approach was intended to be consistent with § 1630.14(b) of the EEOC's regulations, and the EEOC's October 10, 1995, ''ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations.''

The proposal also required that the contractor maintain a separate file on applicants and employees who identified themselves as covered disabled veterans or Vietnam era veterans, and provide that file to OFCCP upon request. Finally, the proposal provided that if an applicant identified himself or herself as a special disabled or Vietnam era veteran, the contractor should seek the advice of the applicant regarding proper placement and appropriate accommodation, after a job offer had been extended.

Two comments were submitted in response to the May 1, 1996, interim rule. One of the interim rule commenters also commented on the NPRM, and two additional comments were submitted in response to the NPRM. Finally, five organizations expressed views on the proposal in a meeting with OFCCP held during the comment period.

The five organizations felt that the proposed limitations on pre-offer invitations to Vietnam era veterans were unduly restrictive. They asserted that in most instances a contractor would be aware of an applicant's veteran status at the pre-offer stage, because the applicant would include this information in his or her employment history, or because of priority referral from the job listing program. The organizations advocated that, with respect to Vietnam era veterans, the invitation to self identify should be mandatory at the pre-offer stage so that contractors could take affirmative action specific to Vietnam era veterans in the employment process. Upon consideration, we agree that limiting the invitation to Vietnam era veterans to the post-offer stage is unduly restrictive. The disability discrimination concerns embodied in the ADA (which justify restrictions on the timing of invitations extended to special disabled veterans) do not apply to Vietnam era veterans.

On the other hand, we are reluctant to **require** that the invitation be extended pre-offer, because to do so would **mandate** that contractors extend invitations at two different times—a pre-offer invitation to Vietnam era veterans and a post-offer invitation to special disabled veterans. This would potentially be confusing and seemingly over-technical, particularly for smaller employers.

Accordingly, the final rule contains separate invitation to self-identify provisions for special disabled veterans and for Vietnam era veterans. Paragraph (a) covers the invitation that is to be extended to special disabled veterans. It requires, with two limited exceptions, that the invitation be extended after a job offer has been made and before the individual begins his or her employment duties. The exceptions are that the invitation may be extended pre-offer when: the invitation is made when the contractor actually is undertaking affirmative action for special disabled veterans at the pre-offer stage; or the invitation is made pursuant to a Federal, state or local law requiring affirmative action for special disabled veterans. In this context, the reference to Federal law means a law other than one enforced by OFCCP (i.e., Section 503 and VEVRAA). Following are examples which illustrate the application of each exception:

Special disabled veteran example: A contractor establishes a job training program to train disabled veterans for high paying technical jobs like those at the contractor's establishment. The initial phase of the training program is a six-month classroom component. The contractor pays all costs for the classroom training, and pays the participants the minimum wage during this period. After completion of classroom training, all trainees participate in a six-month work-study phase of the program. During the work-study phase, participants are regarded as temporary trainee-employees of the contractor. The contractor hires graduates of the program as permanent employees, if openings exist when the training is complete. Program participants whom the contractor is unable to hire have acquired education and job experience that will assist them in obtaining skilled employment as technicians elsewhere.

The contractor's initial decision to accept an individual into the program is also a decision to employ that person as

a temporary employee during the classroom and work-study phases of the program. Under the general rule stated at § 60–250.42(a), the contractor could not ask program applicants to disclose whether they are disabled veterans because the question would be a pre-offer disability-related inquiry. However, the contractor's program is a voluntary affirmative action program that satisfies the exception at § 60–250.42(a)(1). The contractor's program is a specific and fully implemented affirmative action effort, which is not required by any Federal, state or local law. The affirmative action program requires the identification of disabled veterans prior to extending an offer to participate in the program, because the information is necessary for determining whether the applicant is eligible to participate in the program.

Federal, state or local law example: A state statute requires that state government jobs be filled in the following fashion. Applicants who meet basic eligibility requirements take a competitive examination. The names of applicants who pass the examination are placed on a list of eligible applicants in the following order: (1) disabled veterans; (2) veterans; (3) widows of veterans who were killed in action; (4) all others in order of their test scores. When job openings occur the selecting official is provided the names of the top five applicants from the list to interview for employment. All five applicants are interviewed before a job offer is extended.

The state statute expressly requires affirmative action in the form of according top priority to disabled veterans for placement on a list of eligibles. In order to implement the priority accorded disabled veterans, state officials must be able to determine whether an applicant is a disabled veteran prior to extending a job offer. The state's program fits within the exception at § 60–250.42(a)(2). Therefore, it is not a violation of VEVRAA (or of Section 503 or the ADA) for state hiring officials to invite applicants to self-identify as a special disabled veteran prior to extending an offer of employment.

Paragraph (b) covers invitations to veterans of the Vietnam era. It specifies that the invitation may be made at any time before the applicant begins his or her employment.

This approach necessitated some modification of Appendix B, which contains a sample invitation to self-identify. We have amended the Appendix to make it adaptable to situations in which a contractor extends an invitation to Vietnam era veterans separately from its invitation to special disabled veterans, as well as when the contractor extends a single invitation to both categories of veterans.

One comment on the interim rule expressed concerns about the separate file requirement contained in subsection (d)(4). The commenter, an agency of a state government, felt that the requirement that contractors maintain a separate file on persons who have self-identified and provide the file to OFCCP upon request, ''creates an undue burden on covered contractors, without any appreciable benefit to the class Sec. 60–250 was intended to protect.'' OFCCP disagrees that the requirement to maintain separate files results in an increased recordkeeping burden for contractors. As explained in the preamble to the interim rule:

> OFCCP believes that a number of contractors may already have maintained separate files on such applicants and employees in order to implement the VEVRAA confidentiality requirements. In addition, the ADA presently requires employers with 15 or more employees to maintain on separate forms and in separate medical files information obtained regarding the medical condition or history of applicants and to treat this information as confidential medical records (42 U.S.C. 12112(d)(3)(B); 29 CFR 1630.14(b)(1)). Furthermore, because the invitation to self-identify is only required by the interim rule to occur after a job offer has been made, and not to all applicants, there will be fewer records of self-identification being generated than in the past.

Moreover, because the ADA requires that information regarding the medical condition or history of applicants be kept in separate files, OFCCP cannot impose a different standard with regard to disabled veterans under VEVRAA.

The second commenter on the interim rule addressed the portion of proposed subsection (d)(4) that provided that if an applicant identifies himself or herself as an individual with a disability, the contractor should seek the advice of the applicant regarding proper placement and appropriate accommodation, after a job offer has been extended. The commenter asserted that if an applicant self-identified at the pre-offer stage, the contractor apparently cannot discuss accommodation at that stage unless the applicant first raises the issue. The commenter then opined that this imposed an additional burden as well as a more stringent restriction on Federal contractors under VEVRAA than the EEOC imposes under the ADA. Specifically, the commenter asserted that the EEOC's enforcement guidance permits an employer to ask an applicant questions regarding possible reasonable accommodations: (1) If the employer believes the applicant will need accommodation because of an obvious disability; (2) if the employer believes the applicant will need accommodation because of a hidden disability that the applicant has voluntarily disclosed; or (3) if the applicant has voluntarily disclosed to the employer that he or she needs accommodation. In the commenter's view OFCCP's interim rule permitted pre-offer discussion of accommodations only in the third instance mentioned above.

We disagree with the commenter's interpretation of the rule. The rule recommends that contractors make certain inquiries after tendering an offer of employment, but the rule does not **prohibit** inquiries before a job offer when the contractor becomes aware of the need for accommodation at the pre-offer stage. OFCCP intends that its regulations under Section 503 and VEVRAA be interpreted in a manner which is consistent with the EEOC's interpretations of the ADA. Accordingly, pre-offer discussion of accommodations would be permissible under VEVRAA in the same circumstances as those in which it would be permissible under the ADA.

The same commenter also submitted comments in response to the NPRM. Those comments requested that OFCCP provide ''clear guidance'' as to what is meant by ''actually taking affirmative action at the pre-offer stage.'' Consistent with interpretations made by the EEOC under the ADA, ''actually taking affirmative action at the pre-offer stage'' refers to an employer voluntarily using the information obtained in response to an invitation to self-identify, to benefit special disabled veterans. If an employer wishes to invoke this exception, it must provide affirmative action at the pre-offer stage that necessitates the identification of special disabled veterans. The example provided earlier in this discussion should help to illustrate the point.

The commenter also requested ''clear guidance'' as to what is meant by ''before the applicant begins his or her job [employment] duties.'' By this we mean that the invitation to self identify must be made before the applicant is placed on the contractor's payroll.

Another commenter pointed out that, as proposed, the rule would require contractors to discuss reasonable accommodation with all who self identify as either special disabled veterans or veterans of the Vietnam era. The commenter asserted, ''by encompassing Vietnam-era veterans, this provision presupposes that all Vietnam-era veterans are likely to require some form of accommodation to

be employable.'' The point is well taken. Reasonable accommodation is relevant in the context of special disabled veterans, but generally not in the context of Vietnam era veterans. We have modified the rule accordingly, and have made corresponding modifications to the sample invitation to self-identify found at Appendix B.

The same commenter also was concerned that self-identification, coupled with the provision that permits an employer to ask an applicant to demonstrate how the applicant will be able to perform job-related functions, could result in an employer ''withdraw[ing] the job offer on the pretense that the veteran couldn't perform some aspect of the job when asked to ''demonstrate.''' The commenter than asked, ''[w]ho couldn't be deemed to fail some task they'd never done before?'

As proposed, the literal wording of the rule was ambiguous as to whether a contractor would be permitted to require a demonstration from both Vietnam era and special disabled veterans, or only from the latter. The context of the proposal, specifically the reference to inquiries that are consistent with the ADA, makes clear, however, that our intent was to apply this standard with respect to special disabled veterans only. We have revised the rule to clarify the point.

Turning more directly to the commenter's concern, the concept of requiring an applicant with a known disability to demonstrate his or her ability to perform the job is drawn directly from the ADA, and OFCCP intends to apply it consistent with its application under the ADA. The EEOC Guidance on this subject explains that an employer may require a disabled applicant to demonstrate how he or she will perform the job only when: (1) the employer could reasonably believe that the applicant would not be able to perform a job function due to a known disability; or (2) all applicants in the job category (i.e., including those who are not disabled) are asked to demonstrate how they would perform the job. Thus, an employer need not hire someone who, even with accommodation, cannot perform the essential functions of the job. On the other hand, an employer may not use the demonstration requirement to discriminatorily deny an individual employment simply because that individual is disabled.

Another commenter was concerned that the proposed restrictions on pre-offer self-identification could preclude contractors from asking questions about military service on employment applications or in employment interviews. As the commenter pointed out, a normal employment application asks about military service and the reason for leaving or the type of discharge, and military service also is a common topic in employment interviews. However, such questions may elicit information that identifies an applicant as a special disabled or a Vietnam era veteran. The commenter asserted restricting such inquiries would require radical revision in the application process among United States employers.

The ADA prohibits employers from asking about the existence, nature, or severity of a disability at the pre-offer stage. The EEOC's October 10, 1995, Enforcement Guidance on Preemployment Disability-Related Inquiries and Medical Examinations defines such an inquiry as one that is **likely** to elicit information about a disability. On the other hand, according to the EEOC Guidance, if there are many possible answers to a question and only some of those answers would contain disability-related information, the question is not disability-related. It is our intent that the VEVRAA rule be applied consistent with this standard. Under this interpretation, it would be permissible for an employer to inquire about an applicant's military service, including the reason for leaving or the type of discharge. This is because the large majority of those discharged from the military are discharged for reasons other than medical, and even among those discharged for medical reasons not all would qualify as special disabled veterans under VEVRAA or as individuals with disabilities under the ADA and Section 503. If the applicant's response indicated a discharge for medical reasons, the employer would not be permitted to ask follow-up questions relating to the nature or extent of the medical condition. However, if the response caused the employer to reasonably believe that the applicant may need an accommodation, the employer may inquire about that need.

The same commenter also expressed concern that a contractor electing to invite individuals to self-identify at the pre-offer stage might violate the ADA, which generally prohibits pre-offer inquiries as to whether an individual has a disability. The commenter sought further guidance on this issue.

As we have stated above, our intent is that this rule be applied consistently with the ADA. The limited instances of pre-offer self-identification permitted by the regulation should not result in violation of the ADA. The ADA expressly does not preempt other Federal, state or local laws that provide greater or equal protection for the rights of individuals with disabilities than are provided in the ADA. 42 USC 12201(b). Therefore, the provision permitting pre-offer invitations to self-identify directed to special disabled veterans, when required by a Federal, state or local law requiring affirmative action, would not violate the ADA. Similarly, a contractor actually undertaking affirmative action for special disabled veterans pursuant to VEVRAA at the pre-offer stage would not violate this provision of the ADA.

Finally, staff from the Department's Office of the Assistant Secretary of Labor for Veterans' Employment and Training (OASVET) have asked that we clarify one additional point. The restrictions on the timing of the invitation to self-identify that appear in the regulation, are completely unrelated to pre-application recruitment activities. Accordingly, it would not violate VEVRAA, Section 503 or the ADA, for an employer to advertise that it encourages applicants who are special disabled or Vietnam era veterans, or to otherwise direct its recruitment efforts at members of those two groups.

Section 60–250.44 Required Contents of Affirmative Action Programs

The regulations being replaced today, at § 60–250.6(b), specify that ''[c]ontractors shall review their personnel processes to determine whether their present procedures assure careful, thorough and systematic consideration of the job qualifications' of special disabled and Vietnam era veterans. Section 60-250.44(b) of the NPRM stated the obligation as follows: ''[t]he contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications'' of special disabled and Vietnam era veterans. One commenter felt that the duty to ''ensure'' as stated in the NPRM required a ''different mandate'' than the duty to ''review'' as stated in the rule that was current at that time. We disagree. When read in full context, the regulation being replaced today requires that contractors do more than simply examine their processes. If affirmative action is to have any meaning, it surely requires that contractors take steps to reform those processes that, upon review, are found not to meet the stated standard of assuring careful, thorough and systematic consideration.

Two commenters addressed the obligation in proposed § 60-250.44(d), that contractors inquire whether an employee with a known disability who is having difficulty performing a job is in need of accommodation. One commenter characterized the obligation

as: (1) conflicting with the EEOC's guidance under the ADA which ''gives the employee primary responsibility for requesting an accommodation''; (2) conflicting with the spirit of the ADA which ''empowers individuals with disabilities to choose to—or choose not to—ask for help''; and (3) ''paternalistic,'' ''potentially insulting and embarrassing to the individual,'' and liable to ''be perceived by special disabled veterans as prejudicial, because the employer has distinguished employees with disabilities from employees who do not'' have disabilities.

The other commenter read the provision as potentially requiring identification of special disabled veterans prior to the job offer, accommodation in the application process, and post-offer disability-related questions directed to only some entering employees, all of which the commenter thought were problematic under the ADA.

We do not share the commenters' views on this issue. Affirmative action, of which this provision is an example, is unique to VEVRAA and Section 503, and includes actions above and beyond those required as a matter of nondiscrimination. Also, by specifying ''employee,'' the provision does not conflict with the ADA restrictions relating to pre-offer, and post-offer but pre-employment, inquiries. Moreover, the rule does not undermine the concept of individuals with disabilities being able to choose not to ask for help. That is, the rule requires that the employer make inquiry, but it does not require a particular response from the employee. Additionally, contrary to this type of employer inquiry being prohibited by the ADA, it is permitted by the EEOC's interpretive materials. See 29 CFR Part 1630, Appendix, Section 1630.9.

Finally, we are sensitive to the concern that employers not be required to take actions which might be offensive to their employees with disabilities. However, we disagree with the commenter that the provision in question here crosses that line. It is instructive to note that OFCCP did not receive a single objection to this provision from a commenter that might be characterized as a veteran or an individual with disabilities, nor from a group representing veterans or individuals with disabilities. Similarly, OFCCP did not receive a single objection from any of these categories of commenters when it proposed the corresponding provision in its Section 503 NPRM. See 57 FR 48084 (October 21, 1992), corrected at 57 FR 49160 (October 30, 1992).

OFCCP has made one minor alteration to the text of § 60-250.44(d) for clarification. Language has been inserted to specify that the obligation to provide reasonable accommodation is an element of nondiscrimination, whereas the obligation to notify the employee of a performance problem and inquire whether the problem is related to disability is an element of affirmative action.

One commenter objected to the requirement in proposed § 60-250.44(e) that contractors ''develop and implement procedures to ensure'' that employees are not harassed because of their status as special disabled and Vietnam era veterans. The commenter felt that the requirement was unnecessary and impractical, adding that it is almost impossible for an employer to guarantee that an employee will not act inappropriately. But that is not what the regulation requires. The rule simply requires that contractors develop and implement procedures that are designed to ensure that disabled and Vietnam era veteran employees will not be harassed.

Proposed § 60–250.44(f) required that contractors undertake appropriate outreach and recruitment activities, and enumerated eight suggested activities. The proposed section's introductory provision stated that the scope of the contractor's efforts ''shall depend upon all the circumstances,'' and that ''[i]t is not contemplated that the contractor will necessarily undertake all the activities listed . . . or that its activities will be limited to those listed.''

One commenter objected to proposed subsection (f)(8), which would have provided that contractors, in making hiring decisions, should consider special disabled and Vietnam era veterans for all available positions for which they may be qualified, when the position(s) applied for is unavailable. The commenter felt that ''the requirement'' is onerous, in that it would require contractors to set up two application processes—one for covered veterans and one for all other applicants—and it would force contractors to review applicants' files numerous times in an effort to consider applicants for other jobs. Paragraph (f)(8) does not establish a ''requirement.'' As is outlined above it is a suggested measure, which contractors may take, or not take, as appropriate under the circumstances. Accordingly, we do not share the commenter's concerns about the provision.

Section 60–250.44(j) of the proposal would have required that all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes be trained to ensure that the commitments in the contractor's affirmative action program are implemented. One commenter objected to the provision, declaring that ''[t]he proposed mandatory training requirement suggests that OFCCP desires training above and beyond'' the current requirement. The commenter described the requirement in effect at that time as ''employees of federal contractors are instructed on the requirements of VEVRAA.'' However, the wording of proposed § 60–250.44(j) is virtually identical to the wording of § 60–250.6(i)(3) in the regulations being replaced today. Accordingly, no substantial change was intended and the rule is adopted as proposed.

Subpart D—General Enforcement and Complaint Procedures

Section 60–250.60 Compliance Evaluations

As proposed, paragraph (a) of this section would have clarified existing regulatory authority for OFCCP to conduct compliance reviews with regard to contractors' implementation of their affirmative action obligations, and would have provided that the review consist of ''a comprehensive analysis and evaluation'' of all relevant practices. The proposal was intended to make the VEVRAA provision consistent with the corresponding provision in the Section 503 regulations. One commenter noted that the proposal did not track a proposed revision to the regulations implementing Executive Order 11246, under which OFCCP proposed to supplement the ''comprehensive analysis'' approach with a variety of alternative means of assessing a contractor's compliance status. See proposed § 60–1.20(a) at 61 FR 25516, 25523 (May 21, 1996). The commenter recommended that ''[t]he proposed § 60-250.60 * * * be modified to clarify that OFCCP is not required to conduct a full, on-site compliance review of any contractor it selects for review.''

Since the publication of the VEVRAA proposal, OFCCP has promulgated a final version of its Executive Order 11246 ''compliance evaluation'' procedure. See 41 CFR 60–1.20(a) at 62 FR 44174, 44189 (August 19, 1997). As recommended by the commenter, OFCCP has decided to adopt the compliance evaluation approach for VEVRAA as well, in lieu of the proposed ''comprehensive analysis'' compliance review approach. (Corresponding wording changes have been made, as appropriate, throughout the regulations.) The new VEVRAA

regulatory text is virtually identical to the text of the Executive Order regulation, except for changes necessary to reflect differences between the two laws and their implementing regulations. This approach will improve the efficiency of OFCCP and permit the agency to target resources better. It will also further procedural consistency among the laws enforced by OFCCP.

The same commenter also recommended that the regulations be changed ''to insure that OFCCP may not arbitrarily demand that a federal contractor produce anything the agency wants, at any time it wants, at any location it wants.'' The commenter asserted that many contractors have faced ''seemingly endless requests for information under current regulations,'' and that ''[c]ontractors now have no recourse when confronted with endless requests for information.'' The commenter also asserted that OFCCP should establish in the regulation a definite time period within which the compliance evaluation should be completed. Such a time limit, the commenter argued, would help both OFCCP and the contractor to focus their efforts on supplying and reviewing definite records, and reduce piecemeal requests.

OFCCP does not agree that the regulations should contain additional assurances of the type requested. Under the proposed rule access is limited to records that may be relevant to the matter under investigation and pertinent to compliance with VEVRAA. Moreover, the suggestion that OFCCP should be limited to one or a small number of data requests ignores the reality of conducting a law enforcement investigation. The initial data request often is intentionally restricted in scope, to minimize the burden on the responding party. However, if the materials provided in response to the initial request indicate potential problem areas, it is perfectly reasonable and appropriate for the agency to follow up with supplementary requests. Several rounds of supplementary requests may be necessary before the agency can definitively conclude that a violation did, or did not, occur. Contractors may expect that the currently prescribed time frames for completing compliance evaluations and reviews will continue. However, in OFCCP's view such time frames are more appropriately included in a compliance manual than in implementing regulations.

In addition, we have revised subsection (c) to reflect the terms of a Memorandum of Understanding entered into on May 29, 1997, between OFCCP and OASVET. The proposal provided that during a compliance review OFCCP would verify whether the contractor has filed its annual Veterans' Employment Report (VETS–100 Report) with OASVET and that OFCCP would notify OASVET if the contractor has not filed. We have added to the regulation a provision under which, if the contractor has not filed its report, OFCCP will request a copy from the contractor. If the contractor fails to provide a copy of the report to OFCCP, OFCCP will notify OASVET.

Section 60–250.61 Complaint procedures

Two commenters opposed our proposal under § 60–250.61(a) that the time for filing a complaint with OFCCP be expanded from 180 to 300 days after the alleged violation. Both felt that the current 180-day rule is more in keeping with the standard under Title VII and the ADA, both of which require filing within 180 days in non-deferral jurisdictions and 300 days in deferral jurisdictions. Additionally, one of the commenters argued that the 300-day filing period in deferral jurisdictions was developed for the convenience of the states, not the Federal enforcement agencies.

OFCCP recently considered this question in detail in conjunction with the preparation of the Section 503 final rule. In that rule we adopted a 300-day standard, based upon a desire to establish a uniform national standard that would be at least as long as the complaint filing period under the ADA. We elected not to adopt the split 180/300-day limit applied under the ADA because we are not statutorily bound to do so (as is the EEOC under Title VII and the ADA), and because the lack of a frequently updated and readily available list of deferral jurisdictions could make it difficult for complainants and contractors to know whether the 180 or the 300-day limit applies in any particular case. In line with OFCCP's approach of applying consistent procedures under Section 503 and VEVRAA wherever possible, we hereby adopt the proposed rule's standard that complaints must be filed within 300 days.

Section 60–250.61(b)(2) Contents of Complaints—Third Party Complaints

One commenter objected to this paragraph of the proposal, which provided in part that a complaint filed by an authorized representative need not identify by name the person on whose behalf the complaint was filed. The purpose of this provision is to help prevent retaliation against persons seeking to exercise their rights under VEVRAA. The commenter asserted that in some cases contractors would have difficulty responding to the allegations of a complaint without knowing the identity of the person on whose behalf it is filed.

In many cases it will not be necessary to disclose the individual's identity to enable the contractor to respond effectively. For example, as the commenter acknowledged, where the complaint alleges a broad contractor policy or practice, the contractor will be able to respond fully without knowing the name(s) of the person(s) on whose behalf the complaint was filed. However, we agree that where the complaint involves a practice with limited applicability or an isolated act of discrimination, it may not be possible to protect the individual's confidentiality. Therefore, the rule reflects that confidentiality will be protected where possible, given the facts and circumstances in the complaint.

Section 60–250.66 Sanctions and Penalties

Section 60–250.66(c) Debarment

The proposed paragraph would have authorized OFCCP to impose fixed-term debarments. One commenter objected to the fixed-term debarment concept. The commenter was concerned that fixed-term debarment is too harsh a measure, especially if it is used in response to what the commenter termed ''paper'' violations, which the commenter characterized as violations of recordkeeping or affirmative action requirements which do not involve discrimination. OFCCP does not view fixed-term debarments as too harsh a measure, and OFCCP does not intend to seek a fixed term debarment for minor, technical violations of the law. Explicit regulatory authority to impose debarment for a minimum fixed-term is necessary to ensure the continued future compliance of some contractors.

OFCCP believes the fixed-term debarment sanction will be particularly effective in encouraging compliance among the recalcitrant contractors who repeatedly break their promises of future compliance with respect to affirmative action and recordkeeping requirements. OFCCP views affirmative action and recordkeeping requirements as fundamental to VEVRAA compliance. These requirements provide the foundation for the contractor's affirmative action efforts and provide the basis for monitoring the contractor's compliance by both the contractor and OFCCP.

The regulation being replaced today (at § 60–250.50) requires a showing that a debarred contractor will carry out employment policies and practices in compliance with VEVRAA and its regulations as one of the conditions of reinstatement. OFCCP traditionally has accepted a contractor's promise of future compliance as sufficient to meet this requirement. Unfortunately, OFCCP has found that, for some contractors, a promise is not enough. The sanction of debarment for a fixed-term of not less than six months but no more than three years establishes a minimum trial period during which a contractor can demonstrate its commitment and ability to establish personnel practices that will ensure continuing compliance with the contractor's VEVRAA obligations. See, e.g., *OFCCP* v. *Disposable Safety Wear*, 92–OFC–11 (Decision and Final Administrative Order of the Secretary of Labor, September 29, 1992). The express recognition of fixed-term debarment in the regulations is designed to put contractors on notice that an empty promise of future compliance will not be a sufficient premise for continued contracting with the Federal Government. Express regulatory recognition of the sanction of fixed-term debarment will strengthen the VEVRAA enforcement scheme by deterring contractors from engaging in violations ''based on a cold weighing of the costs and benefits of noncompliance.'' *Janik Paving & Construction* v. *Brock*, 828 F.2d 84 (2d Cir. 1987). Accordingly, OFCCP has determined to retain in this final rule the authority to impose fixed-term debarments.

Subpart E—Ancillary Matters

Section 60–250.80 Recordkeeping

Under the regulation being replaced today (§ 60–250.52(a)), contractors are required to maintain for one year records relating to complaints and actions taken by the contractor in connection with such complaints. Paragraph (a) of proposed § 60–250.81 would have revised this obligation in two ways. First, it would have made the record retention obligation applicable to any personnel or employment record made or kept by the contractor, and set out a listing of examples of the types of records that must be retained. Second, it would have extended the required record retention period from one to two years for larger contractors. In this context, larger contractors are those that have 150 or more employees and a Government contract of $150,000 or more. When a contractor has been notified that a complaint has been filed, a compliance evaluation has been initiated or an enforcement action has been commenced, the contractor would be required to preserve all relevant personnel records until the final disposition of the action. Three comments were received on proposed paragraph (a).

Two commenters criticized the two-year record retention period proposed for larger contractors. The commenters questioned why OFCCP should need to review two years' worth of records, when complaints must be filed within 300 days and when a one-year retention period applies under the ADA and Title VII. As one commenter put it, ''[t]he responsibility and authority of OFCCP to investigate complaints under VEVRAA is no greater or more encompassing than EEOC's responsibility to investigate complaints under the ADA. Similarly, the data needed by OFCCP to accomplish this purpose is no greater than that of the EEOC.'' One of the commenters also said that OFCCP had ''significantly underestimate[d]'' the administrative and storage costs associated with maintaining an additional year of records.

These comments incorrectly minimize the differences in the enforcement schemes of EEOC and OFCCP. EEOC's enforcement of Title VII and the ADA is triggered exclusively by charges, which must be filed within 180 days (or, in deferral jurisdictions, 300 days) of an alleged violation. EEOC's one-year retention period is designed to ensure that relevant records are not discarded before the expiration of the complaint filing period. In contrast, OFCCP's evaluations of contractors' compliance with VEVRAA cover a two-year period. The agency's policy and practice are to examine the contractor's personnel policies and activities for the two years preceding the initiation of the evaluation, and to assess liability for discriminatory practices dating back two years. The two-year record retention period provides greater assurance that relevant records will be available to OFCCP during its compliance evaluations.

The commenter who asserted that OFCCP has underestimated the burdens on contractors provided no data or other support for its assertion. OFCCP continues to believe, as stated in the preamble to the NPRM, that the recordkeeping provisions of this proposed rule are consistent with those contained in the Section 503 final rule and therefore do not result in recordkeeping burdens beyond those under the Section 503 rule.

One commenter raised questions regarding the record retention obligations of contractors who are at or near the thresholds that trigger the different retention periods. Specifically, the commenter asked what would happen if the employment levels or contract values change so that they exceed or fall below the 150 employees/$150,000 thresholds during the course of the contract. A change in status relating to either threshold would affect the record retention obligation. If the number of employees should fall below 150 or if the contractor no longer has a contract of at least $150,000, the contractor would not be required to retain employment records for two years. The requirement to keep records for two years would become effective again on the date that the contractor met the thresholds of 150 employees and a contract of $150,000. The record retention requirement, however, would not be applied retroactively, *i.e.*, the change from one year to two years would be phased in day-by-day. See the discussion later in this section of the preamble regarding the obligation to maintain records once a compliance evaluation has commenced.

One commenter contended that the proposed regulatory language was inadequate because it failed to answer contractors' recurrent questions regarding what records must be kept. The commenter urged that the regulations should include guidance on: (1) who is an ''applicant'' for the purposes of the record retention requirement; and (2) whether and to what extent the record retention requirement applied when a contractor used electronic bulletin boards and the Internet as recruitment sources.

OFCCP has issued the following guidance on the meaning of the term ''applicant'' under Executive Order 11246:

> The precise definition of the term ''applicant'' depends upon [a contractor's] recruitment and selection procedures. The concept of an applicant is that of a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. This interest might be expressed by completing an application form, or might be expressed orally, depending upon the [contractor's] practice. Question and Answer No. 15, Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures (44 F.R. 11996, 11998 (March 2, 1979)).

The Uniform Guidelines on Employee Selection Procedures do not apply to VEVRAA. See § 60–250.21(g)(2) of this rule. Nevertheless, the statement quoted above represents a reasoned, balanced approach to the question of who is an

applicant under VEVRAA, and hereby is adopted for that purpose. Accordingly, whether an individual will be considered an applicant turns on the employee selection procedures designed and utilized by the contractor. OFCCP is studying the range of ways contractors are utilizing electronic media in their employee selection processes and intends to issue guidance responding to questions most frequently asked by contractors regarding this issue.

One commenter expressed disapproval of the requirement that contractors retain all relevant records once a compliance review, complaint investigation or enforcement action has been initiated. This commenter contended that the requirement was burdensome and inequitable, particularly because the regulations lack a limitation on the period of time in which OFCCP must complete a compliance review.

The purpose of this record retention requirement is to ensure that OFCCP can obtain all relevant documents during a compliance evaluation, complaint investigation or enforcement action. OFCCP appreciates the commenter's concerns about the timely completion of compliance evaluations but, as discussed earlier in this preamble, disagrees with the assertion that the schedule should be codified in the regulations.

One commenter, a Federal agency, said that the recordkeeping requirements increase both the number of contractors and subcontractors that must maintain records, and the recordkeeping burden on each contractor and subcontractor. As a result, the commenter recommended that the increased burdens be submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, and that a Regulatory Flexibility Act analysis be conducted to address asserted increases in the burden on small businesses.

The assertion that the rule increases the number of contractors and subcontractors that must maintain records simply is incorrect. Coverage thresholds are not being altered in any way. Moreover, as was stated in the preamble to the NPRM, the recordkeeping provisions of this rule are consistent with those already being applied under Section 503; accordingly, this rule will not impose new recordkeeping burdens. Nevertheless, we have submitted the requirements to the Office of Management and Budget as is required under the Paperwork Reduction Act.

Subsection (c) of the rule states that the recordkeeping requirements shall apply only to records made or kept on or after the date on which OFCCP publishes in the **Federal Register** notice that the Office of Management and Budget has cleared the requirements. When OFCCP receives the clearance from OMB under the Paperwork Reduction Act of 1995, which it expects to occur approximately 60 days after publication of this final rule, we will revise subsection (c) to specify the actual date on which the recordkeeping requirements take effect.

Finally, in order that the section numbers in the VEVRAA rule correspond to the numbers of counterpart regulatory provisions in the Section 503 rules, we have renumbered this section as § 60–250.80. The section number in the NPRM was § 60–250.81.

Except as mentioned above, the final rule adopts the record retention provisions proposed in the NPRM without change.

Section 60–250.81 Access to Records

Each contractor is required to permit OFCCP access during normal business hours to its places of business, books, records and accounts for the purpose of investigating compliance with VEVRAA. OFCCP proposed to add computerized records to the list of items which the contractor must make available for inspection by OFCCP.

One commenter objected to the proposal regarding access to computerized records. The commenter contended that the proposal would allow unlimited access to sensitive information in a contractors' human resource files, regardless of its relevancy to the contractor's compliance with VEVRAA. The commenter requested that OFCCP modify the proposal to clarify that contractors need only provide ''reasonable'' access, that data requests would be limited in scope to information necessary to address specific compliance questions raised during the evaluation, and that contractors would not be required to reprogram their computers to comply with an OFCCP request. The commenter also recommended that contractors be afforded an appeal process for use when they believe a data request is unreasonable.

OFCCP's primary interest is that it have access during an investigation to relevant data that already exists, whether in computerized or other form. Accordingly, OFCCP intends to apply the same standards for access to computerized records that it always has applied regarding paper records.

The proposed rule would not have expanded the scope of records that must be made available to OFCCP. Contractors already must give OFCCP access to their ''books, records and accounts'' under the previous regulations. The proposed regulation simply would have clarified that ''books, records and accounts'' includes those maintained in computerized form.

The concern that the provision would permit, if not encourage, unfettered access to confidential commercial proprietary data or irrelevant information, is unjustified in OFCCP's view. Under the proposed rule, as under the current regulation, access is limited to records that may be relevant to the matter under investigation and pertinent to compliance with VEVRAA. A further safeguard against broad requests for irrelevant data is the provision that information obtained under this regulation may be used only in connection with the administration of VEVRAA and in furtherance of the purposes of the Act.

Incorporating an appeal process for use by contractors when they disagree with a data request into the VEVRAA regulations at this time would result in procedural inconsistencies between VEVRAA and Section 503, which in our view would not be in the best interest of either contractors or OFCCP. Accordingly, OFCCP is considering this issue for further action in the future.

The regulation is adopted in the final rule as proposed in the NPRM, except that in order that the section numbers in the VEVRAA rule correspond to the numbers of counterpart regulatory provisions in the Section 503 rules, we have renumbered this section as § 60–250.81. The section number in the NPRM was § 60–250.82.

Section 60–250.82 Labor Organizations and Recruiting and Training Agencies

In order that the section numbers in the VEVRAA rule correspond to the numbers of counterpart regulatory provisions in the Section 503 rules, we have renumbered this section as § 60–250.82. The section number in the NPRM was § 60–250.83.

Section 60–250.83 Rulings and interpretations

In order that the section numbers in the VEVRAA rule correspond to the numbers of counterpart regulatory provisions in the Section 503 rules, we have renumbered this section as § 60–250.83. The section number in the NPRM was § 60–250.84.

Section 60–250.84 Responsibilities of Local Employment Service Offices

This section, which was numbered § 60–250.80 in the NPRM, is

renumbered as § 60–250.84. Also, the title of the section, and corresponding text within the section, have been amended to reflect the term ''local employment service office.''

Appendix B—Sample Invitation to Self-Identify

Proposed Appendix B would have contained a sample format that contractors could use to satisfy their obligation under § 60–250.42 to invite applicants to identify themselves as being covered under the Act and wishing to benefit under the contractor's affirmative action program. Paragraph d of the proposed sample invitation would have informed the special disabled veteran applicant that self-identification would assist the contractor in making accommodations to the individual's disability, and then would have suggested that the contractor insert a brief provision summarizing the relevant portion of its affirmative action program.

A commenter suggested that it would be helpful to include in paragraph d of the Appendix a cross reference to the relevant subsection of § 60–250.44. The implication of the comment is that § 60–250.44 contains a particular provision which details what should be inserted in the invitation. That is not the case. Each contractor's approach to affirmative action for special disabled veterans, and each affirmative action program, is different; that is, each is tailored to the contractor's unique circumstances. The contractor should insert into its invitation information about its affirmative action efforts that might be of benefit to covered veterans.

As noted above, we have modified Appendix B to reflect comments relating to § 60–250.42. Specifically, consistent with the revision to the regulation that permits contractors to invite Vietnam era veterans and special disabled veterans to self identify at different stages in the employment process, we have modified the Appendix so that it can be used in a way that best fits the contractor's actual practices relating to the timing of invitations to the two categories of veterans. Further, we have modified the Appendix, in both content and format, to enhance the user's understanding of whether particular portions of the invitation apply to special disabled veterans, Vietnam era veterans, or both.

Appendix C—Review of Personnel Processes

Proposed Appendix C would have set out an example of an appropriate set of procedures that contractors could use to facilitate a review by the contractor and the Government of the contractor's implementation of its duty to evaluate its personnel processes pursuant to proposed § 60–250.44(b). (Section 60–250.44(b) requires the contractor to ensure that its personnel processes provide for careful consideration of the qualifications of applicants and employees, who are known to be special disabled veterans or veterans of the Vietnam era, for employment opportunities.)

Paragraphs 3 and 4 of proposed Appendix C would have instructed contractors to attach or include a description of accommodations considered or used for special disabled veterans to application forms or personnel records. The EEOC commented that in most instances descriptions of accommodations constitute medical information that must be maintained in separate files and treated as confidential medical records. Accordingly, the EEOC recommended that paragraphs 3 and 4 be changed to require contractors to maintain descriptions of accommodations considered or used in separate confidential medical files.

We agree with the EEOC's recommendation and believe it is consistent with § 60–250.23(d) of this rule. Accordingly, we have modified paragraphs 3 and 4 consistent with the comment. Moreover, in order to maintain consistency between the VEVRAA and Section 503 rules, in a companion document published today we also are modifying the corresponding Appendix C to 41 CFR Part 60–741.

General Comments

Several comments addressed the regulatory proposal in general, rather than focusing on any particular section of the NPRM.

One commenter questioned the continued need for VEVRAA, stating that he did not ''think that any employment laws or regulations are necessary any more pertaining to the Vietnam war'' and that the ADA ''should be sufficient to cover disabled vets.'' The commenter also asserted that ''[c]omplying with the paper requirements of this Act are costly, time consuming, and difficult to administer'' and that laws like VEVRAA ''add an artificial cost to our products which puts U.S. business at a disadvantage when competing with foreign companies.''

OFCCP believes that VEVRAA serves a valuable purpose in ensuring that those who served their country are given opportunity to participate in our economic system. Moreover, we note that at least four times within the past seven years the Congress has acted to reauthorize VEVRAA or expand its reach. See, e.g., Section 505 of P.L. 104–275, Section 702 of P.L. 103–446, Section 502 of P.L. 102–568, and Section 1 of P.L. 102–16. OFCCP remains mindful, however, of concerns about compliance burdens. OFCCP seeks to minimize the burdens associated with compliance with VEVRAA by administering the statute, to the extent reasonable, in tandem with the agency's administration of Section 503.

One commenter suggested that publication of a final rule by OFCCP would somehow violate ''due process'' because interested parties were not given sufficient notice of assertedly ''massive, substantive revisions'' and a ''total rewrite'' of the regulations. The commenter supports its point by referring to two semi-annual regulatory agendas in which OFCCP characterized the regulatory action under VEVRAA as ''nonsignificant,'' and by claiming that the published agendas for two meetings of a Department of Labor Advisory Committee on Veterans' Employment and Training did not note anything about the alleged ''extensive rewrite of 41 CFR 60–250.''

OFCCP disagrees with the commenter and believes that it has followed all applicable rulemaking procedures. As is required under the Administrative Procedure Act, OFCCP published the proposed rule for public notice and comment. Despite an extended comment period of more than three months' duration, only a small number of comments were submitted on the proposal.

Moreover, OFCCP's designation of the regulatory action as ''nonsignificant'' is a term of art, referring to the categories used in Executive Order 12866, rather than an indication of the importance of the rule to OFCCP or to the regulated community. Under Executive Order 12866, a ''significant'' regulatory action is one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in Executive Order 12866. OFCCP's VEVRAA proposal clearly did not meet any of the standards of a ''significant'' action. Accordingly, OFCCP's designation of the action as ''nonsignificant'' was entirely appropriate, and was entirely consistent with other agencies' entries in the semiannual regulatory agendas.

Finally, OFCCP also does not agree with the commenter's characterization of this rule as containing extensive substantive revisions of the VEVRAA regulations. To be certain, we have changed the format of the rules. We also have codified in these regulations some concepts and procedures that heretofore existed only in judicial rulings and OFCCP practice. However, the fundamental principles—concepts such as the equal opportunity/affirmative action clause to be inserted in all nonexempt contracts, the contents of written affirmative action programs, the coverage thresholds for the AAP requirement, and the complaint and enforcement procedures—remain largely unchanged in this rule.

Regulatory Procedures

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866. This rule has been determined not to be significant for purposes of Executive Order 12866 and therefore need not be reviewed by OMB. This rule does not meet the criteria of Section 3(f)(1) of Executive Order 12866 and therefore the information enumerated in Section 6(a)(3)(C) of that Order is not required.

This conclusion is based on the fact that this rule does not substantively change the existing obligation of Federal contractors to apply a policy of nondiscrimination and affirmative action in their employment of qualified special disabled veterans and veterans of the Vietnam era. For instance, although the rule generally conforms the existing Section 4212 regulations' nondiscrimination provisions to the Section 503 final rule published by the OFCCP, it does not significantly alter the substance of the existing nondiscrimination provisions.

Regulatory Flexibility Act

The rule clarifies existing requirements, and does not substantively change existing obligations, for Federal contractors. Accordingly, we certify that the rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Unfunded Mandates Reform

Executive Order 12875—This rule will not create an unfunded Federal mandate upon any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

The information collection requirements under the VEVRAA regulations being replaced today were covered by OMB control numbers 1215–0072 and 1215–0163. The new recordkeeping requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These new recordkeeping requirements are not effective until OFCCP displays currently valid OMB control numbers. When OMB completes its review OFCCP will publish a notice in the **Federal Register** regarding the control numbers.

In the Preamble to the NPRM OFCCP explained that the rule: would extend the current one-year record retention period to two years (for larger contractors) and make the retention obligation applicable to a broader range of records; require that, for purposes of confidentiality, medical information obtained regarding the medical condition or history of any applicant or employee be collected and maintained on separate forms and in separate medical files; and require those contractors who, for affirmative action purposes, choose to invite applicants to identify themselves as special disabled veterans or veterans of the Vietnam era to maintain a separate file on such applicants and employees.

OFCCP stated that the recordkeeping provisions of the rule were consistent with those contained in the Section 503 final rule. Therefore, OFCCP stated, although the recordkeeping provisions would be more expansive than those in the current VEVRAA regulations, they would not result in increased recordkeeping burdens.

OFCCP invited the public to comment on the accuracy of the agency's estimates regarding the burdens posed by the proposed revisions to the information collection requirements, and to suggest ways of minimizing the burden and enhancing the quality and utility of the information collected. None of the commenters responded to this request for comments. Several commenters, however, expressed general opinions about the burdens associated with the record retention requirements in their comments directed toward particular regulatory provisions. We have addressed those comments in our discussion of those regulatory provisions. After careful consideration of the comments, OFCCP continues to believe that the recordkeeping provisions in this rule will not result in increased burdens.

List of Subjects in 41 CFR Part 60–250

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, Veterans.

Signed at Washington, DC, this 26th day of October, 1998.

Alexis M. Herman,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

Accordingly, with respect to the rule amending 41 CFR Chapter 60 published on December 30, 1980 (45 FR 86216), which was delayed indefinitely at 46 FR 42865, the revision of Part 60–250 is withdrawn, and in Part 60–30, all references to Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act are withdrawn; and, under authority of 38 U.S.C. 4212, Title 41 of the Code of Federal Regulations, Chapter 60 is amended by revising part 60–250 to read as follows:

PART 60–250—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

Subpart A—Preliminary Matters, Equal Opportunity Clause

Sec.

60–250.1 Purpose, applicability and construction.
60–250.2 Definitions.
60–250.3 [Reserved]
60–250.4 Coverage and waivers.
60–250.5 Equal opportunity clause.

Subpart B—Discrimination Prohibited

60–250.20 Covered employment activities.
60–250.21 Prohibitions.
60–250.22 Direct threat defense.
60–250.23 Medical examinations and inquiries.
60–250.24 Drugs and alcohol.
60–250.25 Health insurance, life insurance and other benefit plans.

Subpart C—Affirmative Action Program

60–250.40 Applicability of the affirmative action program requirement.
60–250.41 Availability of affirmative action program.
60–250.42 Invitation to self-identify.
60–250.43 Affirmative action policy.
60–250.44 Required contents of affirmative action programs.

Subpart D—General Enforcement and Complaint Procedures

60–250.60 Compliance evaluations.
60–250.61 Complaint procedures.
60–250.62 Conciliation agreements and letters of commitment.
60–250.63 Violation of conciliation agreements and letters of commitment.
60–250.64 Show cause notices.
60–250.65 Enforcement proceedings.
60–250.66 Sanctions and penalties.
60–250.67 Notification of agencies.
60–250.68 Reinstatement of ineligible contractors.
60–250.69 Intimidation and interference.
60–250.70 Disputed matters related to compliance with the Act.

Subpart E—Ancillary Matters

60–250.80 Recordkeeping.
60–250.81 Access to records.
60–250.82 Labor organizations and recruiting and training agencies.
60–250.83 Rulings and interpretations.
60–250.84 Responsibilities of local employment service offices.
60–250.85 Effective date.

Appendix A to Part 60–250—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

Appendix B to Part 60–250—Sample Invitation To Self-Identify

Appendix C to Part 60–250—Review of Personnel Processes

Authority: 29 U.S.C 793; 38 U.S.C. 4211 and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

Subpart A—Preliminary Matters, Equal Opportunity Clause

§ 60–250.1 Purpose, applicability and construction.

(a) *Purpose.* The purpose of the regulations in this part is to set forth the standards for compliance with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212, or VEVRAA), which requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era.

(b) *Applicability.* This part applies to all Government contracts and subcontracts of $10,000 or more for the purchase, sale or use of personal property or nonpersonal services (including construction): *Provided,* That subpart C of this part applies only as described in § 60–250.40(a). Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with other statutes, and compliance with other statutes will not necessarily determine its compliance with this part.

(c) *Construction*—(1) *In general.* The Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) (42 U.S.C. 12101, *et seq.*) set out as an appendix to 29 CFR Part 1630 issued pursuant to Title I may be relied upon for guidance in interpreting the parallel provisions of this part.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures under any Federal law or the law of any state or political subdivision that provides greater or equal protection for the rights of special disabled veterans or veterans of the Vietnam era as compared to the protection afforded by this part. It may be a defense to a charge of violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

§ 60–250.2 Definitions.

(a) *Act* means the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.

(b) *Equal opportunity clause* means the contract provisions set forth in § 60–250.5, ''Equal opportunity clause.''

(c) *Secretary* means the Secretary of Labor, United States Department of Labor, or his or her designee.

(d) *Deputy Assistant Secretary* means the Deputy Assistant Secretary for Federal Contract Compliance of the United States Department of Labor, or his or her designee.

(e) *Government* means the Government of the United States of America.

(f) *United States,* as used in this part, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

(g) *Recruiting and training agency* means any person who refers workers to any contractor, or who provides or supervises apprenticeship or training for employment by any contractor.

(h) *Contract* means any Government contract or subcontract.

(i) *Government contract* means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services (including construction). The term *Government contract* does not include agreements in which the parties stand in the relationship of employer and employee, and federally assisted contracts.

(1) *Modification* means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments and extensions.

(2) *Contracting agency* means any department, agency, establishment or instrumentality of the United States, including any wholly owned Government corporation, which enters into contracts.

(3) *Person,* as used in this paragraph (i) and paragraph (l) of this section, means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(4) *Nonpersonal services,* as used in this paragraph (i) and paragraph (l) of this section, includes, but is not limited to, the following: Utility, construction, transportation, research, insurance, and fund depository.

(5) *Construction,* as used in this paragraph (i) and paragraph (l) of this section, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(6) *Personal property,* as used in this paragraph (i) and paragraph (l) of this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements).

(j) *Contractor* means, unless otherwise indicated, a prime contractor or subcontractor holding a contract of $10,000 or more.

(k) *Prime contractor* means any person holding a contract of $10,000 or

more, and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' includes any person who has held a contract subject to the Act.

(l) *Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services (including construction) which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(m) *Subcontractor* means any person holding a subcontract of $10,000 or more and, for the purposes of subpart D of this part, ''General Enforcement and Complaint Procedures,'' any person who has held a subcontract subject to the Act.

(n)(1) *Special disabled veteran* means:

(i) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:

(A) Rated at 30 percent or more; or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(2) *Serious employment handicap,* as used in paragraph (n)(1) of this section, means a significant impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes and interests.

(o) *Qualified special disabled veteran* means a special disabled veteran who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

(p) *Veteran of the Vietnam era* means a person who:

(1) Served on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred:

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed:

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(q) *Essential functions*—(1) *In general.* The term *essential functions* means fundamental job duties of the employment position the special disabled veteran holds or desires. The term *essential functions* does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The contractor's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(r) *Reasonable accommodation*—(1) The term *reasonable accommodation* means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant who is a special disabled veteran to be considered for the position such applicant desires; [1] or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified special disabled veteran to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable the contractor's employee who is a special disabled veteran to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees who are not special disabled veterans.

(2) *Reasonable accommodation* may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by special disabled veterans; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for special disabled veterans.

(3) To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the qualified special disabled veteran in need of the accommodation.[2] This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (Appendix A of this part provides guidance on a contractor's duty to provide reasonable accommodation.)

(s) *Undue hardship*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in paragraph (s)(2) of this section.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on the contractor, factors to be considered include:

(i) The nature and net cost of the accommodation needed, taking into consideration the availability of tax

[1] A contractor's duty to provide a reasonable accommodation with respect to applicants who are special disabled veterans is not limited to those who ultimately demonstrate that they are qualified to perform the job in issue. Special disabled veteran applicants must be provided a reasonable accommodation with respect to the application process if they are qualified with respect to that process (e.g., if they present themselves at the correct location and time to fill out an application).

[2] Contractors must engage in such an interactive process with a special disabled veteran, whether or not a reasonable accommodation ultimately is identified that will make the person a qualified individual. Contractors must engage in the interactive process because, until they have done so, they may be unable to determine whether a reasonable accommodation exists that will result in the person being qualified.

credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the contractor, the overall size of the business of the contractor with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the contractor, including the composition, structure and functions of the work force of such contractor, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the contractor; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(t) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by the contractor as requirements which an individual must meet in order to be eligible for the position held or desired.

(u) *Direct threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that a special disabled veteran poses a *direct threat* shall be based on an individualized assessment of the individual's present ability to perform safely the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

§ 60–250.3 [Reserved]

§ 60–250.4 Coverage and waivers.

(a) *General*—(1) *Contracts and subcontracts of $10,000 or more.* Contracts and subcontracts of $10,000 or more, are covered by this part. No contracting agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the equal opportunity clause.

(2) *Contracts for indefinite quantities.* With respect to indefinite delivery-type contracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, ''call-type'' contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will be less than $10,000. The applicability of the equal opportunity clause shall be determined at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order is $10,000 or more. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Employment activities within the United States.* This part applies only to employment activities within the United States and not to employment activities abroad. The term ''employment activities within the United States'' includes actual employment within the United States, and decisions of the contractor made within the United States pertaining to the contractor's applicants and employees who are within the United States, regarding employment opportunities abroad (such as recruiting and hiring within the United States for employment abroad, or transfer of persons employed in the United States to contractor establishments abroad).

(4) *Contracts with state or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a state or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(b) *Waivers*—(1) *Specific contracts and classes of contracts.* The Deputy Assistant Secretary may waive the application to any contract of the equal opportunity clause in whole or part when he or she deems that special circumstances in the national interest so require. The Deputy Assistant Secretary may also grant such waivers to groups or categories of contracts: where it is in the national interest; where it is found impracticable to act upon each request individually; and where such waiver will substantially contribute to convenience in administration of the Act. When a waiver has been granted for any class of contracts, the Deputy Assistant Secretary may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

(2) *National security.* Any requirement set forth in the regulations of this part shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the contracting agency will notify the Deputy Assistant Secretary in writing within 30 days.

(3) *Facilities not connected with contracts.* The Deputy Assistant Secretary may waive the requirements of the equal opportunity clause with respect to any of a contractor's facilities which he or she finds to be in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act. Such waivers shall be considered only upon the request of the contractor.

§ 60–250.5 Equal opportunity clause.

(a) *Government contracts.* Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

Equal Opportunity for Special Disabled Veterans and Veterans of the Vietnam Era

1. The contractor will not discriminate against any employee or applicant for employment because he or she is a special disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take

affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a special disabled veteran or veteran of the Vietnam era in all employment practices, including the following:

i. recruitment, advertising, and job application procedures;

ii. hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

iii. rates of pay or any other form of compensation and changes in compensation;

iv. job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

v. leaves of absence, sick leave, or any other leave;

vi. fringe benefits available by virtue of employment, whether or not administered by the contractor;

vii. selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

viii. activities sponsored by the contractor including social or recreational programs; and

ix. any other term, condition, or privilege of employment.

2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local employment service office of the state employment security agency wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

3. Listing of employment openings with the local employment service office pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

4. Whenever the contractor becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the state employment security agency in each state where it has establishments of the name and location of each hiring location in the state: *Provided,* That this requirement shall not apply to state and local governmental contractors. As long as the contractor is contractually bound to these provisions and has so advised the state agency, there is no need to advise the state agency of subsequent contracts. The contractor may advise the state agency when it is no longer bound by this contract clause.

5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

6. As used in this clause: i. *All employment openings* includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

ii. *Executive and top management* means any employee: (a) Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and (b) who customarily and regularly directs the work of two or more other employees therein; and (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and (d) who customarily and regularly exercises discretionary powers; and (e) who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his or her hours of work in the work week to activities which are not directly and closely related to the performance of the work described in (a) through (d) of this paragraph 6. ii.; *Provided,* that (e) of this paragraph 6.ii. shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he or she is employed.

iii. *Positions that will be filled from within the contractor's organization* means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established ''recall'' lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

7. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

8. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

9. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans or veterans of the Vietnam era. The contractor must ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).

10. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and is committed to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era.

11. The contractor will include the provisions of this clause in every subcontract or purchase order of $10,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

[End of Clause]

(b) *Subcontracts.* Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

(c) *Adaption of language.* Such necessary changes in language may be made to the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

(d) *Inclusion of the equal opportunity clause in the contract.* It is not necessary that the equal opportunity clause be quoted verbatim in the contract. The clause may be made a part of the contract by citation to 41 CFR 60–250.5(a).

(e) *Incorporation by operation of the Act.* By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.

(f) *Duties of contracting agencies.* Each contracting agency shall cooperate with the Deputy Assistant Secretary and the Secretary in the performance of their responsibilities under the Act. Such cooperation shall include insuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the Act and this part, providing the Deputy Assistant Secretary with any information which comes to the agency's attention that a contractor is not in compliance with the Act or this part, responding to requests for information from the Deputy Assistant Secretary, and taking such actions for noncompliance as are set forth in § 60–250.66 as may be ordered by the Secretary or the Deputy Assistant Secretary.

Subpart B—Discrimination Prohibited

§ 60–250.20 Covered employment activities.

The prohibition against discrimination in this part applies to the following employment activities:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(g) Selection and financial support for training, including, apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by the contractor including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

§ 60–250.21 Prohibitions.

The term *discrimination* includes, but is not limited to, the acts described in this section and § 60–250.23.

(a) *Disparate treatment.* It is unlawful for the contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual because of that individual's status as a special disabled veteran or veteran of the Vietnam era.

(b) *Limiting, segregating and classifying.* Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of that individual's status as a special disabled veteran or veteran of the Vietnam era. For example, the contractor may not segregate qualified special disabled veterans or veterans of the Vietnam era into separate work areas or into separate lines of advancement.

(c) *Contractual or other arrangements.*—(1) *In general.* It is unlawful for the contractor to participate in a contractual or other arrangement or relationship that has the effect of subjecting the contractor's own qualified applicant or employee who is a special disabled veteran or veteran of the Vietnam era to the discrimination prohibited by this part.

(2) *Contractual or other arrangement defined.* The phrase ''contractual or other arrangement or relationship'' includes, but is not limited to, a relationship with: an employment or referral agency; a labor organization, including a collective bargaining agreement; an organization providing fringe benefits to an employee of the contractor; or an organization providing training and apprenticeship programs.

(3) *Application.* This paragraph (c) applies to the contractor, with respect to its own applicants or employees, whether the contractor offered the contract or initiated the relationship, or whether the contractor accepted the contract or acceded to the relationship. The contractor is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

(d) *Standards, criteria or methods of administration.* It is unlawful for the contractor to use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that:

(1) Have the effect of discriminating on the basis of status as a special disabled veteran or veteran of the Vietnam era; or

(2) Perpetuate the discrimination of others who are subject to common administrative control.

(e) *Relationship or association with a special disabled veteran or a veteran of the Vietnam era.* It is unlawful for the contractor to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known special disabled veteran or Vietnam era veteran status of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

(f) *Not making reasonable accommodation.* (1) It is unlawful for the contractor to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee who is a special disabled veteran, unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(2) It is unlawful for the contractor to deny employment opportunities to an otherwise qualified job applicant or employee who is a special disabled veteran based on the need of such contractor to make reasonable accommodation to such an individual's physical or mental impairments.

(3) A qualified special disabled veteran is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified special disabled veteran.

(g) *Qualification standards, tests and other selection criteria*—(1) *In general.* It is unlawful for the contractor to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out individuals on the basis of their status as special disabled veterans or veterans of the Vietnam era, unless the standard, test or other selection criterion, as used by the contractor, is shown to be job-related for the position in question and is consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude a special disabled veteran if that individual could satisfy the criteria with provision of a reasonable accommodation. Selection criteria that exclude or tend to exclude individuals on the basis of their status as special disabled veterans or veterans of the Vietnam era but concern only marginal functions of the job would not be consistent with business necessity. The contractor may not refuse to hire an applicant who is a special disabled veteran because the applicant's disability prevents him or her from performing marginal functions. When considering a special disabled veteran or a veteran of the Vietnam era for an employment opportunity, the contractor

may not rely on portions of such veteran's military record, including his or her discharge papers, which are not relevant to the qualification requirements of the opportunity in issue.

(2) The Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3, do not apply to 38 U.S.C. 4212 and are similarly inapplicable to this part.

(h) *Administration of tests.* It is unlawful for the contractor to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who is a special disabled veteran with a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant, except where such skills are the factors that the test purports to measure.

(i) *Compensation.* In offering employment or promotions to special disabled veterans or veterans of the Vietnam era, it is unlawful for the contractor to reduce the amount of compensation offered because of any income based upon a disability-related and/or military-service-related pension or other disability-related and/or military-service-related benefit the applicant or employee receives from another source.

§ 60–250.22 Direct threat defense.

The contractor may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. (See § 60–250.2(u) defining *direct threat.*)

§ 60–250.23 Medical examinations and inquiries.

(a) *Prohibited medical examinations or inquiries.* Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is a special disabled veteran or as to the nature or severity of such a veteran's disability.

(b) *Permitted medical examinations and inquiries*—(1) *Acceptable pre-employment inquiry.* The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(2) *Employment entrance examination.* The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of their status as a special disabled veteran.

(3) *Examination of employees.* The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions.

(4) *Other acceptable examinations and inquiries.* The contractor may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site.

(5) Medical examinations conducted in accordance with paragraphs (b)(2) and (b)(4) of this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an applicant or applicants or an employee or employees who are special disabled veterans as a result of such examinations or inquiries, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations as required in this part.

(c) *Invitation to self-identify.* The contractor shall invite applicants to self-identify as being covered by the Act, as specified in § 60–250.42.

(d) *Confidentiality and use of medical information.* (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing the laws administered by OFCCP, including this part, or enforcing the Americans with Disabilities Act, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

§ 60–250.24 Drugs and alcohol.

(a) *Specific activities permitted.* The contractor:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the contractor holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies that apply to employment in sensitive positions subject to such regulations.

(b) *Drug testing*—(1) *General policy.* For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by the contractor to its job applicants or employees is not a violation of § 60–250.23. Nothing in this part shall be construed to encourage, prohibit, or authorize the contractor to conduct drug tests of job applicants or

employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) *Transportation employees.* Nothing in this part shall be construed to encourage, prohibit, or authorize the otherwise lawful exercise by contractors subject to the jurisdiction of the Department of Transportation of authority to test employees in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (b)(1) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of §§ 60–250.23(b)(5) and (c).

§ 60–250.25 Health insurance, life insurance and other benefit plans.

(a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with state law.

(b) The contractor may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with state law.

(c) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

(d) The contractor may not deny a qualified special disabled veteran equal access to insurance or subject a qualified special disabled veteran to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

(e) The activities described in paragraphs (a), (b) and (c) of this section are permitted unless these activities are used as a subterfuge to evade the purposes of this part.

Subpart C—Affirmative Action Program

§ 60–250.40 Applicability of the affirmative action program requirement.

(a) The requirements of this subpart apply to every Government contractor that has 50 or more employees and a contract of $50,000 or more.

(b) Contractors described in paragraph (a) of this section shall, within 120 days of the commencement of a contract, prepare and maintain an affirmative action program at each establishment. The affirmative action program shall set forth the contractor's policies and procedures in accordance with this part. This program may be integrated into or kept separate from other affirmative action programs.

(c) The affirmative action program shall be reviewed and updated annually.

(d) The contractor shall submit the affirmative action program within 30 days of a request from OFCCP, unless the request provides for a different time. The contractor also shall make the affirmative action program promptly available on-site upon OFCCP's request.

§ 60–250.41 Availability of affirmative action program.

The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

§ 60–250.42 Invitation to self-identify.

(a) *Special disabled veterans.* The contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is a special disabled veteran who may be covered by the Act and wishes to benefit under the affirmative action program. Such invitation shall be extended after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, except that the contractor may invite special disabled veterans to self-identify prior to making a job offer when:

(1) The invitation is made when the contractor actually is undertaking affirmative action for special disabled veterans at the pre-offer stage; or

(2) The invitation is made pursuant to a Federal, state or local law requiring affirmative action for special disabled veterans.

(b) *Veterans of the Vietnam era.* The contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is a veteran of the Vietnam era who may be covered by the Act and wishes to benefit under the affirmative action program. Such invitation may be made at any time before the applicant begins his or her employment duties.

(c) The invitations referenced in paragraphs (a) and (b) of this section shall state that a request to benefit under the affirmative action program may be made immediately and/or at any time in the future. The invitations also shall summarize the relevant portions of the Act and the contractor's affirmative action program. Furthermore, the invitations shall state that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the Act. (An acceptable form for such an invitation is set forth in Appendix B of this part. Because a contractor usually may not seek advice from a special disabled veteran regarding placement and accommodation until after a job offer has been extended, the invitation set forth in Appendix B of this part contains instructions regarding modifications to be made if it is used at the pre-offer stage.)

(d) If an applicant so identifies himself or herself as a special disabled veteran, the contractor should also seek the advice of the applicant regarding proper placement and appropriate accommodation, after a job offer has been extended. The contractor also may make such inquiries to the extent they are consistent with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, (e.g., in the context of asking applicants to describe or demonstrate how they would perform the job). The contractor shall maintain a separate file in accordance with § 60-250.23(d) on persons who have self-identified as special disabled veterans.

(e) The contractor shall keep all information on self identification confidential. The contractor shall provide the information to OFCCP upon request. This information may be used only in accordance with this part.

(f) Nothing in this section shall relieve the contractor of its obligation to take affirmative action with respect to those applicants or employees who are known to the contractor to be special disabled veterans or veterans of the Vietnam era.

(g) Nothing in this section shall relieve the contractor from liability for discrimination under the Act.

§ 60–250.43 Affirmative action policy.

Under the affirmative action obligations imposed by the Act contractors shall not discriminate because of status as a special disabled veteran or veteran of the Vietnam era and shall take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era at all levels of employment, including the executive

level. Such action shall apply to all employment activities set forth in § 60–250.20.

§ 60–250.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) *Policy statement.* The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees who are special disabled veterans are informed of the contents of the policy statement (for example, the contractor may have the statement read to a visually disabled individual, or may lower the posted notice so that it may be read by a person in a wheelchair). The policy statement should indicate the chief executive officer's attitude on the subject matter, provide for an audit and reporting system (see paragraph (h) of this section) and assign overall responsibility for the implementation of affirmative action activities required under this part (see paragraph (i) of this section). Additionally, the policy should state, among other things, that the contractor will: recruit, hire, train and promote persons in all job titles, and ensure that all other personnel actions are administered, without regard to special disabled veteran or Vietnam era veteran status; and ensure that all employment decisions are based only on valid job requirements. The policy shall state that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion or discrimination because they have engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA) or any other Federal, state or local law requiring equal opportunity for special disabled veterans or veterans of the Vietnam era;

(3) Opposing any act or practice made unlawful by VEVRAA or its implementing regulations in this part or any other Federal, state or local law requiring equal opportunity for special disabled veterans or veterans of the Vietnam era; or

(4) Exercising any other right protected by VEVRAA or its implementing regulations in this part.

(b) *Review of personnel processes.* The contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees who are known special disabled veterans or veterans of the Vietnam era for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that when a special disabled veteran or a veteran of the Vietnam era is considered for employment opportunities, the contractor relies only on that portion of the individual's military record, including his or her discharge papers, that is relevant to the requirements of the opportunity in issue. The contractor shall ensure that its personnel processes do not stereotype special disabled veterans and veterans of the Vietnam era in a manner which limits their access to all jobs for which they are qualified. The contractor shall periodically review such processes and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government. (Appendix C of this part is an example of an appropriate set of procedures. The procedures in Appendix C of this part are not required and contractors may develop other procedures appropriate to their circumstances.)

(c) *Physical and mental qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the periodic review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified special disabled veterans, they are job-related for the position in question and are consistent with business necessity.

(2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified special disabled veterans, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph (c)(2).

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of the individual or others in the workplace. (See § 60–250.2(u) defining *direct threat.*)

(d) *Reasonable accommodation to physical and mental limitations.* As is provided in § 60–250.21(f), as a matter of nondiscrimination the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified special disabled veteran unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As a matter of affirmative action, if an employee who is known to be a special disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability; if the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(e) *Harassment.* The contractor must develop and implement procedures to ensure that its employees are not harassed because of their status as a special disabled veteran or veteran of Vietnam era.

(f) *External dissemination of policy, outreach and positive recruitment.* The contractor shall undertake appropriate outreach and positive recruitment activities such as those listed in paragraphs (f)(1) through (f)(8) of this section that are reasonably designed to effectively recruit qualified special disabled veterans and veterans of the Vietnam era. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraphs (f)(1) through (f)(8) of this section or that its activities will be limited to those listed. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(1) The contractor should enlist the assistance and support of the following persons and organizations in recruiting, and developing on-the-job training opportunities for, qualified special

disabled veterans and veterans of the Vietnam era, to fulfill its commitment to provide meaningful employment opportunities to such veterans:

(i) The Local Veterans' Employment Representative or his or her designee in the local employment service office nearest the contractor's establishment;

(ii) The Department of Veterans Affairs Regional Office nearest the contractor's establishment;

(iii) The veterans' counselors and coordinators (''Vet-Reps'') on college campuses;

(iv) The service officers of the national veterans' groups active in the area of the contractor's establishment; and

(v) Local veterans' groups and veterans' service centers near the contractor's establishment.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefing. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(3) The contractor's recruitment efforts at all educational institutions should incorporate special efforts to reach students who are special disabled veterans or veterans of the Vietnam era. An effort should be made to participate in work-study programs with Department of Veterans Affairs rehabilitation facilities which specialize in training or educating disabled veterans.

(4) The contractor should establish meaningful contacts with appropriate veterans' service organizations which serve special disabled veterans or veterans of the Vietnam era for such purposes as advice, technical assistance, and referral of potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training and accommodations contractors may undertake, but no such resource providing technical assistance shall have authority to approve or disapprove the acceptability of affirmative action programs.

(5) Special disabled veterans and veterans of the Vietnam era should be made available for participation in career days, youth motivation programs, and related activities in their communities.

(6) The contractor should send written notification of company policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

(7) The contractor should take positive steps to attract qualified special disabled veterans and veterans of the Vietnam era not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for Vietnam era veterans and veterans with disabilities.

(8) The contractor, in making hiring decisions, should consider applicants who are known special disabled veterans or veterans of the Vietnam era for all available positions for which they may be qualified when the position(s) applied for is unavailable.

(g) *Internal dissemination of policy.* (1) A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall develop internal procedures such as those listed in paragraph (g)(2) of this section for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraph (g)(2) of this section or that its activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing practices are adequate.

(2) The contractor should implement and disseminate this policy internally as follows:

(i) Include it in the contractor's policy manual;

(ii) Inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified special disabled veterans and veterans of the Vietnam era. The contractor should periodically schedule special meetings with all employees to discuss policy and explain individual employee responsibilities;

(iii) Publicize it in the company newspaper, magazine, annual report and other media;

(iv) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude;

(v) Discuss the policy thoroughly in both employee orientation and management training programs;

(vi) Meet with union officials and/or employee representatives to inform them of the contractor's policy, and request their cooperation;

(vii) Include articles on accomplishments of special disabled veterans and veterans of the Vietnam era in company publications; and

(viii) When employees are featured in employee handbooks or similar publications for employees, include special disabled veterans.

(h) *Audit and reporting system.* (1) The contractor shall design and implement an audit and reporting system that will:

(i) Measure the effectiveness of the contractor's affirmative action program;

(ii) Indicate any need for remedial action;

(iii) Determine the degree to which the contractor's objectives have been attained;

(iv) Determine whether known special disabled veterans and veterans of the Vietnam era have had the opportunity to participate in all company sponsored educational, training, recreational and social activities; and

(v) Measure the contractor's compliance with the affirmative action program's specific obligations.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) *Responsibility for implementation.* An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity should appear on all internal and external communications regarding the company's affirmative action program. This official shall be given necessary top management support and staff to manage the implementation of this program.

(j) *Training.* All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that

the commitments in the contractor's affirmative action program are implemented.

Subpart D—General Enforcement and Complaint Procedures

§ 60–250.60 Compliance evaluations.

(a) OFCCP may conduct compliance evaluations to determine if the contractor is taking affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a special disabled veteran or veteran of the Vietnam era in all employment practices. A compliance evaluation may consist of any one or any combination of the following investigative procedures:

(1) *Compliance review.* A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages:

(i) A desk audit of the written affirmative action program and supporting documentation to determine whether all elements required by the regulations in this part are included, whether the affirmative action program meets agency standards of reasonableness, and whether the affirmative action program and supporting documentation satisfy agency standards of acceptability. The desk audit is conducted at OFCCP offices;

(ii) An on-site review, conducted at the contractor's establishment to investigate unresolved problem areas identified in the affirmative action program and supporting documentation during the desk audit, to verify that the contractor has implemented the affirmative action program and has complied with those regulatory obligations not required to be included in the affirmative action program, and to examine potential instances or issues of discrimination. An on-site review normally will involve an examination of the contractor's personnel and employment policies, inspection and copying of documents related to employment actions, and interviews with employees, supervisors, managers, hiring officials; and

(iii) Where necessary, an off-site analysis of information supplied by the contractor or otherwise gathered during or pursuant to the on-site review;

(2) *Off-site review of records.* An analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of the Executive Order and regulations;

(3) *Compliance check.* A visit to the establishment to ascertain whether data and other information previously submitted by the contractor are complete and accurate; whether the contractor has maintained records consistent with § 60–250.80; and/or whether the contractor has developed an affirmative action program consistent with § 60–250.40; or

(4) *Focused review.* An on-site review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to § 60–250.62.

(c) *VETS–100 Report.* During a compliance evaluation, OFCCP may verify whether the contractor has complied with its obligation, pursuant to 41 CFR Part 61–250, to file its annual Veterans' Employment Report (VETS–100 Report) with the Office of the Assistant Secretary for Veterans' Employment and Training (OASVET). If the contractor has not filed its report, OFCCP will request a copy from the contractor. If the contractor fails to provide a copy of the report to OFCCP, OFCCP will notify OASVET.

§ 60–250.61 Complaint procedures.

(a) *Place and time of filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally, or by an authorized representative, file a written complaint alleging a violation of the Act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Such complaint must be filed within 300 days of the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown. Complaints may be submitted to the OFCCP, 200 Constitution Avenue, N.W., Washington, D.C. 20210, or to any OFCCP regional, district, or area office. Complaints may also be submitted to the Veterans' Employment and Training Service of the Department of Labor directly, or through the Local Veterans' Employment Representative (LVER) or his or her designee at the local employment service office. Such parties will assist veterans in preparing complaints, promptly refer such complaints to OFCCP, and maintain a record of all complaints which they receive and forward. OFCCP shall inform the party forwarding the complaint of the progress and results of its complaint investigation. The state employment security agency shall cooperate with the Deputy Assistant Secretary in the investigation of any complaint.

(b) *Contents of complaints.*—(1) *In general.* A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) Documentation showing that the individual is a special disabled veteran or veteran of the Vietnam era. Such documentation must include a copy of the veteran's form DD–214, and, where applicable, a copy of the veteran's Benefits Award Letter, or similar Department of Veterans Affairs certification, updated within one year prior to the date the complaint is filed, indicating the veteran's level (by percentage) of disability, and whether the veteran has been determined by the Department of Veterans Affairs to have a serious employment handicap under 38 U.S.C. 3106;

(iv) A description of the act or acts considered to be a violation, including the pertinent dates (in the case of an alleged continuing violation, the earliest and most recent date that the alleged violation occurred should be stated); and

(v) Other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted.

(2) *Third party complaints.* A complaint filed by an authorized representative need not identify by name the person on whose behalf it is filed. The person filing the complaint, however, shall provide OFCCP with the name, address and telephone number of the person on whose behalf it is made, and the other information specified in paragraph (b)(1) of this section. OFCCP shall verify the authorization of such a complaint by the person on whose behalf the complaint is made. Any such person may request that OFCCP keep his or her identity confidential, and OFCCP will protect the individual's confidentiality wherever that is possible given the facts and circumstances in the complaint.

(c) *Incomplete information.* Where a complaint contains incomplete

information, OFCCP shall seek the needed information from the complainant. If the information is not furnished to OFCCP within 60 days of the date of such request, the case may be closed.

(d) *Investigations.* The Department of Labor shall institute a prompt investigation of each complaint.

(e) *Resolution of matters.* (1) If the complaint investigation finds no violation of the Act or this part, or if the Deputy Assistant Secretary decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor pursuant to § 60–250.65(a)(1), the complainant and contractor shall be so notified. The Deputy Assistant Secretary, on his or her own initiative, may reconsider his or her determination or the determination of any of his or her designated officers who have authority to issue Notifications of Results of Investigation.

(2) The Deputy Assistant Secretary will review all determinations of no violation that involve complaints that are not also cognizable under Title I of the Americans with Disabilities Act.

(3) In cases where the Deputy Assistant Secretary decides to reconsider the determination of a Notification of Results of Investigation, the Deputy Assistant Secretary shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and his or her final determination after reconsideration, to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the contractor.

(4) If the investigation finds a violation of the Act or this part, OFCCP shall invite the contractor to participate in conciliation discussions pursuant to § 60–250.62.

§ 60–250.62 Conciliation agreements and letters of commitment.

(a) If a compliance evaluation, complaint investigation or other review by OFCCP finds a material violation of the Act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority. The agreement shall also specify the time period for completion of the remedial action; the period shall be no longer than the minimum period necessary to complete the action.

(b) The term ''conciliation agreement'' does not include ''letters of commitment'', which are appropriate for resolving minor technical deficiencies.

§ 60–250.63 Violation of conciliation agreements and letters of commitment.

(a) When OFCCP believes that a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violation alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which OFCCP asserts that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(b) In those cases in which OFCCP asserts that a delay would result in irreparable injury to the employment rights of affected employees or applicants, enforcement proceedings may be initiated immediately without proceeding through any other requirement contained in this chapter.

(c) In any proceedings involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

(d) When OFCCP believes that a letter of commitment has been violated, the matter shall be handled, where appropriate, pursuant to § 60–250.64. The violation may be corrected through a conciliation agreement, or an enforcement proceeding may be initiated.

§ 60–250.64 Show cause notices.

When the Deputy Assistant Secretary has reasonable cause to believe that the contractor has violated the Act or this part, he or she may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted. The issuance of such a notice is not a prerequisite to instituting enforcement proceedings (see § 60–250.65).

§ 60–250.65 Enforcement proceedings.

(a) *General.* (1) If a compliance evaluation, complaint investigation or other review by OFCCP finds a violation of the Act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above in this sentence. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance evaluation. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth in this section, the Deputy Assistant Secretary may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60–250.5, including appropriate injunctive relief.

(b) *Hearing practice and procedure.* (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the Act and this part shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR Part 60–30 and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR Part 18, Subpart B: *Provided,* That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of exceptions and responses to exceptions to such decision (if any), whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights, Regional Solicitors and Associate Regional Solicitors.

(3) For the purposes of hearings pursuant to this part, references in 41 CFR Part 60–30 to ''Executive Order 11246'' shall mean the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; to ''equal opportunity clause'' shall mean the equal opportunity clause published at

§ 60–250.5; and to ''regulations'' shall mean the regulations contained in this part.

§ 60–250.66 Sanctions and penalties.

(a) *Withholding progress payments.* With the prior approval of the Deputy Assistant Secretary, so much of the accrued payment due on the contract or any other contract between the Government contractor and the Federal Government may be withheld as necessary to correct any violations of the provisions of the Act or this part.

(b) *Termination.* A contract may be canceled or terminated, in whole or in part, for failure to comply with the provisions of the Act or this part.

(c) *Debarment.* A contractor may be debarred from receiving future contracts for failure to comply with the provisions of the Act or this part subject to reinstatement pursuant to § 60–250.68. Debarment may be imposed for an indefinite period, or may be imposed for a fixed period of not less than six months but no more than three years.

(d) *Hearing opportunity.* An opportunity for a formal hearing shall be afforded to a contractor before the imposition of any sanction or penalty.

§ 60–250.67 Notification of agencies.

The Deputy Assistant Secretary shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

§ 60–250.68 Reinstatement of ineligible contractors.

(a) *Application for reinstatement.* A contractor debarred from further contracts for an indefinite period under the Act may request reinstatement in a letter filed with the Deputy Assistant Secretary at any time after the effective date of the debarment; a contractor debarred for a fixed period may make such a request following the expiration of six months from the effective date of the debarment. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Act and this part. Additionally, in determining whether reinstatement is appropriate for a contractor debarred for a fixed period, the Deputy Assistant Secretary also shall consider, among other factors, the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history, and whether the contractor's reinstatement would impede the effective enforcement of the Act or this part. Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Deputy Assistant Secretary shall issue a written decision on the request.

(b) *Petition for review.* Within 30 days of its receipt of a decision denying a request for reinstatement, the contractor may file a petition for review of the decision with the Secretary. The petition shall set forth the grounds for the contractor's objections to the Deputy Assistant Secretary's decision. The petition shall be served on the Deputy Assistant Secretary and the Associate Solicitor for Civil Rights and shall include the decision as an appendix. The Deputy Assistant Secretary may file a response within 14 days to the petition. The Secretary shall issue the final agency decision denying or granting the request for reinstatement. Before reaching a final decision, the Secretary may issue such additional orders respecting procedure as he or she finds appropriate in the circumstances, including an order referring the matter to the Office of Administrative Law Judges for an evidentiary hearing where there is a material factual dispute that cannot be resolved on the record before the Secretary.

§ 60–250.69 Intimidation and interference.

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against, any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Act or any other Federal, state or local law requiring equal opportunity for special disabled veterans or veterans of the Vietnam era;

(3) Opposing any act or practice made unlawful by the Act or this part or any other Federal, state or local law requiring equal opportunity for special disabled veterans or veterans of the Vietnam era; or

(4) Exercising any other right protected by the Act or this part.

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by the Deputy Assistant Secretary against any contractor who violates this obligation.

§ 60–250.70 Disputed matters related to compliance with the Act.

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the Act and this part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

Subpart E—Ancillary Matters

§ 60–250.80 Recordkeeping

(a) *General requirements.* Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least $150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least $150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or action until final disposition of the complaint, compliance evaluation or action. The term *personnel records relevant to the complaint, compliance evaluation or action* would include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions

similar to that held or sought by the aggrieved person, and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

(b) *Failure to preserve records.* Failure to preserve complete and accurate records as required by paragraph (a) of this section constitutes noncompliance with the contractor's obligations under the Act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: *Provided,* That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

(c) The requirements of this section shall apply only to records made or kept on or after the date that the Office of Management and Budget has cleared the requirements.

§ 60–250.81 Access to records.

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the Act or this part. Information obtained in this manner shall be used only in connection with the administration of the Act and in furtherance of the purposes of the Act.

§ 60–250.82 Labor organizations and recruiting and training agencies.

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, the Department of Veterans Affairs, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the Act.

§ 60–250.83 Rulings and interpretations.

Rulings under or interpretations of the Act and this part shall be made by the Deputy Assistant Secretary.

§ 60–250.84 Responsibilities of local employment service offices.

(a) Local employment service offices shall refer qualified special disabled veterans and veterans of the Vietnam era to fill employment openings listed by contractors with such local offices pursuant to the mandatory listing requirements of the equal opportunity clause, and shall give priority to special disabled veterans and veterans of the Vietnam era in making such referrals.

(b) Local employment service offices shall contact employers to solicit the job orders described in paragraph (a) of this section. The state employment security agency shall provide OFCCP upon request information pertinent to whether the contractor is in compliance with the mandatory listing requirements of the equal opportunity clause.

§ 60–250.85 Effective date.

This part is effective on January 4, 1999, and does not apply retroactively. Contractors presently holding Government contracts shall update their affirmative action programs as required to comply with the regulations in this part within 120 days after January 4, 1999.

Appendix A to Part 60–250—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent ''free-standing'' source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. See § 60–250.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under VEVRAA, like reasonable accommodation required under Section 503 and the ADA, is a part of the nondiscrimination obligation. *See* EEOC appendix cited in this paragraph. Affirmative action is unique to VEVRAA and Section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor *shall* make an inquiry of a special disabled veteran who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an ''otherwise qualified'' special disabled veteran, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60–250.2(o), a special disabled veteran is qualified if he or she satisfies all the skill, experience, education and other job-related selection criteria, and can perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the special disabled veteran is qualified with respect to that process. One is ''otherwise qualified'' if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide a reasonable accommodation for applicants and employees who are known to be special disabled veterans. As stated in § 60–250.42 (see also Appendix B of this part), the contractor is required to invite applicants who have been provided an offer of employment, before they are placed on the contractor's payroll, to indicate whether they are covered by the Act and wish to benefit under the contractor's affirmative action program. That section further provides that the contractor should seek the advice of special disabled veterans who ''self-identify'' in this way as to proper placement and appropriate accommodation. Moreover, § 60–250.44(d) provides that if an employee who is a known special disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables a special disabled veteran to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment, as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee who is a special disabled veteran in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to

be the ''best'' accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) accommodations in the application process; (2) accommodations that enable employees who are special disabled veterans to perform the essential functions of the position held or desired; and (3) accommodations that enable employees who are special disabled veterans to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term ''undue hardship'' refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source, e.g., the Department of Veterans Affairs or a state vocational rehabilitation agency, or if Federal, state or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the special disabled veteran should be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. Section 60–250.2(r) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are any number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor generally should consult with the special disabled veteran in deciding on the appropriate accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate state vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1–800–669–EEOC (voice), 1–800–800–3302 (TDD)), the Job Accommodation Network (JAN) operated by the President's Committee on Employment of People with Disabilities (1–800–JAN–7234), private disability organizations (including those that serve veterans), and other employers.

6. With respect to accommodations that can permit an employee who is a special disabled veteran to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For the visually-impaired such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, braille devices, talking calculators, magnifiers, audio recordings and braille or large-print materials. For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids and telecommunications devices for the deaf (TDDs). For persons with limited physical dexterity, the obligation may require the provision of goose neck telephone headsets, mechanical page turners and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, interpreter or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by special disabled veterans—including areas used by employees for purposes other than the performance of essential job functions such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots and credit unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by employees who do not have disabilities.

8. Another of the potential accommodations listed in § 60–250.2(r) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified special disabled veteran cannot perform to another position. Accordingly, if a clerical employee who is a special disabled veteran is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, i.e., those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor which has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind special disabled veteran with an assistant to perform that duty; in such a case, the assistant would be performing an essential function of the job for the special disabled veteran. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit special disabled veterans who cannot work a standard schedule because of the need to obtain medical treatment, or special disabled veterans with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the special disabled veteran's current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider applicants who are known special disabled veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees who are special disabled veterans by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A ''reasonable amount of time'' should be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned special disabled veteran at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not special disabled veterans. It should also be noted that the contractor is not required to promote a special disabled veteran as an accommodation.

11. With respect to the application process, appropriate accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to special disabled veterans who are vision or hearing impaired, e.g., by making an announcement available in braille, in large print, or on audio tape, or by responding to job inquiries via TDDs; (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations, e.g., extending regular time deadlines, allowing a special disabled veteran who is blind or has a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of his or her ability, to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices; and (4) ensuring a special disabled veteran with a mobility impairment full access to testing locations such that the applicant's test scores accurately reflect the applicant's skills or aptitude rather than the applicant's mobility impairment.

Appendix B to Part 60–250—Sample Invitation To Self-Identify

Note: When the invitation to self-identify is being extended to special disabled veterans

prior to an offer of employment, as is permitted in limited circumstances under §§ 60–250.42(a)(1) and (2), paragraph 7(ii) of this appendix, relating to identification of reasonable accommodations, should be omitted. This will avoid a conflict with the EEOC's ADA Guidance, which in most cases precludes asking a job applicant (prior to a job offer being made) about potential reasonable accommodations.

[Sample Invitation to Self-Identify]

1. This employer is a Government contractor subject to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, which requires Government contractors to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era.

2. **[The following text should be used when extending an invitation to veterans of the Vietnam era only.]** If you are a veteran of the Vietnam era, we would like to include you under our affirmative action program. If you would like to be included under the affirmative action program, please tell us. The term ''veteran of the Vietnam era'' refers to a person who served on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred in the Republic of Vietnam between February 28, 1961, and May 7, 1975 or between August 5, 1964, and May 7, 1975, in all other cases. The term also refers to a person who was discharged or released from active duty for a service-connected disability if any part of such active duty was performed in the Republic of Vietnam between February 28, 1961, and May 7, 1975, or between August 5, 1964, and May 7, 1975, in all other cases.

[The following text should be used when extending an invitation to special disabled veterans only.] If you are a special disabled veteran, we would like to include you in our affirmative action program. If you would like to be included under the affirmative action program, please tell us. This information will assist us in placing you in an appropriate position and in making accommodations for your disability. The term ''special disabled veteran'' refers to a veteran who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability rated at 30 percent or more, or rated at 10 or 20 percent in the case of a veteran who has been determined by the Department of Veterans Affairs to have a serious employment handicap. The term also refers to a person who was discharged or released from active duty because of a service-connected disability.

[The following text should be used when extending an invitation to both veterans of the Vietnam era and special disabled veterans.] If you are a veteran of the Vietnam era or a special disabled veteran, we would like to include you under our affirmative action program. If you would like to be included under the affirmative action program, please tell us. [The contractor should include here the definitions of ''veteran of the Vietnam era'' and ''special disabled veteran'' found in the two preceding paragraphs.]

3. You may inform us of your desire to benefit under the program at this time and/or at any time in the future.

4. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information provided will be used only in ways that are not inconsistent with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

5. The information you submit will be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of special disabled veterans, and regarding necessary accommodations; (ii) first aid and safety personnel may be informed, when and to the extent appropriate, if you have a condition that might require emergency treatment; and (iii) Government officials engaged in enforcing laws administered by OFCCP, or enforcing the Americans with Disabilities Act, may be informed.

6. [The contractor should here insert a brief provision summarizing the relevant portion of its affirmative action program.]

7. **[The following text should be used only when extending an invitation to special disabled veterans, either by themselves or in combination with veterans of the Vietnam era. Paragraph 7(ii) should be omitted when the invitation to self-identify is being extended prior to an offer of employment.]** If you are a special disabled veteran it would assist us if you tell us about (i) any special methods, skills, and procedures which qualify you for positions that you might not otherwise be able to do because of your disability so that you will be considered for any positions of that kind, and (ii) the accommodations which we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job, provision of personal assistance services or other accommodations. This information will assist us in placing you in an appropriate position and in making accommodations for your disability.

Appendix C to Part 60–250—Review of Personnel Processes

The following is a set of procedures which contractors may use to meet the requirements of § 60–250.44(b):

1. The application or personnel form of each known applicant who is a special disabled veteran or veteran of the Vietnam era should be annotated to identify each vacancy for which the applicant was considered, and the form should be quickly retrievable for review by the Department of Labor and the contractor's personnel officials for use in investigations and internal compliance activities.

2. The personnel or application records of each known special disabled veteran or veteran of the Vietnam era should include (i) the identification of each promotion for which the covered veteran was considered, and (ii) the identification of each training program for which the covered veteran was considered.

3. In each case where an employee or applicant who is a special disabled veteran or a veteran of the Vietnam era is rejected for employment, promotion, or training, the contractor should prepare a statement of the reason as well as a description of the accommodations considered (for a rejected special disabled veteran). The statement of the reason for rejection (if the reason is medically related), and the description of the accommodations considered, should be treated as confidential medical records in accordance with § 60–250.23(d). These materials should be available to the applicant or employee concerned upon request.

4. Where applicants or employees are selected for hire, promotion, or training and the contractor undertakes any accommodation which makes it possible for him or her to place a special disabled veteran on the job, the contractor should make a record containing a description of the accommodation. The record should be treated as a confidential medical record in accordance with § 60–250.23(d).

[FR Doc. 98–29043 Filed 11–3–98; 8:45 am]

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DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–741

RIN 1215–AB19

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: This final rule amends Appendix C to the regulations implementing Section 503 of the Rehabilitation Act of 1973, as amended (Section 503). Appendix C contains procedures that Government contractors may use to review their personnel processes to ensure that the processes are fair to disabled applicants and employees. The existing Appendix recommends that contractors attach or include a description of accommodations considered or used for special disabled veterans to application forms or personnel records. As amended, the Appendix recommends that the description of accommodations be maintained in separate confidential medical files. The amendments make Appendix C to the Rehabilitation Act rules consistent with Appendix C to OFCCP's rules implementing the Vietnam Era Veterans' Readjustment Assistance Act, which also are published elsewhere in this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective January 4, 1999.

FOR FURTHER INFORMATION CONTACT: James I. Melvin, Director, Division of Policy, Planning and Program Development, 202–693–0102 (voice), 1–800–326–2577 (TDD). Copies of this final rule, including copies in alternative formats, may be obtained by calling OFCCP at 202–693–0102 (voice) or 1–800–326–2577 (TDD). The alternative formats available are: Large print, electronic file on computer disk, and audio-tape. The rule also is available on the Internet at http://www.dol.gov/dol/esa.

SUPPLEMENTARY INFORMATION:

Rulemaking History

This final rule amends the regulations implementing Section 503. The Act, and OFCCP's implementing regulations, 41 CFR Part 60–741, require parties holding a Federal Government contract or subcontract in excess of $10,000 to ''take affirmative action to employ and advance in employment qualified individuals with disabilities.'' The Section 503 Rules last were revised on May 1, 1996, 61 FR 19336.

On September 24, 1996, OFCCP published a notice of proposed rulemaking (NPRM), 61 FR 50080, proposing to revise the regulations implementing the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). VEVRAA, and OFCCP's regulations at 41 CFR Part 60–250, require Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era.

OFCCP has modeled its regulations implementing VEVRAA on those implementing Section 503. This reflects the close similarity between the statutes in terms of their substantive protections and jurisdictional requirements. The September 24, 1996, VEVRAA NPRM was modeled after the May 1, 1996, Section 503 final rule.

Appendix C, Review of Personnel Processes, in the VEVRAA NPRM proposed a set of procedures that contractors could use to facilitate a review by the contractor and the Government of the contractor's personnel processes. The review is required by § 60–250.44(b), and is intended to ensure that the contractor's personnel processes provide for careful consideration of the qualifications of applicants and employees who are known to be special disabled veterans or veterans of the Vietnam era, for all employment and training opportunities. Paragraphs 3 and 4 of Appendix C proposed to recommend that contractors attach or include a description of accommodations considered or used for special disabled veterans to application forms or personnel records. Appendix C to the VEVRAA NPRM repeated the substance of Appendix C to the May 1, 1996, Section 503 final rule.

The Equal Employment Opportunity Commission (EEOC) submitted a comment in which it asserted that in most instances descriptions of accommodations considered or used for special disabled veterans constitute medical information that must be maintained in separate files and treated as confidential medical records. Accordingly, the EEOC recommended that Appendix C be revised by changing paragraphs 3 and 4 to indicate that contractors should maintain descriptions of accommodations considered or used in separate confidential medical files. OFCCP agreed with the EEOC's recommendation and, in its VEVRAA final rule published elsewhere in this issue of the **Federal Register**, revised paragraphs 3 and 4 of Appendix C.

The EEOC's comment applies equally to Appendix C to the Section 503 rules. Just as descriptions of accommodations considered or used for special disabled veterans often constitute medical information, so, too, do descriptions of accommodations considered or used for individuals with disabilities often constitute medical information. Accordingly, OFCCP has decided to revise paragraphs 3 and 4 of the corresponding Appendix C to 41 CFR Part 60–741.

Regulatory Revision

Pursuant to this revision, paragraphs 3 and 4 to Appendix C specify:

3. Where the contractor prepares a statement of the reason why an individual with a disability was rejected and a description of accommodations considered, those materials should be treated as confidential medical records.

4. Where the contractor makes a record of accommodations undertaken in order to place an individual with a disability on the job, the record should be treated as a confidential medical record.

Regulatory Procedures

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866. This rule has been determined not to be significant for purposes of Executive Order 12866 and therefore need not be reviewed by OMB. This rule does not meet the criteria of Section 3(f)(1) of Executive Order 12866 and therefore the information enumerated in Section 6(a)(3)(C) of that Order is not required.

This conclusion is based on the fact that this rule does not substantively change the existing obligation of Federal contractors to apply a policy of nondiscrimination and affirmative action in their employment of qualified individuals with disabilities. As discussed in more detail below, the rule is interpretive in nature and does not require particular actions by contractors.

Regulatory Flexibility Act

The rule is interpretive and does not substantively change existing obligations for Federal contractors. Accordingly, we certify that the rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 605(b), is not required.

Unfunded Mandates Reform

Executive Order 12875

This rule will not create an unfunded Federal mandate upon any State, local or tribal government.

Unfunded Mandates Reform Act of 1995

This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

We have reviewed this rule and we have not identified any changes in paperwork under the Paperwork Reduction Act.

Notice and Comment Rulemaking

The Department believes that notice and comment rulemaking are not required under the Administrative Procedure Act, 5 U.S.C. 553(b)(A), because this rule is interpretive rather than substantive in nature. The Section 503 regulations specifically provide as follows:

Appendix C of this part is *an example* of an appropriate set of procedures. The procedures in Appendix C of this part *are not required* and contractors may develop other procedures appropriate to their circumstances. 41 CFR 60–741.44(b) (emphasis added).

Because contractors are not required to follow Appendix C, no penalty can attach for failure to follow the

Appendix. Accordingly, the rule is not substantive in nature and notice and comment rulemaking is not required. See, e.g., *American President Lines, Ltd.* v. *FMC*, 316 F.2d 419 (DC Cir. 1963).

List of Subjects in 41 CFR Part 60–741

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, and Reporting and recordkeeping requirements.

Signed at Washington, D.C., this 26th day of October, 1998.

Alexis M. Herman,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

For the reasons set forth above, 41 CFR Part 60–741 is amended as follows:

PART 60–741—[AMENDED]

1. The authority citation for part 60–741 continues to read as follows:

Authority: 29 U.S.C. 706 and 793; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

2. In Appendix C to part 60–741, the introductory text is republished and paragraphs 3 and 4 are revised to read as follows:

Appendix C to Part 60–741—Review of Personnel Processes

The following is a set of procedures which contractors may use to meet the requirements of § 60–741.44(b):

* * * * *

3. In each case where an employee or applicant who is an individual with a disability is rejected for employment, promotion, or training, the contractor should prepare a statement of the reason as well as a description of the accommodations considered. The statement of the reason for rejection (if the reason is medically related), and the description of the accommodations considered, should be treated as confidential medical records in accordance with § 60–741.23(d). These materials should be available to the applicant or employee concerned upon request.

4. Where applicants or employees are selected for hire, promotion, or training and the contractor undertakes any accommodation which makes it possible for him or her to place an individual with a disability on the job, the contractor should make a record containing a description of the accommodation. The record should be treated as a confidential medical record in accordance with § 60–741.23(d).

[FR Doc. 98–29042 Filed 11–3–98; 8:45 am]

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federal register

Wednesday
November 4, 1998

Part III

Department of Energy

10 CFR Part 835

Occupational Radiation Protection; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 835

[Docket No.: EH–RM–96–835]

RIN 1901–AA59

Occupational Radiation Protection

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its primary standards for occupational radiation protection. This final rule is the culmination of a systematic analysis to identify the elements of a comprehensive radiation protection program and determine those elements of such a program that should be codified as DOE continues its transition from a system of contractually-based nuclear safety standards to regulatory-based requirements. The final rule codifies requirements previously established in DOE's contractually-based standards, clarifies certain issues identified during implementation of programs to ensure compliance with the original rule, and corrects minor errors.

EFFECTIVE DATE: The amendments to this regulation become effective on December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Joel Rabovsky, U.S. Department of Energy, Office of Worker Protection Programs and Hazards Management, EH–52, 19901 Germantown Road, Germantown, MD 20874, (301) 903–2135.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Significant Changes
III. Review Under the National Environmental Policy Act
IV. Review Under the Regulatory Flexibility Act
V. Review Under Executive Order 12866
VI. Review Under Executive Order 12612
VII. Review Under Executive Order 12988
VIII. Review Under Paperwork Reduction Act
IX. Review Under the Unfunded Mandates Reform Act
X. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

I. Background

On December 14, 1993, DOE published a final rule, 10 CFR part 835, ''Occupational Radiation Protection'' (58 FR 65458), which established regulatory requirements consistent with the ''Radiation Protection Guidance to Federal Agencies for Occupational Exposure'' (52 FR 2822) (Guidance to Federal Agencies), as well as guidance issued by authoritative organizations, including the National Council on Radiation Protection and Measurements (NCRP) and the International Commission on Radiological Protection (ICRP). Many of the codified requirements were previously established in DOE Order 5480.11, ''Radiation Protection for Occupational Workers.'' In addition, DOE codified in 10 CFR part 835 the ''as low as is reasonably achievable'' (ALARA) process as the primary means of maintaining occupational radiation doses below regulatory limits.

As a result of an initiative to eliminate redundant and unnecessarily stringent requirements, DOE conducted a systematic analysis to identify the elements of a comprehensive radiation protection program and determine those elements of such a program that should be codified as DOE continues its transition from a system of contractually-based nuclear safety standards to regulatory-based requirements. The systematic analysis included an evaluation of DOE's objectives for occupational radiation protection programs, including structured analyses of existing standards for similar programs, operational occurrences within the DOE complex, and provisions in the original rule. The analysis also included reviews of the requirements in DOE Notice 441.1, ''Radiological Protection for DOE Activities,'' (extended by DOE N 441.2 and 441.3) and the provisions of the ''DOE Radiological Control Manual'' (Manual). DOE proposed to codify requirements in use within the DOE complex to ensure that worker health and safety programs would continue to be maintained at a level commensurate with workplace hazards. DOE also considered approaches used by national and international radiation protection organizations and experience throughout the DOE complex in achieving compliance with 10 CFR part 835. The systematic analysis is documented in a report entitled, ''Development of the 1996 Proposed Amendment to 10 CFR part 835, Occupational Radiation Protection,'' (regulatory development document, November 1996) which may be viewed in the DOE Freedom of Information Reading Room at Room 1E–190, 1000 Independence Avenue, SW, Washington, DC, 20585, (202) 586–6020.

On December 23, 1996, DOE published a Notice of Proposed Rulemaking that would amend 10 CFR part 835 by:

1. Modifying the scope to explicitly exclude radioactive material transportation and certain activities conducted on foreign soil;
2. Adding requirements for area posting and sealed radioactive source control;
3. Adding a removable surface contamination value for tritium, to be used to identify the need for area posting and imposition of certain radioactive material controls;
4. Expanding and clarifying provisions of the rule to address emergent radiation protection issues;
5. Deleting certain provisions, as appropriate, to eliminate redundant and excessively stringent regulatory requirements; and
6. Clarifying and correcting minor errors.

As discussed in this Notice of Final Rulemaking, the final rule was developed in consideration of the extensive input received during two public hearings and through written and electronic public comments.

The schedule for achieving compliance with the amendments to 10 CFR part 835 is as follows. The final rule will become effective 30 days following publication in the **Federal Register**. As provided at § 835.101(g)(3), updated radiation protection programs (RPPs) must be submitted to DOE within 180 days following the effective date of the final rule. Changes that do not decrease the effectiveness of the RPP may be implemented prior to DOE approval. Changes that decrease the effectiveness of the RPP require DOE approval prior to implementation. As provided at § 835.101(i), an update of the RPP shall be considered approved 180 days after its initial submission unless rejected by DOE at an earlier date. The final rule, at § 835.101(f), requires full compliance with the regulatory changes within 180 days of RPP approval except for radiobioassay program accreditation required under § 835.402(d). Because of the breadth of the joint DOE/DOE-contractor effort needed to accomplish radiobioassay program accreditation, at § 835.101(f) DOE has established January 1, 2002 as the compliance date for the radiobioassay program accreditation requirements.

II. Discussion of Significant Changes

The discussion of the significant changes to 10 CFR part 835 and the response to public comments is organized according to subpart. When there was more than one significant change in a subpart the significant changes are generally listed in order of section. The topic addressed by each significant change is listed. In many cases, inclusion of a change to the provisions in one subpart or section required changes to other subparts or

sections of the regulation either for internal consistency or to resolve a public comment. For example a number of changes to the provisions of the rule required concomitant changes to the definitions or recordkeeping requirements. Accordingly, the discussion of a change may reference other subparts in addition to the one in which the primary change was made. This organization of the discussion of the significant changes to 10 CFR part 835 and the response to public comments was chosen to more clearly explain the changes and how DOE responded to the public comments.

A. General Provisions, Subpart A

1. Nuclear Explosive and Weapon Surety Program

Proposed Amendment

DOE proposed to revise the Nuclear Explosive and Weapon Surety Program exclusion at § 835.1(b)(3) to clearly indicate that the exclusion applies only to the extent that compliance with 10 CFR part 835 would compromise the effectiveness of activities essential to prevention of an accidental or unauthorized detonation. This action was initiated to ensure that radiation protection programs are implemented that do not compromise the overriding goal of preventing such incidents.

Summary of Public Comments and Disposition

DOE received comments indicating that this exclusion should also be extended to address the provisions of CG-TSS-S2, ''Transportation Safeguards System Classification and Unclassified Controlled Information Guide (Supplement),'' which states that ''The fact that a specific SST (Safe Secure Trailer)/SSR (Safe Secure Railcar) is loaded or empty is CNSI (controlled nuclear safeguards information).'' The commenters believe that certain posting and labeling provisions of 10 CFR part 835 would provide indication of the loaded or empty status of affected vehicles, contrary to the referenced guidance. DOE believes that the existing exclusion already provides the flexibility needed for implementation of programs consistent with CG-TSS-S2. Indeed, the situation presented by the commenters is exactly the type of condition for which the exclusion is intended.

Final Rule

After further consideration, DOE has determined that the proposed clarification is not needed. Ruling 1995–1 makes it clear that the existing language recognizes ''the paramount importance of preventing accidental or unauthorized nuclear detonations and ensuring that the requirements in (part 835) do not come into conflict with any activities necessary to prevent such detonation. However, [the language is] not intended to relieve the person responsible for a DOE nuclear facility or a DOE activity from complying with the requirements in (part 835) to the extent they do not interfere with the conduct of activities undertaken to prevent an accidental or unauthorized detonation.'' (61 FR 4212, February 5, 1996.)

2. Radioactive Material Transportation

Proposed Amendment

DOE standards for packaging and transporting radioactive material are addressed in DOE Orders. DOE Orders 460.1A, ''Packaging and Transportation Safety,'' and 460.2, ''Departmental Materials Transportation and Packaging Management,'' provide DOE requirements for packaging and transportation of radioactive material. Requirements for radioactive material transported under DOE's national security mission are provided in DOE Order 5610.12, ''Packaging and Off-site Transportation of Nuclear Components and Special Assemblies Associated with the Nuclear Explosive and Weapon Safety Program,'' and DOE Order 5610.14, ''Transportation Safeguards System Program Operations.'' The requirements of these Orders are consistent with Department of Transportation (DOT) regulatory requirements and provide the framework for ensuring transportation safety. Certain provisions of 10 CFR part 835 complement these transportation safety directives by ensuring that individuals are afforded an adequate level of radiation protection while preparing radioactive materials for transportation and taking possession of radioactive material from transportation.

Although the absence of provisions pertaining to radioactive material transportation was addressed in the preamble for the original Rulemaking (58 FR 65465), DOE did not explicitly exclude radioactive material transportation from the scope of 10 CFR part 835. Consistent with its original intent as expressed in the preamble of the final rule, DOE proposed an exclusion at § 835.1(b)(4) for radioactive material transportation conducted in accordance with applicable DOE Orders. DOE also proposed a definition of ''radioactive material transportation'' at § 835.2(a) to clarify the distinction between the process of transporting radioactive materials, which would be excluded from 10 CFR part 835, and those activities leading to or resulting from radioactive material transportation, which would be subject to 10 CFR part 835. The proposed definition included a specified threshold (specific activity) consistent with DOT requirements at 49 CFR 171–179.

Summary of Public Comments and Disposition

Public comments supported DOE's intent to exclude radioactive material transportation, but indicated that the proposed approach did not clearly establish the interface between 10 CFR part 835 and applicable transportation requirements. Other comments indicated that the term ''specific activity'' in the proposed § 835.2(a) definition of the term ''radioactive material transportation'' could be misconstrued, potentially resulting in non-compliant conditions.

Final Rule

The final rule clearly establishes the interface between the occupational radiation protection and transportation requirements. This approach makes it clear that 10 CFR part 835 does not apply to the radioactive material transportation, which is defined to be movement of radioactive material that is subject to DOE Orders or DOT regulations. The definition of radioactive material transportation is independent of the geographical location of the material being transported (i.e., inside or outside of the area controlled by DOE) and also independent of the radiological characteristics (e.g., specific activity) of the material in question. As a result of this revised approach, DOE has not included the term ''specific activity'' in the § 835.2(a) definition of the term ''radioactive material transportation.''

3. DOE Activities Conducted on Foreign Soil

Proposed Amendment

DOE proposed to add an exclusion at § 835.1(b)(5) for DOE activities conducted on foreign soil and under requirements agreed to between the foreign government and the United States. DOE proposed this exclusion in recognition of the primacy of foreign governments' occupational radiation protection requirements.

Summary of Public Comments and Disposition

Several commenters indicated that the development and approval of agreements with foreign governments may require action by the State Department and that DOE contractors could not take independent actions to

ensure that appropriate agreements have been reached. However, DOE activities, including those performed on foreign soil, are conducted under the cognizance of the responsible DOE Program Office and these offices are responsible for ensuring that such agreements are in effect before authorizing the conduct of the activities. The only action required of the DOE contractor will be to ensure that the DOE Program Office has established, or verified the establishment of, the appropriate agreements. Also, the activity is not excluded unless there are occupational radiation protection requirements agreed upon.

Final Rule

The final rule includes the exclusion for DOE activities conducted on foreign soil at § 835.1(b)(5).

4. Applicability of Occupational Dose Received From Excluded Activities

Proposed Amendment

At §§ 835.1(c), 835.202(a), and 835.202(b), DOE proposed changes to clarify the requirements for accounting for occupational doses received from non-DOE activities. The proposed amendment indicated that, even though certain activities are excluded from the scope of the rule at § 835.1(b), an individual's occupational dose resulting from excluded activities would be applied toward determination of compliance with the occupational dose limits established in subpart C of 10 CFR part 835. This is necessary to ensure that an individual's annual aggregate occupational dose is maintained below the limits specified in the Federal Guidance. This would include occupational doses received from activities licensed by the Nuclear Regulatory Commission (NRC) and its agreement states, activities conducted under the authority of the Director, Naval Nuclear Propulsion Program, activities conducted under the Nuclear Explosive and Weapon Surety Program, radioactive material transportation activities, and activities conducted under the auspices of foreign governments. However, radiation doses received from background radiation, as a patient for the purposes of medical diagnosis or therapy, and from participation as a subject in medical research programs are not considered occupational doses and would not be considered in determining compliance with the occupational dose limits. Furthermore, occupational dose received as a result of authorized emergency exposures and planned special exposures, although occupational in nature, would not be considered in determining compliance with the dose limits established at § 835.202(a).

Summary of Public Comments and Disposition

Commenters generally supported this clarification of DOE policy.

Final Rule

The final rule adopts the proposed clarification that all occupational doses, other than doses resulting from authorized emergency exposures and planned special exposures, shall be considered in determining compliance with the limits set forth in §§ 835.202, and 835.207. Section § 835.206, Limits for the embryo/fetus, was included in this provision for consistency and completeness. Because § 835.1302 establishes the appropriate criteria for authorizing exposures under emergency conditions, DOE has instituted an editorial change to reference this section. Procedures for handling doses resulting from authorized emergency exposures and planned special exposures are discussed in Section II.C of this Notice of Final Rulemaking, ''Limitation of Individual Doses.''

5. Definitions

DOE proposed to add, revise, or remove the definitions of a number of terms that appear at § 835.2(a) and (b) as follows:

a. Adding definitions of the terms ''accountable sealed radioactive source,'' ''derived air concentration-hour,'' ''occupational dose,'' ''radioactive material area,'' ''radioactive material transportation,'' ''radiological control technician,'' ''real time air monitoring,'' ''respiratory protective device,'' ''sealed radioactive source,'' ''source leak test,'' and ''week.''

b. Revising the definitions of the terms ''airborne radioactive material or airborne radioactivity,'' ''airborne radioactivity area,'' ''contamination area,'' ''controlled area,'' ''DOE activity,'' ''high contamination area,'' ''member of the public,'' ''monitoring,'' ''radiological area,'' ''year,'' ''committed dose equivalent,'' ''cumulative total effective dose equivalent,'' ''effective dose equivalent,'' ''external dose or exposure,'' ''internal dose or exposure,'' ''quality factor,'' ''total effective dose equivalent,'' and ''weighting factor.''

c. Removing the definitions of the terms ''ambient air,'' ''continuous air monitor,'' ''collective dose,'' and ''occupational exposure.''

The effects of these proposed changes, significant public comments on these proposed changes, and any resulting changes are discussed in this Notice of Final Rulemaking as these terms appear in the final rule.

6. Intervals Between Required Activities

Proposed Rule

DOE proposed to revise the required intervals for internal audits, instrument and equipment calibration and maintenance, and radiation safety retraining from the specified number of years to the equivalent number of months. This change was proposed to eliminate any confusion resulting from the § 835.2(a) definition of the term ''year,'' which specifically defined the year in terms necessary to ensure compliance with the subpart C dose limits.

Summary of Public Comments and Disposition

DOE received a number of comments indicating that the required intervals appeared to be somewhat arbitrary and should therefore include some degree of flexibility to accommodate operational and scheduling needs. DOE agrees with these observations.

Final Rule

DOE has included a provision at § 835.3(e) that will allow a 30 day automatic extension in the required time interval to accommodate operational and scheduling constraints. The extension is considered to be automatic in that there is no requirement to obtain DOE or other approval for the extension. This provision addresses the requirements of §§ 835.102, 835.901, and 835.1202 for internal audits, radiation safety training, and sealed radioactive source inventories and leak tests, respectively. Because of the varying lengths of the calendar months, DOE has not provided a definition of the term ''month.'' DOE expects that those entities responsible for ensuring compliance with 10 CFR part 835 will undertake those measures necessary to perform the required activities within the prescribed time frame (i.e., if a sealed radioactive source is leak tested on January 15, DOE would expect the subsequent leak test to be performed on or before July 15 of the same year). When operational or scheduling considerations preclude adherence to that schedule, then one may consider utilization of the 30 day extension (i.e., the leak test could be performed no later than August 14 of the same year).

7. Radiological Units

Proposed Amendment

DOE proposed to delete the § 835.4 prohibition on use of the international (SI) radiological units. The international system of radiological units is commonly used for calculational and reference purposes. As proposed, § 835.4 would continue to require the use of the special radiological units in required records. Consistent with its historical endorsement of the special units and in recognition of the capabilities of many commercially-available instruments in use throughout the DOE complex, DOE also proposed to specifically allow for use of subunits and multiples of the unit ''roentgen.''

Summary of Public Comments and Disposition

Although some comments indicated that DOE should proceed toward use of the SI units for required records, DOE believes that considerations of consistency with records required by the NRC and its agreement states override the impetus toward use of SI units.

Final Rule

As proposed, § 835.4 of the final rule allows the use of the international system of units for calculations or reference purposes. Records required by 10 CFR part 835 will continue to be maintained using the special radiological units of curie, rad, roentgen, and rem.

B. Management and Administrative Requirements, Subpart B

1. Documented Radiation Protection Programs

Proposed Rule

Paragraph 835.101(g) of the original rule requires that those entities subject to the requirements of 10 CFR part 835 submit an update of the documented radiation protection program (RPP) within 180 days of the effective date of any regulatory modifications. DOE proposed to establish provisions at § 835.101(f) requiring compliance with amendments to 10 CFR part 835 no later than 180 days following approval of the updated RPP, except for the provisions of § 835.402(d) for radiobioassay program accreditation. Because of the extent of the joint DOE/DOE contractor effort necessary to complete the radiobioassay program accreditations, DOE proposed a compliance date of January 1, 2000 for this provision. DOE also proposed to delete outdated provisions codified at § 835.101 (f) and (g).

Summary of Public Comments and Disposition

Several commenters indicated that DOE's proposed compliance date of January 1, 2000 for radiobioassay program accreditation may be inappropriate due to the lack of experience in implementing the accreditation program. Other comments indicated that DOE delays in implementing the program might result in a state of non-compliance for DOE-contractors. DOE agrees that more time may be necessary to complete the required program accreditations.

Final Rule

DOE has codified the proposed 180 day period for achieving compliance with the amendments to 10 CFR part 835, except for the radiobioassay program accreditation requirements of § 835.402(d). DOE has extended the date for compliance with the radiobioassay program accreditation requirements until January 1, 2002 to accommodate the planned schedule to complete program accreditations throughout the DOE complex. DOE expects this extension to provide ample time for completion of the program accreditations. Should significant delays occur in performing the program accreditations, DOE could exercise appropriate enforcement discretion. These changes will not affect the compliance status of personnel dosimetry programs currently accredited, or excepted from accreditation, under the existing Department of Energy Laboratory Accreditation Program (DOELAP) standards.

DOE has deleted the outdated provisions of § 835.101 (f) and (g) as proposed.

2. Education and Training of Cognizant Individuals

Proposed Amendment

To address a number of shortcomings in its provisions for training radiological control technicians identified during its systematic analysis, DOE proposed to codify a definition of ''radiological control technician'' at § 835.2(a). DOE also solicited comments on four alternative approaches that were discussed in the preamble of the Notice of Proposed Rulemaking.

Summary of Public Comments and Disposition

Public comments indicated that DOE's proposed definition of the term ''radiological control technician'' did not adequately describe the roles and responsibilities of individuals filling this position. DOE received comments endorsing each of the proposed alternative approaches, with the majority of the comments endorsing Alternative Approach 4 as discussed in the preamble of DOE's Notice of Proposed Rulemaking.

Final Rule

To satisfy its programmatic objectives for occupational radiation protection programs, DOE has codified an approach consistent with that discussed as Alternative Approach 4 in its Notice of Proposed Rulemaking. Under this approach, DOE has eliminated the specific requirements for radiological control technician training from subpart J of 10 CFR part 835 and added at § 835.103 a requirement for all individuals responsible for ensuring compliance with the rule to have the appropriate education, training, and skills. This approach provides the flexibility necessary to address the wide range of individuals involved in developing and implementing measures necessary for ensuring compliance with 10 CFR part 835, including cognizant managers, supervisors, auditors, engineers, clerks, and technicians.

3. Written Procedures

Proposed Rule

In its Notice of Proposed Rulemaking, DOE noted that the existing rule did not establish requirements for written procedures that consistently addressed the hazards associated with the specified activity. DOE believes that, due to the wide variation of radiological activities and their associated hazards conducted at DOE facilities, requiring written procedures for specific types of activities may divert resources from active management of higher-hazard activities to administrative control of lower-hazard activities. DOE discussed two alternative approaches in its Notice of Proposed Rulemaking. Alternative Approach 1 would eliminate most or all of the requirements for written procedures and leave the determination of the need for written procedures to the cognizant DOE Program Office. Alternative Approach 2 would eliminate most or all of the existing requirements for written procedures in favor of a general requirement that written procedures be developed and implemented commensurate with the radiological hazards created by the activity and consistent with the education, training, and skills of the affected individuals.

Summary of Public Comments and Disposition

Public comments overwhelmingly favored Alternative Approach 2. Commenters indicated that this approach would provide for an appropriate level of radiological safety while providing the flexibility needed to address the wide range of DOE activities. DOE agrees with the public comments.

Final Rule

DOE has established a requirement at § 835.104 consistent with that described as Alternative Approach 2 in its Notice of Proposed Rulemaking. As a result of this change, DOE has deleted specific requirements for written procedures from §§ 835.501(d), 835.1001(a), 835.1001(b), 835.1003(a), 835.1101(c), and 835.1102(c)(3) (formerly 835.404(d)). In addition, proposed requirements for written procedures at §§ 835.405(f) and 835.1201(a) were omitted from the final rule.

DOE's adoption of this approach is not intended to imply a global requirement that written procedures be developed and implemented to address all of the requirements of 10 CFR part 835. In evaluating the need for written procedures addressing any particular provision of 10 CFR part 835, consideration must be given to the nature and extent of the radiological hazards, the complexity of the measures necessary to achieve compliance, and the education, training and skills of the individuals who must implement those measures. Under such a regimen, a low hazard activity employing a stable staff of highly educated and skilled workers having an advanced knowledge of radiation protection principles and practices could have fewer and less detailed procedures than a higher hazard activity employing a transient force of workers with less knowledge of radiation protection principles and practices. The adequacy of the written procedures is ultimately determined by the appropriate implementation of the necessary compliance measures by the affected individuals.

Because the scope of subpart B of 10 CFR part 835 has been expanded, DOE has changed the title of this subpart to ''Management and Administrative Requirements.''

C. Limitation of Individual Doses, Subpart C

1. Summing of Internal and External Doses

Proposed Amendment

DOE proposed to revise § 835.203(a) to provide flexibility in requirements for summing of individual internal and external dose equivalents to determine the total effective dose equivalent. As proposed, § 835.203(a) would require summing only when the individual was monitored in accordance with § 835.402 (that is, when the individual's dose was likely to exceed the mandatory individual monitoring thresholds) or when the individual's dose exceeded the mandatory monitoring thresholds, regardless of a priori expectations.

DOE also proposed to delete § 835.203(c) because this provision is redundant with provisions included in the § 835.2(b) definition of the term ''weighting factor.''

Summary of Public Comments and Disposition

DOE received comments indicating that all monitored individual internal and external doses should be summed to determine the total effective dose equivalent. Commenters noted that these data were available and could be important in future dose reconstruction or litigation efforts. DOE agrees with these comments. Although DOE is concerned about the administrative burden associated with the need to sum trivial internal and external doses, DOE has provided ample flexibility for ameliorating such burdens through codification of the individual monitoring thresholds provided at § 835.402.

Final Rule

DOE has omitted the proposed change from § 835.203(a), but deleted the second sentence of § 835.203(a) because this sentence is redundant with provisions included in the definition of the term ''effective dose equivalent'' at § 835.2(b). DOE has deleted § 835.203(c), as proposed.

2. Planned Special Exposures

Proposed Amendment

DOE proposed changes to the 10 CFR part 835 requirements for conducting planned special exposures in excess of the dose limits established at § 835.202. The proposed changes included:

a. Changing the § 835.204(a)(1) reference from § 835.202(a)(1) to § 835.202(a) to indicate that all of the § 835.202 dose limits apply.

b. Revising § 835.204(c) to indicate that doses resulting from planned special exposures may exceed the numerical values established at § 835.202(a) without actually exceeding the occupational dose limits.

c. Clarifying documentation requirements for planned special exposures at § 835.204(d).

DOE also solicited comments on the possibility of deleting the provisions for planned special exposures because these provisions have not been used to date.

Summary of Public Comments and Disposition

Commenters generally supported the proposed changes to the provisions for planned special exposures. Many commenters indicated that the provisions for planned special exposures should be retained to provide the maximum practical degree of flexibility.

Final Rule

Consistent with the comments received, DOE has retained the provisions for planned special exposures, with the proposed revisions, in the final rule.

3. Radiation Dose Limits

Proposed Amendment

DOE proposed editorial changes to § 835.207 and the heading of that section to clarify that the dose limits for minors apply to doses resulting from occupational exposure only. DOE also proposed to add deterministic dose limits for minors consistent with the Federal Guidance. Non-occupational exposure of minors is subject to the dose limits established at § 835.208 for members of the public entering a controlled area. DOE also proposed changes to § 835.208 to clarify that the member of the public dose limit applies to members of the public in the controlled area only. DOE proposed to revise the definition of ''member of the public'' at § 835.2(a) to clearly distinguish members of the public from temporary or transient workers or visiting scientists who could receive occupational doses.

DOE proposed to revise the definition of ''cumulative total effective dose equivalent'' (CTEDE) at § 835.2(b) to include all total effective dose equivalent (TEDE) values, where available, from January 1, 1989, whether or not the dose was received at that DOE site or facility.

Summary of Public Comments and Disposition

Several commenters questioned DOE's proposed approach to controlling doses to minors, pointing out that a minor could possibly receive 0.1 rem in a year occupational dose and 0.1 rem in a year as a member of the public. Although this scenario is possible, the resulting maximum dose is well below the most recent recommendations of scientific bodies for exposures that do not occur repeatedly.

DOE did not receive any substantive comments on the proposed change to the definition of the term ''cumulative total effective dose equivalent.''

Final Rule

DOE has adopted the changes, essentially as proposed. DOE has also made editorial changes to §§ 835.207 and 835.208 for clarity. These changes include omitting, in § 835.207, the proposed occupational dose limit for minors of 10% of the § 835.202(a)(2) limit. This limit is redundant because the 0.1 rem total effective dose equivalent limit for minors is always more restrictive.

4. Exposures to Airborne Radionuclides

Proposed Amendment

DOE proposed to delete § 835.209(b) because of redundancy with other rule requirements for inhalation exposures and external exposures from airborne radionuclides.

Summary of Public Comments and Disposition

DOE did not receive any substantive comments on the proposed deletion.

Final Rule

DOE has deleted § 835.209(b) and redesignated § 835.209(c) as § 835.209(b). In addition, DOE has initiated an editorial change by deleting the word ''representative'' from § 835.209(c)(3) (redesignated as § 835.209(b)(3)). This word was redundant with the remaining requirement that the internal dose estimate based upon air concentration values must be as or more accurate than that based upon bioassay results.

D. Monitoring of Individuals and Areas, Subpart E

1. General Requirements for Area and Individual Monitoring

Proposed Amendment

In reviewing the requirements of 10 CFR part 835, DOE noted that the terms ''monitoring'' and ''survey'' were not used consistent with the definitions provided at § 835.2(a). DOE proposed changes to the definition of the term ''monitoring'' at § 835.2(a) to clearly establish that ''monitoring'' involves measurement of radiological conditions and the subsequent use of the results of these measurements to evaluate potential and actual exposures to ionizing radiation. As proposed, the term ''survey,'' would be more directly related to the assessment of workplace or material radiological conditions through direct measurement, assessment, or calculation for the purposes of hazards assessment. DOE proposed changes throughout the rule to ensure consistent application of these terms.

DOE proposed to clarify the requirements of §§ 835.401(c) and 835.703(d) by making the calibration requirements apply to both ''instruments'' and ''equipment.'' This clarification is consistent with current field practice with regard to equipment, such as an air sampler, that, although incorporated into or associated with instrumentation systems, does not have any instrumentation.

Summary of Public Comments and Disposition

DOE received a number of comments supporting its attempt to clarify the ''monitoring'' and ''surveying'' terminology. However, comments indicated that the usage of these terms remained inconsistent.

With regard to the proposed § 835.401(c) requirements for calibration and maintenance of instruments and equipment, DOE received a number of comments indicating that the required one year calibration frequency was overly stringent given the reliability of many modern instruments, particularly certain fixed monitors. Other commenters indicated that the term ''equipment'' could conceivably be extended to include vehicles, calculators, and other equipment routinely used in the course of area monitoring.

Commenters indicated that the use of the undefined term ''workplace'' in this subpart could result in confusion regarding the scope of the requirements. Commenters also indicated that the use of the term ''area monitoring'' at § 835.401(b) seemed to imply that stationary area monitors were required under certain conditions.

Final Rule

DOE has determined that, for regulatory purposes as established in 10 CFR part 835, there is no substantive difference between the uses of the terms ''monitoring'' and ''survey.'' Therefore, in the final rule DOE has revised the definition of the term ''monitoring'' and deleted the term ''survey,'' replacing this term with ''monitoring'' (as modified) throughout the rule. DOE has also deleted the undefined terms ''sampling'' and ''measurements'' in favor of the defined term ''monitoring.''

DOE has deleted the term ''workplace'' from subpart E of 10 CFR part 835, instead adopting a performance-oriented approach of ''monitoring of individuals and areas.'' In a related editorial change, DOE has deleted the term ''area monitoring'' from proposed § 835.401(b) and redesignated the remaining text as § 835.401(a)(6) to eliminate any connotation regarding requirements for stationary radiation monitors. DOE has also substituted the defined term ''individual'' for the undefined term ''personnel'' in this provision.

In response to comments on DOE's requirements for calibration and maintenance of instruments and equipment, DOE has revised these requirements (at redesignated § 835.401(b)(1)) such that calibration and maintenance will be required ''periodically'' on an ''established frequency.'' This change is consistent with NRC requirements at 10 CFR 20.1501 and provides flexibility for acceptance of recommendations provided in various consensus standards accepted by the instrument calibration community and used within the DOE complex. DOE will provide guidance regarding measures for establishing appropriate maintenance and calibration frequencies and proper application of these requirements to ''equipment'' used for monitoring.

As used in 10 CFR part 835, instruments and equipment used for monitoring includes devices used for both area monitoring (e.g., portable and installed radiation, contamination, and airborne radioactivity sampling and monitoring devices) and individual monitoring devices (e.g., thermoluminescent dosimeters, pocket ion chambers, track etch dosimeters, and electronic dosimeters). Note that the calibration of personnel dosimeters that are required under § 835.402 is addressed by the DOELAP for personnel dosimetry.

2. Individual Monitoring and Dose Determination

Proposed Amendment

DOE proposed several changes to the existing requirements for monitoring individual radiation doses. The proposed changes included:

a. Clarifying the requirements for external and internal dose monitoring programs at § 835.402(b) and (d) by providing that such programs must be capable of demonstrating compliance with all of the individual dose equivalent limits in subpart C. This approach is consistent with DOE's previously established requirements for records required under § 835.701(a).

b. Revising the monitoring requirements for minors at § 835.402(a)(3) and (c)(3) to expressly state that these requirements apply to occupationally exposed minors only.

Minors who are not occupationally exposed are subject to the member of the public monitoring requirements found at § 835.402(a)(4) and (c)(4).

c. Deleting from § 835.402(c)(1) the monitoring threshold based on organ and tissue committed dose equivalent. The monitoring threshold based upon committed effective dose equivalent obviates the need for this threshold because, through application of the weighting factors defined at § 835.2(b), the committed effective dose equivalent always provides a more restrictive basis for individual monitoring.

d. Changing § 835.402(a)(1)(i) to require individual monitoring on the basis of deep dose equivalent rather than effective dose equivalent because deep dose equivalent is the parameter actually monitored by existing dosimetry programs.

e. Removing provisions at § 835.402(a)(1)(iv) for measuring deep dose equivalent from external sources to any organ or tissue other than the lens of the eye because any doses meeting this condition are adequately addressed by § 835.402(a)(1)(i).

f. Clarifying § 835.402(a)(4) and (c)(4) to indicate that these provisions apply to members of the public inside the controlled area only.

Summary of Public Comments and Disposition

Commenters indicated that the proposed § 835.402(a)(1)(i) requirement for monitoring of deep dose equivalent, as worded, would challenge the capabilities of modern dosimetry systems. While the technical basis for the comments was not clear, reflection on these comments revealed that the wording in the proposed rule could suggest the basis for initiating monitoring was the highest dose received by any portion of the whole body. Furthermore, although deep dose equivalent is the quantity most commonly measured, effective dose equivalent is the appropriate criterion upon which the mandatory individual monitoring threshold should be based because the corresponding occupational dose limits are stated in terms of effective dose equivalent.

Final Rule

DOE agrees with the public comments regarding the proposed change to § 835.402(a)(1)(i). The language in the original version of 10 CFR part 835 has been retained. DOE has included the other proposed changes in the final rule.

3. Program Accreditation

Proposed Amendment

DOE proposed a number of enhancements and additions to the existing requirements for the DOELAP. These proposed changes included:

a. Amending § 835.402(b) to indicate that, except as discussed below, personnel dosimetry programs must be either accredited under the DOELAP or excepted from accreditation under that program.

b. Amending § 835.402(d) to require radiobioassay program accreditation or exception through the recently developed DOELAP for Radiobioassay. This proposed change was intended to ensure the integrity of radiobioassay programs and prevent recurrence of recent adverse events.

c. Revising § 835.402(b) and (d) to limit the scope of the DOELAP requirements to personnel dosimetry and radiobioassay programs implemented to ensure compliance with § 835.402 (i.e., monitoring when individual doses are likely to exceed the stated thresholds). In a related change, because § 835.401(b) addresses calibration of instruments and equipment used for monitoring and DOELAP for Personnel Dosimetry provides appropriate dosimetry system performance criteria, DOE proposed to delete the dosimeter calibration requirement from § 835.402(b).

d. Adding § 835.402(e) to require that external dosimetry and bioassay programs conform to the most recent revisions of the DOELAP technical standards or be subject to review and approval of the Secretarial Officer responsible for environment, safety, and health matters (currently the Assistant Secretary for Environment, Safety and Health). For those programs that are not accredited or excepted from the accreditation program, this provision would also allow this same officer to provide approval if the programs demonstrate performance equivalent to those accredited under the DOELAP. This provision would ensure that, to the extent practical, DOE radiation protection programs will reflect the latest advances in the sciences of external and internal dosimetry. To prevent the automatic loss of accreditation status as a result of changes to the DOELAP technical standards, the DOELAP technical standards provide that changes in the standards become effective only during the ensuing accreditation cycle.

Summary of Public Comments and Disposition

Several commenters suggested that all individual dose measurements be performed under an accredited dosimetry program in order to maintain credibility of all monitoring data. However, DOE does not believe that is appropriate to impose regulatory accreditation requirements on monitoring programs that are not required by regulation. Existing regulatory provisions at § 835.402(a) and (c) require individual monitoring for all individuals likely to receive a dose equivalent exceeding the specified thresholds. As part of a comprehensive radiation protection program, measures used to identify these individuals should include comprehensive, documented area monitoring and could include, if management so chooses, individual monitoring. Section 835.401 establishes minimum requirements for performing such monitoring, including requirements for calibration and maintenance of instruments and equipment used to perform the monitoring. As required by §§ 835.701(a) and 835.703, the monitoring results must be documented.

Several commenters recommended that DOE revise the rule to permit DOE facilities to procure the services of dosimetry processors who are accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) administered through the National Institute of Standards and Technology, as an alternative to accreditation under the DOELAP for personnel dosimetry. These comments noted the NRC's regulations require licensees to use dosimetry processors with NVLAP accreditation. They argued that permitting NVLAP accreditation in lieu of DOELAP accreditation, would maximize private sector competition for DOE contracts. DOE has not accepted the commenters' recommendations because NVLAP accreditation does not meet DOE's requirement for an external dose monitoring program. DOELAP accreditation covers both the facility's and the processor's quality assurance program, whereas NVLAP only deals with the dosimetry processor. The commenter's reference to the NRC's use of NVLAP accreditation for dosimetry processors ignores the fact that NRC has the resources to perform frequent on-site inspections of a facility's dosimetry program. In the absence of such resources at DOE facilities, DOE relies upon the DOELAP accreditation to ensure that a facility's personnel dosimetry program provides accurate results.

DOE received comments on its proposal to require DOELAP accreditation, exception from accreditation under DOELAP, or DOELAP equivalency, for radiobioassay programs that would satisfy the internal dose monitoring program requirement in the rule. The commenters argued that it would be premature to impose this requirement because DOE has not completed the process for developing accreditation standards for radiobioassay programs. As discussed in connection with § 835.101, concerning the effective date of the rule, DOE has responded to these concerns by extending the deadline for complying with this provision to January 1, 2002. In any event, § 835.402(d) provides for Secretarial Officer approval of radiobioassay programs that are not accredited under DOELAP.

Several commenters objected to proposed § 835.402(e), which would have required Secretarial Officer approval of personnel dosimetry and radiobioassay programs that do not comply with the latest edition of DOE's technical standards governing program accreditation. They argued that incorporation by reference of the technical standards was inappropriate because the requirements in the technical standards had not been proposed for public comment in a rulemaking. In light of these comments, DOE has deleted the reference to DOE's technical standards for accreditation in the regulatory text of the final rule. DOE does not intend to codify the accreditation standards through this rulemaking. DOE technical standards are guidance documents to assist contractors in implementing regulatory requirements. As a matter of policy (DOE P 450.2A, May 15, 1996), DOE routinely seeks public comments on guidance documents issued to implement environment, safety and health requirements at DOE sites. On April 24, 1997, DOE published a notice of availability of draft guides and technical standards for the Occupational Radiation Protection Program (62 FR 19940). At that time, DOE invited public comment on draft technical standard, ''Department of Energy Laboratory Accreditation Program Administration,'' which includes requirements for personnel dosimetry and radiobioassay program accreditation. The revised regulatory provisions will accomplish DOE's purpose of providing that programs which DOE accredits, or excepts from accreditation, under DOELAP will satisfy the requirements in this rule for programs that are implemented to demonstrate compliance with § 835.402(a) and (c). Accreditation under DOELAP will obviate the need for contractors to secure approval of the Assistant Secretary for Environment, Safety and Health.

Final Rule

In the final rule DOE has revised § 835.402(b) and (d) to provide that contractors may demonstrate the adequacy of external and internal dose monitoring programs, respectively, by submitting their programs to the Secretarial Officer responsible for environment, safety and health for approval in lieu of accreditation or exception from accreditation under the DOELAP. Alternative programs will be approved if their performance is demonstrated to be substantially equivalent to that of accredited programs. This change makes unnecessary, and DOE has deleted, proposed § 835.402(e), which would have required Secretarial Officer approval of programs not complying with the latest edition of the technical standards for DOELAP accreditation.

DOE has adopted the other changes as proposed, with minor editorial corrections.

4. Air Monitoring

Proposed Amendment

DOE proposed to revise the § 835.403(a)(1) air sampling requirement to be based on potential individual exposures in derived air concentration (DAC)-hours in a year rather than a percentage of the annual limit on intake (ALI) because the values provided in appendices A and C of 10 CFR part 835 are listed as DACs. DOE proposed to add § 835.403(a)(2) to require that air sampling be performed when respiratory protective devices are prescribed to protect individuals from exposure to airborne radionuclides. DOE also proposed an editorial change to delete § 835.403(b), eliminating redundancy with § 835.401(b).

To enhance air monitoring programs, DOE proposed to provide more practical and technically accurate criteria at § 835.403 for the use of real-time air monitors based on potential releases that would exceed a defined threshold exposure levels of 40 DAC-hours in a week. In a related change, DOE proposed to replace the term ''continuous air monitor'' with the term ''real-time air monitor'' with supporting changes to the definitions provided at § 835.2(a). DOE also proposed to add a definition of the term ''week'' at § 835.2(a).

Summary of Public Comments and Disposition

DOE received a number of comments indicating that the proposed revision of the requirements for real-time air monitoring was unclear and did not acknowledge the actual capabilities of available monitors. Other commenters indicated that the proposed definition of the term ''week,'' based upon a period beginning on Monday, might cause unnecessary changes in existing schedules for real-time air monitor filter changes. Several commenters indicated that the proposed provisions for air sampling when respiratory protective devices are prescribed could be construed to mean that an air sample must be taken each time an individual enters an area wearing a respiratory protective device.

DOE received comments indicating that the existing criterion based upon the percentage of an ALI was more appropriate for prospective establishment of air monitoring programs. DAC-hours are related to the fraction of an ALI in a consistent and fixed manner; therefore, potential exposures in units of DAC-hours are an appropriate basis for prospectively determining the need for air sampling.

Final Rule

As suggested through public comments, DOE clarified the mandatory airborne radioactivity monitoring criteria in the final rule. Section 835.403(a) of the final rule requires the implementation of air sampling programs in areas in which an individual is expected to be exposed in excess of 40 DAC-hours in a year. The final rule clarifies that airborne radioactivity monitoring during use of respiratory protective equipment is required ''as necessary'' to characterize the hazard. This provision is consistent with requirements imposed by both the NRC and the Occupational Safety and Health Administration (OSHA) (see 10 CFR 20.1703(a)(3), ''Use of individual respiratory protection equipment,'' and 29 CFR part 1910, ''Occupational Safety and Health Standards,'' § 1910.134(d)(1)(iii), respectively).

The § 835.403(b) criterion for real-time air monitoring is based upon the need to alert potentially exposed individuals of the need for action to reduce or terminate exposures to airborne radioactive material. This approach provides more flexibility for implementation on a site-and facility-specific basis, taking into account realistic event scenarios, source terms, and instrument capabilities. This requirement acknowledges the wide

variety of configurations and hazards associated with DOE activities and the limitations of currently available real-time air monitoring equipment. DOE's implementing guidance provides an acceptable approach for achieving compliance with this provision. The restructuring of the requirements for real-time air monitoring rendered proposed § 835.403(c) redundant; DOE has therefore deleted this provision.

In support of the revised provisions, § 835.2(a) provides definitions for the terms ''derived air concentration-hour (DAC-hour),'' ''real-time air monitoring,'' ''respiratory protective device,'' and ''week'' which are used at § 835.403. In consideration of public comments, DOE has revised the proposed definition of the term ''week'' to omit a mandatory starting day. In addition, DOE has deleted the definitions of ''ambient air'' and ''continuous air monitor'' because these terms are no longer used in 10 CFR part 835.

5. Contamination Monitoring

In consideration of public comments received, DOE has revised the § 835.404 requirements for contamination monitoring and control and moved these requirements to § 835.1102. The proposed changes, public comments, and final rule provisions are discussed in full in Section II.J of this Notice of Final Rulemaking.

6. Receipt of Packages of Radioactive Material

Proposed Amendment

DOE proposed to add requirements at § 835.405 for surveys of packages of radioactive material received from radioactive material transportation to ensure adequate protection is provided to individuals, including warehouse and office workers, who may be exposed to these materials. The proposed provisions included requirements for taking possession of radioactive material packages from transport and performing surveys of these packages. At 835.405(d), DOE proposed to establish requirements for completion of the necessary surveys within three hours of receipt of the package (if received during working hours) or within three hours of the beginning of the following working day (if received after working hours). The proposed requirements are similar to NRC requirements at 10 CFR 20.1906.

Summary of Public Comments and Disposition

Several commenters suggested that the time provision included in the proposed amendment was unnecessarily stringent. During evaluation and resolution of these comments, DOE determined that the nature of many of its sites and facilities and the stringency of the requirements for radioactive material transportation indicate that this observation is accurate.

Final Rule

In deference to the comments received and in recognition of the variety of sites and facilities subject to 10 CFR part 835, DOE has extended the time required for monitoring packages received from radioactive material transportation to 8 hours after the beginning of the working day following the receipt of the package. In practice, the actual interval may also be constrained by the requirements for individual monitoring and radiation safety training at §§ 835.402 and 835.901 respectively, and by the ALARA requirements at § 835.101.

As used in § 835.405, a ''working day'' is considered to be the interval of time within each 24 hour period during which the building or area in which the received package is stored is routinely occupied or available for operations other than emergency activities. For example, if the received package is stored in a warehouse awaiting the required monitoring and that warehouse is occupied or accessible to shipping and receiving personnel, then the working day is that period of time within each 24 hour period during which the shipping and receiving personnel are scheduled to be working or to have ready access to the warehouse. The working day does not include periods during which shipping and receiving personnel would have to return to work on a non-scheduled basis to address emergent issues requiring their attendance.

E. Entry Control Program, Subpart F

Proposed Amendment

DOE proposed more detailed provisions for written work authorizations at § 835.501(e) to address operational occurrences throughout the DOE complex. DOE also proposed to revise § 835.502 to add measures for control of access to high radiation areas. The proposed control measures were consistent with those previously established in the Manual and included requirements for use of a supplemental dosimetry device and appropriate area surveys.

Summary of Public Comments and Disposition

Commenters expressed concern that the proposed § 835.501(e) entry control requirements were inappropriate for relatively minor hazards present in areas such as radiation areas. With regard to the proposed high radiation area access control requirements, commenters also indicated that devices capable of rendering an immediate indication of an individual's integrated dose resulting from neutron radiation are not commercially available. Several commenters also indicated that the proposed § 835.502(c) requirements for control of access to very high radiation areas could be taken to mean that the required controls must be impenetrable. DOE agrees that these issues require clarification.

Final Rule

Regarding low-hazard radiological areas, the final rule provides significant flexibility for implementation of access controls on a facility-and hazard-specific basis. The written authorizations required by 835.501(d) must specify radiation protection measures consistent with existing and potential hazards. DOE does not intend for this provision to establish a global requirement for the development and implementation of radiological work permits to address all entries into radiological areas. The written authorization may take the form of generally applicable procedures, as appropriate. Guidance on the use of written authorizations will be published in DOE's Radiological Control Standard. As a result of the deletion of specific requirements for written procedures (discussed in Section II.B.3 of this Notice of Final Rulemaking), DOE has redesignated proposed § 835.501(e) as § 835.501(d) in the final rule.

To address the unavailability of devices capable of providing an immediate indication of an individual's dose resulting from exposure to neutron radiation in a high radiation area, § 835.502(a)(2) allows for supplemental dosimeters or other means of immediately estimating or measuring the individuals' integrated doses during the area entry. The other means may include knowledge of the area exposure rates combined with tracking of individual access times. Consistent with the existing definition of the terms ''high radiation area'' and ''very high radiation area,'' DOE has revised the proposed requirements to indicate that the required devices and measures must be capable of estimating the affected individual's deep dose equivalent, rather than the dose equivalent. DOE also provided an editorial correction at § 835.502(b)(2), substituting the defined term ''individuals'' for the undefined term ''personnel.''

In response to public comments, DOE has clarified § 835.502(c) to indicate that the additional controls required for very high radiation areas need to be sufficient to prevent ''unauthorized or inadvertent'' entries rather than to prohibit entry into the area.

F. Posting and Labeling, Subpart G

1. Controlled Area and Radiological Area Posting Requirements

Proposed Amendment

DOE proposed several changes to clarify and simplify requirements for area hazard posting and to provide additional flexibility in implementing these requirements. In acknowledgment of the differing hazards and controls associated with removable and fixed radioactive contamination, DOE proposed to revise the § 835.2(a) definitions of ''contamination area'' and ''high contamination area'' to be based upon removable surface contamination levels only and to clearly establish these areas based on accessibility rather than the general reference to ''working areas'' which appeared at § 835.601(a). DOE proposed a similar change to the § 835.2(a) definition of the term ''airborne radioactivity area.'' DOE also proposed to move the controlled area maximum dose expectation from the § 835.2(a) ''controlled area'' definition to the § 835.602(a) controlled area posting provision.

Because radiological area terms are defined at § 835.2(a), DOE proposed to remove redundant definitions imbedded in the posting provisions at § 835.603. DOE also proposed to delete the requirement for DOE approval of warning signs from § 835.601(b) because acceptable signs are described in DOE's implementing guidance and DOE did not intend to establish a formal process for approval of radiological postings and labels. In addition, DOE proposed to expand its provision at § 835.601(e) (redesignated as § 835.601(d) in the proposed amendment) allowing modification of postings and labels to accommodate special considerations of DOE activities involving private residences to also include private businesses.

Consistent with NRC requirements published at 10 CFR 20.1902, DOE proposed to amend § 835.603(b), (d), and (f) to allow use of the words ''Caution'' or ''Danger'' on postings for high radiation, high contamination, and airborne radioactivity areas, respectively. This proposed change would accommodate the wide range of radiological conditions that may be present in these areas to provide some degree of flexibility in their posting.

Proposed § 835.604(a) would create an exception from posting requirements for periods of less than 8 continuous hours as long as the radiological area is placed under continuous observation and control of a person able to implement the required access and exposure control measures. This exception would cover temporary conditions or activities such as maintenance, repair or cleanup activities so long as the absence of posting is kept to within the prescribed time and the prescribed control measures are implemented.

DOE also proposed to add § 835.604(b) and (c) delineating specific exceptions from the radiological area posting requirements of § 835.603, recognizing that compensatory measures may be implemented that would obviate the need for area posting. The proposed exceptions are similar to those established by the NRC at 10 CFR 20.1903.

Summary of Public Comments and Disposition

DOE received several comments indicating that the proposed definition of the term ''airborne radioactivity area'' should include an exposure-based criterion (i.e., based upon potential individual exposures in term of dose, percentage of an ALI, or DAC-hours) instead of, or in addition to, the existing criterion based upon the absolute airborne radioactivity concentration. DOE agrees that this issue requires clarification.

Some commenters expressed support for the current 10 CFR part 835 posting provisions based upon the identification of ''working areas.'' However, the term ''working areas'' is not defined and DOE does not believe that posting of only ''working areas'' provides adequate protection of individuals approaching or entering radiological areas in which there is no work in progress. The commenters did not provide any evidence that such a practice would provide for adequate protection.

DOE received a number of comments on the proposed allowance for the use of ''Caution'' or ''Danger'' on certain radiological hazard warning signs. Commenters indicated that the terms ''Caution'' and ''Danger'' are not interchangeable and that the term ''Danger'' generally carries a connotation of greater hazard than ''Caution.'' While DOE agrees with these observations, DOE believes that, in the continuum of possible radiological conditions associated with DOE activities, the threshold at which ''Danger'' becomes more appropriate than ''Caution'' most likely lies somewhere within those conditions described in the § 835.2(a) definitions of ''airborne radioactivity area,'' ''high radiation area,'' and ''high contamination area.'' Furthermore, individual protective actions required for entry into these areas are dependent upon the radiological area title, not the ''Caution'' or ''Danger'' heading. DOE believes that the demarcation between those conditions requiring ''Caution'' and ''Danger'' headings is best left to the discretion of those responsible for individual DOE activities to ensure that activity-specific conditions are addressed. Therefore, DOE believes that it is appropriate to allow flexibility in the use of the ''Caution'' and ''Danger'' headings for posting of high radiation, high contamination, and airborne radioactivity areas.

Some commenters indicated that provisions for alternative measures for DOE activities conducted at private residences and businesses should be extended to DOE activities conducted on state- and Federally-owned lands. However, DOE does not believe that considerations of individual property rights and property value impacts extend to DOE activities conducted on state and Federal lands. Furthermore, the great majority of DOE activities are conducted at state-and Federally-owned sites. Such an exception would negate the specific posting requirements for essentially all DOE activities.

Commenters generally supported DOE's proposed exceptions to the radiological posting requirements. However, comments indicated that the proposed § 835.604(c) exception for packages received from radioactive material transportation should not apply to damaged packages. DOE agrees that this issue requires specific attention.

Final Rule

DOE has revised the § 835.2(a) definition of the term ''airborne radioactivity area'' such that posting and control of these areas will be required when the airborne radioactivity concentration exceeds the DAC values provided in appendix A or C of 10 CFR part 835 or when an individual present in the area without a respiratory protective device could be exposed to airborne radioactive material in excess of 12 DAC-hours in a week. This definition is similar to that provided by the NRC at 10 CFR 20.1003.

DOE has codified the changes to the radiological hazard posting requirements as proposed. In the final rule, DOE has deleted § 835.601(a) to eliminate redundancy. As a result, § 835.601(b)—(d) have been redesignated as § 835.601(a)—(c), respectively. The § 835.604 radiological

area posting exceptions do not apply to the radiological area entry control requirements established at §§ 835.501 and 835.502 or to the radiation safety training requirements at § 835.901. In response to public comments, DOE has restricted the scope of the posting exception for packages received from radioactive material transportation to those packages received in a non-degraded condition.

2. Radioactive Material Area Posting

Proposed Amendment

To ensure that individuals entering controlled areas but not entering radiological areas are adequately protected, DOE proposed requirements for posting of radioactive material areas similar to the existing requirements of DOE N 441.1 (extended by DOE N 441.2 and DOE N 441.3). The proposed posting requirements were based on quantities of radioactive materials that exceeded 10 times the threshold values proposed in appendix E of 10 CFR part 835 and were similar to NRC requirements at 10 CFR 20.1902. DOE proposed to define ''radioactive material area'' and include this term in the definition of ''radiological area'' at § 835.2(a) and establish requirements for posting radioactive material areas at § 835.603(g). DOE also proposed exceptions to the radioactive material area posting requirements at § 835.604(b).

Summary of Public Comments and Disposition

DOE received numerous comments on these proposed requirements. The major issues included: (1) The threshold values (based on ten times the activity levels provided in proposed appendix E of 10 CFR part 835) which would require posting of radioactive material areas were overly restrictive; (2) the hazards present in a radioactive material area, as defined, did not warrant the imposition of specific entry controls and radiation safety training programs required for radiological areas; (3) posting of radioactive material areas should not be required when the radioactive material consists solely of activated structures or installed components; and (4) there is no apparent difference between the hazards in a controlled area and a radioactive material area, as defined at § 835.2(a).

DOE agrees that: (1) The proposed appendix E values, as a basis for defining a radioactive materials area, were somewhat restrictive; (2) posting of radioactive material areas should not be required when the material solely consists of structures or installed components which have been activated; and (3) the hazards present in a radioactive material area, as defined, are not always significantly different than the hazards in a controlled area and would not always warrant imposition of the entry controls required for the defined radiological areas.

Final Rule

DOE recognizes the fact that the radiological conditions expected in radioactive material areas, as proposed, are less hazardous than those present in radiological areas as defined in the original rule. Accordingly, a less restrictive approach to radiological protection is warranted. In the final rule, DOE has omitted the term ''radioactive material area'' from the § 835.2(a) definition of ''radiological area.'' Therefore, radioactive material areas will not be subject to the specific entry control provisions of § 835.501. As a result of the codification of hazard-based radiation safety training requirements at § 835.901 (discussed in Section II.H. of this Notice of Final Rulemaking), applicability of the radiation safety training requirements for entry into radioactive material areas will be subject to an evaluation of the activities to be performed in the area and the degree of actual or potential exposure to radiological hazards.

Section 835.603(g) of the final rule requires posting of radioactive material areas at the entry points to accessible areas where there exist items or containers of radioactive material in excess of the revised appendix E values as published, rather than ten times the appendix E values, as proposed. The basis for the revised appendix E values is discussed in detail in Section II.K of this Notice of Final Rulemaking. Because of the minimal hazards present in radioactive material areas, DOE has omitted the allowance for the use of the ''Danger'' heading from the § 835.603(g) requirement for posting of radioactive material areas.

DOE has included proposed exceptions to the radioactive material area posting requirement at § 835.604. In response to the comments received, DOE has included another posting exception for areas in which the radioactive material consists solely of structures or installed components which have been activated, such as activation by exposure to neutron radiation or radiation incident to operation of a particle accelerator. DOE expects that this exception will most commonly be applied to building and shielding structures associated with nuclear reactors and particle accelerators. Note that these structures and components are not excepted from the radiological area posting requirements.

Because the term ''radioactive material area'' has been deleted from the § 835.2(a) definition of the term ''radiological area,'' DOE has revised the heading of § 835.603 and the provisions of § 835.602(a) to reflect the inclusion of the radioactive material area posting requirements in subpart G of 10 CFR part 835.

3. Radioactive Material Labeling

Proposed Amendment

To augment and clarify existing requirements, DOE proposed to add requirements for labeling items and containers of radioactive materials at § 835.605, with appropriate exceptions being proposed at § 835.606. These proposed provisions are similar to those in the Manual and consistent with requirements imposed by the NRC at 10 CFR 20.1904 and 20.1905.

Summary of Public Comments and Disposition

DOE received comments indicating that, because the proposed labeling provisions were based upon the proposed appendix E total activity values, they were not adequate to ensure proper labeling of items having removable contamination exceeding the 10 CFR part 835 appendix D surface radioactivity values. However, even though labeling of contaminated items is not explicitly required by the rule, adequate controls are established under §§ 835.1101 and 835.1102 which will require that either labeling or equivalent measures be implemented to inform individuals of the contamination hazard.

DOE also received comments on the proposed exceptions from the labeling requirements. Commenters indicated that exceptions should also be provided for nuclear weapons and their components, for inaccessible radioactive material, and for activated building components. DOE agrees with these comments.

Final Rule

DOE has codified the proposed requirements for labeling with minor editorial changes. Section 835.605 requires labeling of radioactive items and containers of radioactive materials. Section 835.606 provides an exception from the labeling requirements for items and containers having a total activity of less than 1/10 of the appendix E values rather than at the proposed appendix E values because DOE has reevaluated the appendix E values to address concerns regarding the stringency of the proposed

requirements for accountable sealed radioactive sources (see discussion in Section II.K. of this Notice of Final Rulemaking). Because §§ 835.1101 and 835.1102 establish appropriate requirements for control of contaminated material and equipment, DOE has not included specific requirements for labeling of contaminated items in this subpart.

In response to the comments received, DOE has revised the radioactive material labeling exceptions proposed at § 835.606 to include nuclear weapons and their components and inaccessible radioactive material. In addition, the exception from the § 835.601 design and color specifications for labels applied to sealed radioactive sources, proposed at § 835.1201(b), has been codified at § 835.606(b).

G. Records and Reports, Subparts H and I

Proposed Amendment

DOE proposed a number of changes to its requirements for records demonstrating compliance with 10 CFR part 835. The proposed changes included:

1. Revising §§ 835.203(a) and 835.702(b) to provide that, when monitoring is performed, but not required by § 835.402, internal and external doses must be summed and records must be maintained only if the doses determined by the non-mandatory monitoring exceed the thresholds of § 835.402. This proposed change was intended to reduce the burden of recordkeeping consistent with the recommendations in the Guidance to Federal Agencies.

2. Deleting the words ''caused by contamination on the skin'' from § 835.702(b) to ensure consistency with the referenced requirements at § 835.205.

3. Revising § 835.702(c)(1) to provide that records must be sufficient to demonstrate compliance with all of the subpart C dose limits. This provision is consistent with § 835.701(a).

4. Deleting the requirement at § 835.702(c)(4)(iii) to record the estimated intake associated with internal dose assessments. This change was necessary because determination of the individual dose equivalent resulting from intakes of certain radionuclides, such as tritium, does not require determination of the estimated intake.

5. Revising § 835.702(d) and (e) such that acceptance of written estimates of an individual's prior occupational dose is based upon an inability to obtain formal records, rather than the absence of those records. DOE also proposed to revise § 835.702(d) consistent with the previously discussed clarification of the components of occupational dose and to reference DOE Orders for authorizing emergency exposures. DOE further proposed to revise § 835.702(e) to indicate that efforts to obtain records of prior years doses were necessary only for those individuals monitored in accordance with § 835.402.

6. Technical and editorial changes to clarify the recordkeeping provisions and to ensure consistency with other changes included in subparts J and M. DOE also proposed to revise § 835.704(d) to require documentation of revocations of declarations of pregnancy.

7. Because some individuals may not have social security numbers, DOE proposed to revise § 835.801(a) to allow for use of another unique identification number in reports associated with such individuals.

Summary of Public Comments and Disposition

DOE received a number of comments indicating that the results of all individual monitoring that is performed should be recorded. DOE agrees that this approach has merit. Furthermore, DOE has provided adequate flexibility under the individual monitoring requirements of § 835.402 to eliminate any onerous administrative burdens resulting from records of trivial doses.

DOE received comments indicating that the term ''accident'' was not clearly defined, resulting in uncertainty about the proper application of the individual monitoring records requirement of § 835.702(a).

DOE received comments suggesting that the proposed change to § 835.702(e) was not needed because, in the absence of a cumulative dose limit, written estimates would not serve any substantive purpose. DOE agrees with this observation.

Final Rule

DOE has revised § 835.702(a) to delete reference to accidents and to specify that records be maintained to document unplanned doses exceeding the monitoring thresholds of § 835.402.

In consideration of the comments received, DOE has not included the proposed changes to § 835.702(b) in the final rule.

Consistent with the changes to § 835.1302 discussed in Section II.L of this Notice of Final Rulemaking, DOE has revised § 835.702(d) to reference the emergency exposure authorization measures included in that section.

DOE has also not included in the final rule the proposed change to § 835.702(e) allowing written estimates of prior years doses. DOE has included the remaining changes with minor editorial corrections to enhance clarity.

DOE's review of 10 CFR part 835 revealed the fact that § 835.702(c)(2) inappropriately invoked the requirements of certain DOE Orders. The applicability of these Orders is established through DOE contractual processes. DOE has revised the text to delete this invocation of DOE Orders.

Consistent with changes discussed elsewhere in this Notice of Final Rulemaking, DOE has revised the heading of § 835.703 and language at § 835.703(a) and (e) to eliminate the use of the term ''workplace'' and to reference those subparts of the rule (subparts E and L) that establish monitoring requirements.

Because individuals generally do not record the results of contamination monitoring upon exiting contamination and high contamination areas and there is little perceived value in maintaining such records, DOE has clarified § 835.703(a) to permit such a practice. In consideration of comments on the specificity of the proposed § 835.703(c) recordkeeping provisions, DOE has not included the second portion of proposed § 835.703(c) regarding informational content of these records in the final rule. DOE has revised the recordkeeping requirements of § 835.703(d) consistent with the changes made to § 835.401.

In recognition of the need to record the estimated date of conception for a declared pregnant worker (in order to determine compliance with the applicable dose limit for the embryo/fetus), DOE has clearly stated this as a requirement at § 835.704(d). Also, consistent with the changes made at § 835.401, DOE has deleted the term ''workplace'' from § 835.704(e).

H. Radiation Safety Training, Subpart J

1. Training Course Content and Administration

Proposed Amendment

When 10 CFR part 835 was originally developed, the detailed radiation safety training requirements provided in the Manual obviated the need to specify minimum training course content in the rule. Because the Manual is no longer mandatory, DOE proposed to specify minimum training course content at § 835.901(b). Also at § 835.901(b), DOE proposed requirements that would allow more liberal acceptance of an individual's previous radiation safety training.

DOE proposed to further consolidate and simplify its requirements for

radiation safety training. Under the proposed amendment, the level of training required would be based upon the areas entered by the individual unescorted, the activities performed, and the likely doses, rather than the individual's classification as a member of the public, general employee, or radiological worker. Implementation of this hierarchical approach to training would result in the appropriate level of radiation safety training for general employees, with a higher level of training required for radiological workers. This approach is consistent with field experience and feedback from DOE operating contractors and is similar to the approach previously taken by DOE in DOE Order 5480.11 and currently taken by the NRC in 10 CFR part 19, ''Notices, Instructions and Reports to Workers: Inspection and Investigations.'' DOE proposed to eliminate the examination requirement for individuals who are not permitted unescorted access to radiological areas and who do not perform unescorted assignments as a radiological worker. DOE also proposed to provide specific requirements at § 835.901(f) for individuals who may act as escorts of individuals who have not completed required training.

Summary of Public Comments and Disposition

Public comments generally endorsed DOE's proposed hierarchical approach to radiation safety training. However, some commenters were concerned that the proposed approach, which would require an individual to complete radiation safety training prior to being occupationally exposed to radiation, would needlessly penalize those facilities that conduct training inside the controlled area or in other areas in which trivial occupational exposures may occur. However, as proposed, § 835.901(c) (§ 835.901(b) in the proposed rule) requires training to the extent appropriate to the individual's degree of exposure to potential radiological hazards. Under the circumstances described, the ''extent appropriate'' may be minimal (perhaps a briefing on appropriate alarm responses).

Comments indicated that the proposed § 835.901(b)(3) requirement to provide training on ''measures implemented at the facility to minimize exposures'' was inappropriate, as there is no requirement to ''minimize exposures.'' Other comments indicated that it was unnecessary for the required training to be appropriate to ''anticipated and actual'' work assignments; training appropriate to the individual's work assignments should be sufficient. DOE agrees with these observations.

DOE received comments indicating that the existing § 835.2(a) definition of the term ''radiological worker'' was overly restrictive and unclear due to its inclusion of individuals who operate radiation producing devices. Commenters indicated that this inclusion could require extensive training and testing of individuals who operate devices emitting nominal amounts of radiation or those who operate devices such as televisions and computer monitors. However, consumer devices that emit nominal amounts of radiation are clearly excluded from the scope of 10 CFR part 835 under the provisions of 835.1(b)(6) and the related § 835.2(a) definition of ''background.'' Although the proposed provisions of § 835.901(d) (see § 835.901(b) in the final rule) would require training and testing of individuals who operate other radiation producing devices, the provisions of § 835.901(c) (see § 835.901(b) in the proposed rule) would only require that such training be appropriate to the extent of the individual's potential exposure to radiological hazards.

Although many commenters favored DOE's proposed relaxation of the examination requirements, other commenters indicated that an examination should be required for all forms of training to ensure that the student has an understanding of the material presented. DOE agrees that examinations are useful tools for assessing the retention of information by the student. However, as stated in DOE's Notice of Proposed Rulemaking, the radiological hazards present in those portions of controlled areas which are outside of radiological areas are so minimal that the information needed prior to entry does not warrant a regulatory requirement for an examination. However, the absence of this regulatory requirement does not preclude DOE's operating entities from administering an examination.

Several commenters indicated that DOE's proposed requirements for use of escorts in lieu of training were unclear because of the use of the phrase ''where an escort is required.'' These commenters correctly pointed out that the proposed § 835.901(c) and (d) would permit, but would not explicitly require, the use of escorts.

Other commenters were concerned that the retraining requirements of proposed § 835.901(g) might require individuals to complete the full introductory radiation safety training course every 24 months. DOE agrees that this issue requires clarification.

Final Rule

As proposed, DOE has reformatted subpart J into one section in the final rule, codifying an approach similar to that previously published in the Manual and eliminating redundancy. DOE has omitted proposed § 835.901(a) from the final rule because that paragraph would not establish any substantive requirements. DOE has also eliminated the examination requirement for individuals who are not permitted unescorted access to radiological areas and who do not perform unescorted assignments as a radiological worker, as proposed. Although not a regulatory requirement, DOE contractors may still choose to administer examinations or to undertake other means of assessing individual understanding, such as interactive classroom discussions.

DOE has included at § 835.901(c) (§ 835.901(b) in the proposed amendment) a requirement for training to be provided to the extent appropriate to the individual's work assignment. DOE has also included at § 835.901(c)(3) (proposed § 835.901(b)(3)) a requirement that the training address measures used to ''manage doses and maintain doses ALARA,'' rather than ''minimize'' doses. This modification makes clear the distinction between maintaining doses well below the dose limits using the ALARA process and maintaining doses well below the dose limits by minimizing doses regardless of other considerations.

DOE has established requirements applicable to instances in which escorts are used, rather than required, in lieu of training at revised § 835.901(d) (§ 835.901(f) in the proposed amendment).

With regard to the requirements for biennial retraining, DOE has eliminated the use of the undefined term ''retraining.'' Section 835.901(e) of the final rule requires affected individuals to complete the required training at least every 24 months. Like the initial training, this follow-on training is for individuals subject to the requirements of § 835.901(a) and (b), and is subject to the provisions of § 835.901(c). Thus, the content and scheduling (prior to the end of the two year time interval) of such training needs to incorporate considerations of the individual's prior training, work assignments, and degree of exposure to radiological hazards, as well as significant changes to radiation protection policies and procedures that affect the individual.

2. Radiological Control Technician Training [§ 835.903]

DOE also proposed changes to the 10 CFR part 835 requirements for training of radiological control technicians. These changes are discussed in detail in Section II.B.3. of this Notice of Final Rulemaking.

I. Design and Control, Subpart K

Proposed Amendment

Experience in implementing programs to ensure compliance with 10 CFR part 835 revealed that the design objectives currently included at § 835.1002(b) and (c) may not be practical in developing certain modifications to existing facilities. Therefore, DOE proposed to delete § 835.1002(b) and (c). DOE also proposed to move the remaining requirements in paragraphs (a) and (d) of § 835.1002 to § 835.1001.

The design criteria established at § 835.1003(a) did not include all of the occupational dose limits of § 835.202, e.g. the lens of the eye dose limit established at § 835.202(a)(3). This omission implied that the design of new facilities or modification of existing facilities could include design features that would result in doses exceeding the lens of the eye dose equivalent limit of 15 rem established at § 835.202. DOE proposed to correct this omission by including all applicable occupational dose limits established at § 835.202 in this section.

Summary of Public Comments and Disposition

Comments indicated that the phrase ''as low as is reasonably achievable'' at § 835.1001(a) could be construed to have a meaning that differed from ''ALARA'' as defined at § 835.2(a).

Many commenters stated that DOE should retain the numerical design objectives provided at § 835.1002. Although achievement of the numerical design objectives may not be practical in some cases (particularly for minor modifications of existing facilities), the design objectives are important components of the ALARA process. Public comments suggested that elimination of the numerical design objectives could result in confusion over when to apply quantitative design objectives and the appropriate magnitude of those objectives. Comments also indicated that § 835.1003(b) did not establish any substantive requirements beyond those established in subpart E of 10 CFR part 835.

DOE agrees with these observations.

Final Rule

At § 835.1001(a), DOE has substituted ''ALARA'' for ''as low as is reasonably achievable.''

Because procedural requirements are a type of administrative control, DOE has deleted the term ''procedural requirements'' from § 835.1001 and deleted the term ''procedures'' from § 835.1003 to eliminate redundancy. For consistency, DOE has revised the heading of § 835.1003 to read ''Workplace Controls.''

Because the use of quantitative design objectives plays a significant role in the ALARA process as it applies to facility design, DOE has chosen to defer this critical change until more experience is gained through implementation of these regulatory provisions. DOE has accepted the public comments and has retained the numerical design objectives of § 835.1002; however, DOE has retained the proposed editorial change at § 835.1002 (proposed § 835.1001(c)) substituting the term ''existing facilities'' for the term ''old facilities.'' DOE will address its concerns with the application of these requirements through enhanced guidance for achieving compliance. DOE has included in the final rule the proposed change related to the lens of the eye dose limit. In consideration of public comments, DOE has also deleted § 835.1003(b) from the final rule.

J. Radioactive Contamination Control, Subpart L

Proposed Amendment

Consistent with the changes to the § 835.2(a) definitions of the terms ''contamination area'' and ''high contamination area,'' DOE proposed changes to the § 835.404 requirements for areas having only fixed contamination exceeding the appendix D total surface radioactivity values.

DOE proposed several changes to appendix D of 10 CFR part 835, which provides mandatory surface radioactivity values for contamination control. DOE proposed to add the word ''alpha'' after the values for uranium isotopes in appendix D to clarify the applicability of these values. DOE also proposed to add to appendix D of 10 CFR part 835 a contamination control value of 10,000 disintegrations per minute per 100 square centimeters for surfaces contaminated with tritium and Footnote 6 to explain the use of this value. The surface contamination value would be used to determine the applicability of the § 835.603 contamination hazard posting provisions and the §§ 835.404 and 835.1101 contamination control provisions. DOE has prepared an Environmental Assessment, available at DOE's Freedom of Information Reading Room at the address provided above, that addresses this change in detail.

DOE also proposed to move the existing requirements of § 835.1101(d) to § 835.703(c) to consolidate recordkeeping requirements and to add a new requirement for removal of radioactive material labels from released materials and equipment at § 835.1101(d).

Summary of Public Comments and Disposition

Public comments were generally supportive of DOE's proposed changes to the requirements for control of radioactive contamination. Public comments also indicated that the recordkeeping requirements of proposed § 835.703(c) were overly prescriptive in comparison to related requirements of the rule. Public comments also indicated that a literal reading of § 835.404(f) would indicate that the performance of individual contamination monitoring by someone other than the individual exiting a contamination or high contamination area (i.e., individual frisking by radiological control technicians) would be contrary to 10 CFR part 835. DOE agrees with these observations.

Comments indicated that the related requirements of §§ 835.404 and 835.1101 were confusing and possibly contradicting. The existing provisions of § 835.404 establish requirements for control of areas contaminated by radioactive material; the provisions of § 835.1101 establish similar requirements for materials and equipment contaminated by radioactive materials. Upon reexamination of these requirements in light of the comments received, DOE believes that there is opportunity for simplification and clarification of the rule.

Final Rule

DOE has combined and simplified the requirements of §§ 835.404 and 835.1101 in the final rule as follows:

a. Although the provisions of § 835.404 were specifically related to controlling the spread of contamination, they were located in subpart E, which was entitled ''Monitoring in the Workplace.'' Therefore, DOE has moved these requirements, with revisions discussed below, to subpart L.

b. Although the title of subpart L indicates that the subject matter is related to ''Releases of Materials and Equipment from Radiological Areas,'' the requirements are more specifically related to retention and control of

contaminated materials in radiological areas. Therefore, DOE has retitled subpart L, ''Radioactive Contamination Control.''

c. DOE has clarified and simplified the structure of § 835.1101(a).

d. DOE has retained paragraphs 835.1101(b) and (c) with minor editorial clarifications. Consistent with the discussion in Section II.B.3 of this Notice of Final Rulemaking regarding written procedures, DOE has omitted the requirement for written procedures (formerly § 835.1101(c)(3)).

e. Because the existing requirements of § 835.404(a) established no substantive requirements, DOE has omitted this paragraph from the final rule.

f. DOE has redesignated paragraph 835.404(b) as § 835.1102(a) in the final rule.

g. DOE has edited paragraph 835.404(c) and redesignated it as § 835.1102(b) in the final rule. DOE has omitted the provision related to posting of contamination hazards (formerly § 835.404(c)(1)) because this provision is redundant with § 835.603(e) and (f).

h. DOE has edited paragraph 835.404(d) and redesignated it as § 835.1102(c) in the final rule. Consistent with the discussion in Section II.B.3 of this Notice of Final Rulemaking regarding written procedures, DOE has omitted the requirement for written procedures (formerly § 835.404(d)(5)).

i. Because of the changes to the § 835.2(a) definitions of ''contamination area'' and ''high contamination area'' discussed above, the areas discussed at § 835.404(d) (i.e., those having fixed contamination at levels exceeding the appendix D total contamination values, but removable contamination levels below the appendix D removable contamination values) would no longer be considered radiological areas. This renders the provisions of § 835.404(e) redundant; therefore, DOE has omitted these requirements from the final rule.

j. DOE has clarified § 835.404(f) and redesignated it as § 835.1102(d).

k. DOE has revised the language at § 835.404(g) for clarity and redesignated it as § 835.1102(e).

DOE has reconsidered its proposal to add § 835.1101(d) establishing requirements for removal of radioactive material labels from released materials and equipment. Although DOE considers materials and equipment meeting the requirements of § 835.1101(a) to be appropriate for release from radiological areas, such materials and equipment are not necessarily ''non-radioactive'' and conditions may arise under which retention of the radioactive material labels is appropriate. DOE has therefore omitted this provision from the final rule.

As before, the requirements of § 835.1101 address release of materials and equipment from radiological areas to controlled areas. DOE requirements for release of materials and equipment from its control are addressed in DOE environmental protection standards.

K. Control of Sealed Radioactive Sources, Subpart M

Proposed Amendment

DOE proposed to add subpart M to 10 CFR part 835 to establish requirements for control of sealed radioactive sources. These requirements would supersede similar requirements established in DOE Notice 5400.9, ''Sealed Radioactive Source Accountability'' (extended through DOE Notice 5400.13 and superseded by DOE N 441.1 through DOE N 441.3). DOE proposed to add the terms ''accountable sealed radioactive source,'' ''sealed radioactive source,'' and ''source leak test'' at § 835.2(a) and to add recordkeeping requirements at § 835.704(f). DOE also proposed to add appendix E to 10 CFR part 835 to establish threshold values for sealed radioactive source accountability, radioactive material labeling, and radioactive material area posting.

Summary of Public Comments and Disposition

Although many commenters supported DOE's efforts to codify requirements for sealed radioactive source control, several commenters indicated that the accountability threshold values proposed for inclusion in appendix E of 10 CFR part 835 were overly restrictive. Commenters also indicated that the definition of ''sealed radioactive source'' was too broad to allow for exclusion of certain items, such as reactor fuel elements, that are not commonly produced or used as sealed radioactive sources. In addition, several commenters indicated that DOE's proposed minimum activity requiring performance of periodic leak tests (0.005 microcuries) was overly restrictive.

Commenters indicated that inaccessible sources should be excepted from the requirements for leak testing and inventory. Such a measure would obviate the need to disassemble facility components and instruments for the purpose of performing the inventories and leak tests. Commenters also indicated that common contamination control measures are capable of minimizing, but perhaps not preventing, the spread of contamination as would be required by proposed § 835.1202(e).

DOE agrees with these observations.

Final Rule

In response to public comments, DOE has revised the § 835.2(a) definition of the term ''sealed radioactive source'' to exclude reactor fuel elements, nuclear explosive devices, and radioisotope thermoelectric generators. DOE has included the definitions of ''accountable sealed radioactive source'' and ''source leak test'' at § 835.2(a) as proposed. DOE has revised § 835.1202(d) to provide an exception from leak testing and inventory for sealed radioactive sources that are inaccessible. DOE has also revised § 835.1202(e) to indicate that the required contamination control measures must ''minimize'' the spread of contamination.

DOE has revised the proposed appendix E values. DOE determined the appendix E values in the final rule as follows: For each radionuclide, DOE considered two scenarios: (1) the activity quantity resulting in a deep dose equivalent from external radiation of 0.1 rem (0.001 sievert) assuming an individual was irradiated for a period of 12 hours per day at a distance of 1 meter from the source for 365 days; and (2) the activity quantity resulting in a committed effective dose equivalent of 0.1 rem (0.001 sievert) assuming an instantaneous intake of 0.001% of the material by an individual. DOE compared the activity quantities for the deep dose equivalent and the committed effective dose equivalent and selected the more restrictive value as the basis for the accountability threshold value. DOE selected the value of 0.1 rem as the basis for the revised appendix E values for consistency with DOE's mandatory threshold for monitoring of general employee dose (see § 835.402) and dose limit for members of the public in controlled areas (see § 835.208). DOE also assumed more realistic values for the exposure time and intake factor and eliminated the arbitrary 300 microcurie activity cap. The basis for the appendix E values is discussed in more detail in a technical basis document available in DOE's Freedom of Information Reading Room at the address provided above.

Because all of the revised appendix E values are greater than 0.005 microcuries, DOE has deleted this threshold from the requirements for sealed radioactive source leak tests (proposed § 835.1202(b)). DOE has also omitted the proposed requirement for written procedures from the final rule. For details on this omission, see Section II.B.3 of this Notice of Final Rulemaking. Finally, because DOE's

reevaluation of the appendix E values resulted in significant increases in all of the accountability threshold values, DOE has codified a general requirement at § 835.1201 for all radioactive sources (both accountable and non-accountable) to be used, handled, and stored in a manner commensurate with the radiological hazards created by the operation involving the sources. DOE will provide implementing guidance to discuss acceptable methods for achieving compliance with this provision.

The basis for the control of sealed radioactive sources is a hierarchy of increasing radiological controls based upon the maximum credible dose consequence resulting from the loss of a source. The maximum credible dose consequence should not be considered to be a release criterion. Under the requirements of 10 CFR part 835, some degree of radiological control is required for all sealed radioactive sources, regardless of their activity. This hierarchy of controls reduces the likelihood of losing a sealed radioactive source. Thus the approach to sealed radioactive source control is analogous to that taken in nuclear safety. As the potential consequences of a credible incident increase, additional controls are imposed to reduce the probability that the incident will occur and mitigate the consequences of that incident.

For the lowest activity sealed radioactive sources, a minimal level of radiological control is required based upon the hazards associated with the operations involving the sources. More specific actions are not considered necessary and are therefore not specified.

For sealed radioactive sources whose loss could result in a maximum credible dose consequence of 0.1 rem or more in a year, additional controls are imposed. The requirement for semi-annual inventories reduces the possibility of losing the source and, by triggering investigative action, mitigates the consequences of a lost source. The requirement for semi-annual leak testing provides a means of monitoring the integrity of the source and likewise triggers action to mitigate the consequences of a leaking source.

L. Accident and Emergency Exposures, Subpart N

Proposed Amendment

DOE proposed to correct § 835.1301(a), (b), and (d) by deleting references to § 835.205, which provides no dose limits. Consistent with changes to § 835.204, DOE proposed to revise § 835.1301(a) to indicate that doses resulting from accident and emergency exposures may exceed the numerical values established at § 835.202(a) without violating the occupational dose limits. Both accident and emergency doses are considered occupational doses and are included in a general employee's occupational dose record, but emergency doses are explicitly excluded from consideration in determining compliance with the occupational dose limits at § 835.202(a).

DOE proposed to delete § 835.1302(d) because these provisions are adequately addressed in related DOE Orders and emergency management guides.

DOE clarified § 835.1304 by substituting the defined term ''individual'' for the term ''personnel'' which eliminates any confusion regarding the coverage of the personal nuclear accident dosimetry provisions. DOE also proposed to remove the reference to ''all personnel'' to provide flexibility in implementing the personal nuclear accident dosimetry provisions.

Summary of Public Comments and Disposition

Regarding accident and emergency exposures, public comments indicated that DOE had failed to clearly define the terms ''accident'' and ''emergency,'' resulting in uncertainty about the proper application of these provisions.

Comments regarding the proposed approach basing personal nuclear accident dosimetry requirements on the need for nuclear criticality alarms indicated that this approach would be impractical due to the vagueness of the referenced requirements for these alarms.

DOE agrees with these observations.

Final Rule

DOE has included the proposed changes into the final rule.

Consistent with the clarification of the requirements for accounting for occupational doses, including doses resulting from authorized planned special exposures and emergency exposures, DOE has deleted the term ''accident'' from § 835.1301(a). This deletion results from DOE's recognition that, except for doses resulting from planned special exposures and authorized emergency exposures, all doses in excess of the regulatory limits may be considered to be ''accidents.'' Under such circumstances, DOE believes that provisions allowing affected individuals to return to work without further detailed review subverts the intent of the § 835.202 occupational dose limits. DOE believes that it is most appropriate for this section to address doses resulting from authorized emergency exposures. Despite this change, DOE recognizes the fact that issues of individual work rights and DOE liability may arise as a result of ''accidental'' exposures exceeding the regulatory dose limits. Mechanisms for addressing doses resulting from accidents, and authorizations to return affected individuals to work, exist within the exemption process established in 10 CFR part 820.

In response to public comments, DOE revised the text in § 835.1301(c) and (d) to eliminate the terms ''emergency'' and ''accident'' and specify that the notification and resumption provisions apply when doses were received in excess of the limits of § 835.202, except those doses received in accordance with § 835.204.

As discussed above with regard to § 835.702(c)(2), DOE found that § 835.1301(e) inappropriately invoked the requirements of DOE Orders. The applicability of these Orders is established through DOE contractual processes. Therefore, DOE has deleted this provision.

To resolve issues related to requirements for personal nuclear accident dosimetry, DOE has revised the requirement to simply indicate that the nuclear accident dosimetry system must include personal nuclear accident dosimeters. This approach will allow for flexible implementation on a site-and facility-specific basis.

M. Use of Appendices

Proposed Amendment

DOE proposed to clarify the application of the data presented in the appendices of 10 CFR part 835 by adding introductory text to each appendix referencing those sections of the rule requiring use of the appendix. DOE also proposed to delete the absorption factor (f1) values and the related footnote (footnote 5) from appendix A of 10 CFR part 835 because absorption factors and alternative absorption factors are neither used nor referenced in the rule. DOE determined that 10 CFR part 835 established no substantive requirements for use of the data presented in appendix B, and therefore proposed to delete appendix B.

DOE's review of exemption requests concerning occupational exposure to 220Rn and 222Rn and their daughter products revealed that DAC values for these radioisotopes are inappropriately referenced in both appendices A and C. Exposure to these radionuclides results in a lung dose and therefore, the air immersion DACs in appendix C are inappropriate. Accordingly, DOE

proposed to delete the air immersion DAC values for 220Rn and 222Rn from appendix C.

Experience in implementing programs that ensure compliance with 10 CFR part 835 has proven that the exposure conditions used to determine the appendix C DAC values (immersion in a semi-infinite cloud) often differ from those at DOE facilities (i.e., exposure in relatively small enclosures). Use of the appendix C DAC values under these conditions can result in the overestimation of individual doses. Therefore, DOE proposed to revise appendix C, note b., to allow modification of the DAC values to compensate for immersion in a cloud of finite dimensions and to provide instructions for determining the DAC of a mixture of radionuclides.

Summary of Public Comments and Disposition

Although several commenters suggested that the data in appendix B were useful and should be retained, the correlation of chemical form to lung retention class is available directly from Table 3 of Federal Guidance Report Number 11, ''Limiting Values of Radionuclide Intake and Air Concentration and Dose Conversion Factors for Inhalation, Submersion, and Ingestion.''

Commenters favored DOE's proposal to allow for modification of the appendix C values. However, contrary to the information provided in appendix C, note b., these values were calculated based upon an exposure of 2000 hours per year, and not based upon a continuous exposure.

Final Rule

DOE has included the proposed changes in the final rule with minor editorial corrections. For consistency with the existing provisions associated with appendix C of 10 CFR part 835, DOE has included a note with appendix A of 10 CFR part 835 that will allow use of the sum of the fractions rule when there exists a mixture of radionuclides in the area of interest. DOE has also revised appendix C, note b., to reflect the 2000 hour per year exposure basis of the values.

Consistent with terminology used throughout the rule and in DOE's guidance documents, DOE has also retitled the table in appendix D of 10 CFR part 835 ''Surface Contamination Values.''

N. Corrections and Clarifications

Proposed Amendment

DOE proposed numerous editorial corrections and technical clarifications that do not change the requirements of the rule or the measures necessary to ensure regulatory compliance. The proposed changes included:

1. Correction of the definitions of ''airborne radioactive material'', and ''year'' (§ 835.2(a)) and ''external dose or exposure,'' and ''quality factor'' (§ 835.2(b));

2. Clarification of the application of the mean quality factors for neutrons provided at § 835.2(b);

3. Deletion of § 835.2(d) because the convention stated in that paragraph for the use of singular, plural, masculine, and feminine terms is not used in part 835;

4. Revision of the requirements of § 835.102 for clarity;

5. Change of the heading of § 835.202 to ''Occupational dose limits for general employees'' to accurately reflect the content of that section;

6. Deletion from § 835.203(a) and the § 835.2(b) definition of ''total effective dose equivalent'' the provision related to substitution of deep dose equivalent for effective dose equivalent from external exposure. This provision is redundant with the revised definition of ''effective dose equivalent'' proposed at § 835.2(b).

Summary of Public Comments and Disposition

DOE received no substantive comments on these changes.

Final Rule

DOE has included the proposed changes in the final rule.

III. Review Under the National Environmental Policy Act

DOE has reviewed the promulgation of this amendment to 10 CFR part 835 under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508). DOE has completed an Environmental Assessment and on the basis of that information has issued a Finding of No Significant Impact (FONSI) for this amendment. The FONSI and the Environmental Assessment update the FONSI and Environmental Assessment issued when the proposed amendment was published for public comment and reflect changes in the final rule made in response to public comments. The Environmental Assessment and FONSI are available for inspection at the DOE Freedom of Information Reading Room, 1E–190, 1000 Independence Ave. SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

IV. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis and publish it at the time of publication of general notice of rulemaking for the rule. This requirement does not apply if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Today's action amends DOE's regulations governing programs established at DOE facilities to protect individuals from ionizing radiation resulting from DOE activities. The contractors who manage and operate DOE facilities are responsible for implementing the occupational radiation protection program. DOE has considered whether management and operating (M&O) contractors are ''small businesses,'' as that term is defined by the Regulatory Flexibility Act (5 U.S.C. 601(3)). The Regulatory Flexibility Act's definition incorporates the definition of ''small business concern'' in the Small Business Act, which the Small Business Administration (SBA) has developed through size standards in 13 CFR part 121. Small businesses are business concerns which, together with their affiliates, have no more than 500 to 1500 employees, varying by SIC category, and annual receipts of between $0.5 million to $25 million, again varying by SIC category—Title 13 CFR part 121. DOE's M&O contractors exceed the SBA's size standards for small businesses. In addition, it is noted that M&O contractors are reimbursed through their contracts with DOE for the costs of complying with DOE occupational radiation protection requirements. They will not, therefore, be adversely impacted by the requirements in the rule. For these reasons, DOE certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

V. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs

within the Office of Management and Budget.

VI. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

This final rule would not have a substantial direct effect on the institutional interests or traditional functions of States.

VII. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements:

(1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that the amendments to 10 CFR part 835 meet the relevant standards of Executive Order 12988.

VIII. Review Under Paperwork Reduction Act

DOE submitted the proposed collections of information in this rule to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995 (42 U.S.C. 3507(d)), and, by separate notice on May 26, 1998, invited public comment on DOE's statement of need and estimates of the burden of the collection of information in 10 CFR part 835 (63 FR 28495). The information that DOE management and operating contractors are required to produce, maintain and report is necessary to permit the Department and its contractors to manage and oversee health and safety programs that control worker exposure to radiation. DOE estimates that the total annual burden of the collection of information requirements to be 50,000 hours for the approximately 50 contractors subject to the rule.

The Office of Management and Budget has approved the collections of information in 10 CFR part 835 and assigned to the part OMB Number 1910–5105. 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 (5 CFR 1320.5(b)).

IX. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), Pub.L. 104–4 on March 22, 1995, codified at 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, codified at 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on proposals containing ''significant Federal intergovernmental mandates.'' Section 203(a) of the Act, codified at 2 U.S.C. 1533(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and enables officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant intergovernmental Federal mandates.

The final rule published today does not contain any Federal mandate that would result in any expenditure by State, local or tribal government. The provisions of 10 CFR part 835 apply only to activities conducted by or for DOE. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

X. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 835

Emergency radiation exposures, Nuclear material, Occupational safety and health, Radiation exposures, Radiation protection, Radioactive material, Reporting and recordkeeping requirements, Safety during emergencies, Training.

Issued in Washington, DC, on October 29, 1998.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

For the reasons set forth in the preamble, Title 10, Code of Federal Regulations, part 835 is amended as set forth below:

PART 835—OCCUPATIONAL RADIATION PROTECTION

1. The authority citation for part 835 continues to read as follows:

Authority: 42 U.S.C. 2201; 7191.

Subpart A—General Provisions

2. Section 835.1 is amended by revising the introductory text of paragraph (b) and paragraph (b)(3), redesignating paragraph (b)(4) as (b)(6), and by adding paragraphs (b)(4), (b)(5), and (c) as follows:

§ 835.1 Scope.

* * * * *

(b) *Exclusion*. Except as discussed in paragraph (c) of this section, the requirements in this part do not apply to:

* * * * *

(3) Activities conducted under the Nuclear Explosives and Weapons Surety Program relating to the prevention of accidental or unauthorized nuclear detonations;

(4) Radioactive material transportation as defined in this part;

(5) DOE activities conducted outside the United States on territory under the jurisdiction of a foreign government to the extent governed by occupational radiation protection requirements agreed to between the United States and the cognizant government; or

(6) Background radiation, radiation doses received as a patient for the purposes of medical diagnosis or therapy, or radiation doses received from participation as a subject in medical research programs.

(c) Occupational doses received as a result of excluded activities and radioactive material transportation, as listed in paragraphs (b)(1) through (b)(5) of this section, shall be considered when determining compliance with the occupational dose limits at §§ 835.202 and 835.207, and with the limits for the embryo/fetus at § 835.206. Occupational doses resulting from authorized emergency exposures and planned special exposures shall not be considered when determining compliance with the dose limits at §§ 835.202 and 835.207.

3. At § 835.2, paragraph (a) is amended by removing definitions of the terms ''ambient air'', ''continuous air monitor'', ''DOE activities'', ''occupational exposure'', ''representative'', and ''survey''; by adding in alphabetical order, definitions for the terms ''accountable sealed radioactive source'', ''derived air concentration-hour'', ''DOE activity'', ''occupational dose'', ''radioactive material area'', ''radioactive material transportation'', ''real-time air monitoring'', ''respiratory protective device'', ''sealed radioactive source'', ''source leak test'', and ''week''; and revising the definitions of the terms ''airborne radioactive material or airborne radioactivity'', ''airborne radioactivity area'', ''contamination area'', ''controlled area'', ''declared pregnant worker'', ''general employee'', ''high contamination area'', ''member of the public'', ''monitoring'', ''radiological area'', and ''year'' to read as follows. At § 835.2, paragraph (b), the definition of ''collective dose'' is removed, the definition of ''dose'' is added, and the definitions of the terms ''cumulative total effective dose equivalent'', ''effective dose equivalent'', ''external dose or exposure'', ''quality factor'', ''total effective dose equivalent'', and ''weighting factor'' are revised as follows. Paragraph (d) of § 835.2 is removed.

§ 835.2 Definitions.

(a) As used in this part:

Accountable sealed radioactive source means a sealed radioactive source having a half-life equal to or greater than 30 days and an isotopic activity equal to or greater than the corresponding value provided in appendix E of this part.

Airborne radioactive material or airborne radioactivity means radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

Airborne radioactivity area means any area, accessible to individuals, where:

(1) The concentration of airborne radioactivity, above natural background, exceeds or is likely to exceed the derived air concentration (DAC) values listed in appendix A or appendix C of this part; or

(2) An individual present in the area without respiratory protection could receive an intake exceeding 12 DAC-hours in a week.

* * * * *

Contamination area means any area, accessible to individuals, where removable surface contamination levels exceed or are likely to exceed the removable surface contamination values specified in appendix D of this part, but do not exceed 100 times those values.

* * * * *

Controlled area means any area to which access is managed by or for DOE to protect individuals from exposure to radiation and/or radioactive material.

Declared pregnant worker means a woman who has voluntarily declared to her employer, in writing, her pregnancy for the purpose of being subject to the occupational dose limits to the embryo/fetus as provided at § 835.206. This declaration may be revoked, in writing, at any time by the declared pregnant worker.

* * * * *

Derived air concentration-hour (DAC-hour) means the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the DAC for each radionuclide) and the time of exposure to that radionuclide, in hours.

DOE activity means an activity taken for or by DOE in a DOE operation or facility that has the potential to result in the occupational exposure of an individual to radiation or radioactive material. The activity may be, but is not limited to, design, construction, operation, or decommissioning. To the extent appropriate, the activity may involve a single DOE facility or operation or a combination of facilities and operations, possibly including an entire site or multiple DOE sites.

* * * * *

General employee means an individual who is either a DOE or DOE contractor employee; an employee of a subcontractor to a DOE contractor; or an individual who performs work for or in conjunction with DOE or utilizes DOE facilities.

High contamination area means any area, accessible to individuals, where removable surface contamination levels exceed or are likely to exceed 100 times the removable surface contamination values specified in appendix D of this part.

* * * * *

Member of the public means an individual who is not a general employee. An individual is not a ''member of the public'' during any period in which the individual receives an occupational dose.

* * * * *

Monitoring means the measurement of radiation levels, airborne radioactivity concentrations, radioactive contamination levels, quantities of radioactive material, or individual doses and the use of the results of these measurements to evaluate radiological hazards or potential and actual doses resulting from exposures to ionizing radiation.

* * * * *

Occupational dose means an individual's ionizing radiation dose (external and internal) as a result of that individual's work assignment. Occupational dose does not include doses received as a medical patient or doses resulting from background radiation or participation as a subject in medical research programs.

* * * * *

Radioactive material area means any area within a controlled area, accessible to individuals, in which items or containers of radioactive material exist and the total activity of radioactive material exceeds the applicable values provided in appendix E of this part.

Radioactive material transportation means the movement of radioactive material by aircraft, rail, vessel, or highway vehicle when such movement is subject to Department of Transportation regulations or DOE Orders that govern such movements. Radioactive material transportation does not include preparation of material or packagings for transportation, monitoring required by this part, storage of material awaiting transportation, or application of markings and labels required for transportation.

Radiological area means any area within a controlled area defined in this section as a ''radiation area,'' ''high radiation area,'' ''very high radiation

area,'' ''contamination area,'' ''high contamination area,'' or ''airborne radioactivity area.''

* * * * *

Real-time air monitoring means measurement of the concentrations or quantities of airborne radioactive materials on a continuous basis.

* * * * *

Respiratory protective device means an apparatus, such as a respirator, worn by an individual for the purpose of reducing the individual's intake of airborne radioactive materials.

Sealed radioactive source means a radioactive source manufactured, obtained, or retained for the purpose of utilizing the emitted radiation. The sealed radioactive source consists of a known or estimated quantity of radioactive material contained within a sealed capsule, sealed between layer(s) of non-radioactive material, or firmly fixed to a non-radioactive surface by electroplating or other means intended to prevent leakage or escape of the radioactive material. Sealed radioactive sources do not include reactor fuel elements, nuclear explosive devices, and radioisotope thermoelectric generators.

Source leak test means a test to determine if a sealed radioactive source is leaking radioactive material.

* * * * *

Week means a period of seven consecutive days.

Year means the period of time beginning on or near January 1 and ending on or near December 31 of that same year used to determine compliance with the provisions of this part. The starting and ending date of the year used to determine compliance may be changed provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(b) * * *

Cumulative total effective dose equivalent means the sum of all total effective dose equivalent values recorded for an individual, where available, for each year occupational dose was received, beginning January 1, 1989.

* * * * *

Dose is a general term for absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent as defined in this part.

* * * * *

Effective dose equivalent (H_E) means the summation of the products of the dose equivalent received by specified tissues of the body (H_T) and the appropriate weighting factor (w_T)—that is, $H_E = \Sigma w_T H_T$. It includes the dose from radiation sources internal and/or external to the body. For purposes of compliance with this part, deep dose equivalent to the whole body may be used as effective dose equivalent for external exposures. The effective dose equivalent is expressed in units of rem (or sievert).

External dose or exposure means that portion of the dose equivalent received from radiation sources outside the body (i.e., ''external sources'').

* * * * *

Quality factor (Q) means the modifying factor used to calculate the dose equivalent from the absorbed dose; the absorbed dose (expressed in rad or gray) is multiplied by the appropriate quality factor.

(i) The quality factors to be used for determining dose equivalent in rem are as follow:

QUALITY FACTORS

Radiation type	Quality factor
X-rays, gamma rays, positrons, electrons (including tritium beta particles)	1
Neutrons, ≤10 keV	3
Neutrons, >10 keV	10
Protons and singly-charged particles of unknown energy with rest mass greater than one atomic mass unit	10
Alpha particles and multiple-charged particles (and particles of unknown charge) of unknown energy	20

When spectral data are insufficient to identify the energy of the neutrons, a quality factor of 10 shall be used.

(ii) When spectral data are sufficient to identify the energy of the neutrons, the following mean quality factor values may be used:

QUALITY FACTORS FOR NEUTRONS

[Mean quality factors, $\bar{Q}$ (maximum value in a 30-cm dosimetry phantom), and values of neutron flux density that deliver in 40 hours, a maximum dose equivalent of 0.1 rem (0.001 sievert). Where neutron energy falls between listed values, the more restrictive mean quality factor shall be used.]

Neutron energy (MeV)	Mean quality factor	Neutron flux density ($cm^{-2}s^{-1}$)
2.5×10^{-8} thermal	2	680
1×10^{-7}	2	680
1×10^{-6}	2	560
1×10^{-5}	2	560
1×10^{-4}	2	580
1×10^{-3}	2	680
1×10^{-2}	2.5	700

QUALITY FACTORS FOR NEUTRONS—Continued

[Mean quality factors, $\bar{Q}$ (maximum value in a 30-cm dosimetry phantom), and values of neutron flux density that deliver in 40 hours, a maximum dose equivalent of 0.1 rem (0.001 sievert). Where neutron energy falls between listed values, the more restrictive mean quality factor shall be used.]

Neutron energy (MeV)	Mean quality factor	Neutron flux density ($cm^{-2}s^{-1}$)
1×10^{-1}	7.5	115
5×10^{-1}	11	27
1	11	19
2.5	9	20
5	8	16
7	7	17
10	6.5	17
14	7.5	12
20	8	11
40	7	10
60	5.5	11
1×10^{2}	4	14
2×10^{2}	3.5	13
3×10^{2}	3.5	11
4×10^{2}	3.5	10

* * * * *

Total effective dose equivalent (TEDE) means the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

Weighting factor (w_T) means the fraction of the overall health risk, resulting from uniform, whole body irradiation, attributable to specific tissue (T). The dose equivalent to tissue (H_T) is multiplied by the appropriate weighting factor to obtain the effective dose equivalent contribution from that tissue. The weighting factors are as follows:

WEIGHTING FACTORS FOR VARIOUS ORGANS AND TISSUES

Organs or tissues, T	Weighting factor, w_T
Gonads	0.25
Breasts	0.15
Red bone marrow	0.12
Lungs	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder [1]	0.30
Whole body [2]	1.00

[1] ''Remainder'' means the five other organs or tissues, excluding the skin and lens of the eye, with the highest dose (e.g., liver, kidney, spleen, thymus, adrenal, pancreas, stomach, small intestine, and upper large intestine). The weighting factor for each remaining organ or tissue is 0.06.

[2] For the case of uniform external irradiation of the whole body, a weighting factor (w_T) equal to 1 may be used in determination of the effective dose equivalent.

(c) * * *

4. Section 835.3 is amended by adding paragraph (e) as follows:

§ 835.3 General Rule

* * * * *

(e) For those activities that are required by §§ 835.102, 835.901(e), 835.1202 (a), and 835.1202(b), the time interval to conduct these activities may be extended by a period not to exceed 30 days to accommodate scheduling needs.

§ 835.4 [Amended]

5. Section 835.4 is amended by adding ''roentgen,'' after ''rad,'' in the first sentence and removing the last sentence.

Subpart B—Management and Administrative Requirements

6. The heading of subpart B is revised to read as set forth above.

6a. Section 835.101 is amended by revising paragraph (f) to read as follows, removing paragraph (g), and redesignating paragraphs (h), (i), and (j) as (g), (h), and (i) respectively; in paragraph (d), the reference to ''§ 835.101(i)'' is changed to ''§ 835.101(h)''.

§ 835.101 Radiation protection programs.

* * * * *

(f) The RPP shall include plans, schedules, and other measures for achieving compliance with regulations of this part. Unless otherwise specified in this part, compliance with amendments to this part shall be achieved no later than 180 days following approval of the revised RPP by DOE. Compliance with the requirements of § 835.402(d) for radiobioassay program accreditation shall be achieved no later than January 1, 2002.

* * * * *

7. Section 835.102 is revised to read as follows:

§ 835.102 Internal audits.

Internal audits of the radiation protection program, including examination of program content and implementation, shall be conducted through a process that ensures that all functional elements are reviewed no less frequently than every 36 months.

8. Section 835.103 is added as follows:

§ 835.103 Education, training and skills.

Individuals responsible for developing and implementing measures necessary for ensuring compliance with the requirements of this part shall have the appropriate education, training, and skills to discharge these responsibilities.

9. Section 835.104 is added as follows:

§ 835.104 Written procedures.

Written procedures shall be developed and implemented as necessary to ensure compliance with this part, commensurate with the radiological hazards created by the activity and consistent with the education, training, and skills of the individuals exposed to those hazards.

10. Section 835.202 is amended by revising the section heading, revising the introductory text of paragraph (a), and revising paragraphs (b) and (c) to read as follows:

§ 835.202 Occupational dose limits for general employees.

(a) Except for planned special exposures conducted consistent with § 835.204 and emergency exposures authorized in accordance with § 835.1302, the occupational dose received by general employees shall be controlled such that the following limits are not exceeded in a year:

* * * * *

(b) All occupational doses received during the current year, except doses resulting from planned special exposures conducted in compliance with § 835.204 and emergency exposures authorized in accordance with § 835.1302, shall be included when demonstrating compliance with §§ 835.202(a) and 835.207.

(c) Doses from background, therapeutic and diagnostic medical radiation, and participation as a subject in medical research programs shall not be included in dose records or in the assessment of compliance with the occupational dose limits.

11. Section 835.203 is amended by revising the section heading and paragraph (a) to read as follows and by removing paragraph (c):

§ 835.203 Combining internal and external dose equivalents.

(a) The total effective dose equivalent during a year shall be determined by summing the effective dose equivalent from external exposures and the committed effective dose equivalent from intakes during the year.

* * * * *

12. Section 835.204 is amended by revising paragraphs (a)(1), (a)(3), (c)(1), (c)(2) and (d) to read as follows:

§ 835.204 Planned special exposures.

(a) * * *

(1) The planned special exposure is considered only in an exceptional situation when alternatives that might prevent a radiological worker from exceeding the limits in § 835.202(a) are unavailable or impractical;

* * * * *

(3) Joint written approval is received from the appropriate DOE Headquarters program office and the Secretarial Officer responsible for environment, safety and health matters.

* * * * *

(c) * * *

(1) In a year, the numerical values of the dose limits established at § 835.202(a); and

(2) Over the individual's lifetime, five times the numerical values of the dose limits established at § 835.202(a).

(d) Prior to a planned special exposure, written consent shall be obtained from each individual involved. Each such written consent shall include:

(1) The purpose of the planned operations and procedures to be used;

(2) The estimated doses and associated potential risks and specific radiological conditions and other hazards which might be involved in performing the task; and

(3) Instructions on the measures to be taken to keep the dose ALARA considering other risks that may be present.

* * * * *

13. Section 835.207 is revised to read as follows:

§ 835.207 Occupational dose limits for minors.

The dose equivalent limits for minors occupationally exposed to radiation and/or radioactive materials at a DOE activity are 0.1 rem (0.001 sievert) total effective dose equivalent in a year and 10% of the occupational dose limits specified at § 835.202(a)(3) and (a)(4).

14. Section 835.208 is revised to read as follows:

§ 835.208 Limits for members of the public entering a controlled area.

The total effective dose equivalent limit for members of the public exposed to radiation and/or radioactive material during access to a controlled area is 0.1 rem (0.001 sievert) in a year.

§ 835.209 [Amended]

15. Section 835.209 is amended by changing the first ''to'' to ''of'' in paragraph (a), removing paragraph (b), redesignating paragraph (c) as (b), and removing the word ''representative'' from (b)(3).

Subpart E—Monitoring of Individuals and Areas

16. The heading of Subpart E is revised to read as set forth above.

16a. Section 835.401 is amended by removing paragraph (b), redesignating

paragraph (c) as (b), revising paragraphs (a), introductory text, (a)(2), (a)(4), (a)(5), (a)(6), and revising in newly redesignated paragraph (b), the introductory text, and (b)(1) to read as follows:

§ 835.401 General requirements.

(a) Monitoring of individuals and areas shall be performed to:

(1) * * *

(2) Document radiological conditions;

(3) * * *

(4) Detect the gradual buildup of radioactive material;

(5) Verify the effectiveness of engineering and process controls in containing radioactive material and reducing radiation exposure; and

(6) Identify and control potential sources of individual exposure to radiation and/or radioactive material.

(b) Instruments and equipment used for monitoring shall be:

(1) Periodically maintained and calibrated on an established frequency;

* * * * *

17. Section 835.402 is revised to read as follows:

§ 835.402 Individual monitoring.

(a) For the purpose of monitoring individual exposures to external radiation, personnel dosimeters shall be provided to and used by:

(1) Radiological workers who, under typical conditions, are likely to receive one or more of the following:

(i) An effective dose equivalent to the whole body of 0.1 rem (0.001 sievert) or more in a year;

(ii) A shallow dose equivalent to the skin or to any extremity of 5 rems (0.05 sievert) or more in a year;

(iii) A lens of the eye dose equivalent of 1.5 rems (0.015 sievert) or more in a year;

(2) Declared pregnant workers who are likely to receive from external sources a dose equivalent to the embryo/fetus in excess of 10 percent of the limit at § 835.206(a);

(3) Occupationally exposed minors likely to receive a dose in excess of 50 percent of the applicable limits at § 835.207 in a year from external sources;

(4) Members of the public entering a controlled area likely to receive a dose in excess of 50 percent of the limit at § 835.208 in a year from external sources; and

(5) Individuals entering a high or very high radiation area.

(b) External dose monitoring programs implemented to demonstrate compliance with § 835.402(a) shall be adequate to demonstrate compliance with the dose limits established in subpart C of this part and shall be:

(1) Accredited, or excepted from accreditation, in accordance with the DOE Laboratory Accreditation Program for Personnel Dosimetry; or

(2) Determined by the Secretarial Officer responsible for environment, safety and health matters to have performance substantially equivalent to that of programs accredited under the DOE Laboratory Accreditation Program for Personnel Dosimetry.

(c) For the purpose of monitoring individual exposures to internal radiation, internal dosimetry programs (including routine bioassay programs) shall be conducted for:

(1) Radiological workers who, under typical conditions, are likely to receive a committed effective dose equivalent of 0.1 rem (0.001 sievert) or more from all occupational radionuclide intakes in a year;

(2) Declared pregnant workers likely to receive an intake or intakes resulting in a dose equivalent to the embryo/fetus in excess of 10 percent of the limit stated at § 835.206(a);

(3) Occupationally exposed minors who are likely to receive a dose in excess of 50 percent of the applicable limit stated at § 835.207 from all radionuclide intakes in a year; or

(4) Members of the public entering a controlled area likely to receive a dose in excess of 50 percent of the limit stated at § 835.208 from all radionuclide intakes in a year.

(d) Internal dose monitoring programs implemented to demonstrate compliance with § 835.402(c) shall be adequate to demonstrate compliance with the dose limits established in subpart C of this part and shall be:

(1) Accredited, or excepted from accreditation, in accordance with the DOE Laboratory Accreditation Program for Radiobioassay; or,

(2) Determined by the Secretarial Officer responsible for environment, safety and health matters to have performance substantially equivalent to that of programs accredited under the DOE Laboratory Accreditation Program for Radiobioassy.

18. Section 835.403 is revised to read as follows:

§ 835.403 Air monitoring.

(a) Monitoring of airborne radioactivity shall be performed:

(1) Where an individual is likely to receive an exposure of 40 or more DAC-hours in a year; or

(2) As necessary to characterize the airborne radioactivity hazard where respiratory protective devices for protection against airborne radionuclides have been prescribed.

(b) Real-time air monitoring shall be performed as necessary to detect and provide warning of airborne radioactivity concentrations that warrant immediate action to terminate inhalation of airborne radioactive material.

§ 835.404 [Reserved]

19. Section 835.404 is removed and reserved.

20. Section 835.405 is added to subpart E to read as follows:

§ 835.405 Receipt of packages containing radioactive material.

(a) If packages containing quantities of radioactive material in excess of a Type A quantity (as defined at 10 CFR 71.4) are expected to be received from radioactive material transportation, arrangements shall be made to either:

(1) Take possession of the package when the carrier offers it for delivery; or

(2) Receive notification as soon as practicable after arrival of the package at the carrier's terminal and to take possession of the package expeditiously after receiving such notification.

(b) Upon receipt from radioactive material transportation, external surfaces of packages known to contain radioactive material shall be monitored if the package:

(1) Is labeled with a Radioactive White I, Yellow II, or Yellow III label (as specified at 49 CFR 172.403 and 172.436–440); or

(2) Has been transported as low specific activity material (as defined at 10 CFR 71.4) on an exclusive use vehicle (as defined at 10 CFR 71.4); or

(3) Has evidence of degradation, such as packages that are crushed, wet, or damaged.

(c) The monitoring required by paragraph (b) of this section shall include:

(1) Measurements of removable contamination levels, unless the package contains only special form (as defined at 10 CFR 71.4) or gaseous radioactive material; and

(2) Measurements of the radiation levels, unless the package contains less than a Type A quantity (as defined at 10 CFR 71.4) of radioactive material.

(d) The monitoring required by paragraph (b) of this section shall be completed as soon as practicable following receipt of the package, but not later than 8 hours after the beginning of the working day following receipt of the package.

Subpart F—Entry Control Program

21. Section 835.501 is amended by revising paragraph (d) as follows:

§ 835.501 Radiological areas.

* * * * *

(d) Written authorizations shall be required to control entry into and perform work within radiological areas. These authorizations shall specify radiation protection measures commensurate with the existing and potential hazards.

22. At § 835.502, paragraphs (a), (b), and (c) are redesignated as paragraphs (b), (c), and (d) respectively; the paragraph heading of redesignated paragraph (b) is revised; a new paragraph (a) is added and redesignated paragraphs (b)(2) and (c) are revised as follows:

§ 835.502 High and very high radiation areas.

(a) The following measures shall be implemented for each entry into a high radiation area:

(1) The area shall be monitored as necessary during access to determine the exposure rates to which the individuals are exposed; and

(2) Each individual shall be monitored by a supplemental dosimetry device or other means capable of providing an immediate estimate of the individual's integrated deep dose equivalent during the entry.

(b) *Physical controls.* * * *

(1) * * *

(2) A device that functions automatically to prevent use or operation of the radiation source or field while individuals are in the area;

* * * * *

(c) *Very high radiation areas.* In addition to the above requirements, additional measures shall be implemented to ensure individuals are not able to gain unauthorized or inadvertent access to very high radiation areas.

Subpart G—Posting and Labeling

23. Section 835.601 is revised to read as follows:

§ 835.601 General requirements.

(a) Except as otherwise provided in this subpart, postings and labels required by this subpart shall include the standard radiation warning trefoil in black or magenta imposed upon a yellow background.

(b) Signs required by this subpart shall be clearly and conspicuously posted and may include radiological protection instructions.

(c) The posting and labeling requirements in this subpart may be modified to reflect the special considerations of DOE activities conducted at private residences or businesses. Such modifications shall provide the same level of protection to individuals as the existing provisions in this subpart.

24. Section 835.602 is amended by revising paragraph (a) to read as follows:

§ 835.602 Controlled areas.

(a) Each access point to a controlled area (as defined at § 835.2) shall be posted whenever radiological areas or radioactive material areas exist in the area. Individuals who enter only controlled areas without entering radiological areas or radioactive material areas are not expected to receive a total effective dose equivalent of more than 0.1 rem (0.001 sievert) in a year.

* * * * *

25. Section 835.603 is revised to read as follows:

§ 835.603 Radiological areas and radioactive material areas.

Each access point to radiological areas and radioactive material areas (as defined at § 835.2) shall be posted with conspicuous signs bearing the wording provided in this section.

(a) *Radiation area.* The words ''Caution, Radiation Area'' shall be posted at each radiation area.

(b) *High radiation area.* The words ''Caution, High Radiation Area'' or ''Danger, High Radiation Area'' shall be posted at each high radiation area.

(c) *Very high radiation area.* The words ''Grave Danger, Very High Radiation Area'' shall be posted at each very high radiation area.

(d) *Airborne radioactivity area.* The words ''Caution, Airborne Radioactivity Area'' or ''Danger, Airborne Radioactivity Area'' shall be posted at each airborne radioactivity area.

(e) *Contamination area.* The words ''Caution, Contamination Area'' shall be posted at each contamination area.

(f) *High contamination area.* The words ''Caution, High Contamination Area'' or ''Danger, High Contamination Area'' shall be posted at each high contamination area.

(g) *Radioactive material area.* The words ''Caution, Radioactive Material(s)'' shall be posted at each radioactive material area.

26. Section 835.604 is added to subpart G to read as follows:

§ 835.604 Exceptions to posting requirements.

(a) Areas may be excepted from the posting requirements of § 835.603 for periods of less than 8 continuous hours when placed under continuous observation and control of an individual knowledgeable of, and empowered to implement, required access and exposure control measures.

(b) Areas may be excepted from the radioactive material area posting requirements of § 835.603(g) when:

(1) Posted in accordance with §§ 835.603(a) through (f); or

(2) Each item or container of radioactive material is labeled in accordance with this subpart such that individuals entering the area are made aware of the hazard; or

(3) The radioactive material of concern consists solely of structures or installed components which have been activated (i.e., such as by being exposed to neutron radiation or particles produced by an accelerator).

(c) Areas containing only packages received from radioactive material transportation labeled and in non-degraded condition need not be posted in accordance with § 835.603 until the packages are monitored in accordance with § 835.405.

27. Section 835.605 is added to subpart G to read as follows:

§ 835.605 Labeling items and containers.

Except as provided at § 835.606, each item or container of radioactive material shall bear a durable, clearly visible label bearing the standard radiation warning trefoil and the words ''Caution, Radioactive Material'' or ''Danger, Radioactive Material.'' The label shall also provide sufficient information to permit individuals handling, using, or working in the vicinity of the items or containers to take precautions to avoid or control exposures.

28. Section 835.606 is added to subpart G to read as follows:

§ 835.606 Exceptions to labeling requirements.

(a) Items and containers may be excepted from the radioactive material labeling requirements of § 835.605 when:

(1) Used, handled, or stored in areas posted and controlled in accordance with this subpart and sufficient information is provided to permit individuals to take precautions to avoid or control exposures; or

(2) The quantity of radioactive material is less than one tenth of the values specified in appendix E of this part; or

(3) Packaged, labeled, and marked in accordance with the regulations of the Department of Transportation or DOE Orders governing radioactive material transportation; or

(4) Inaccessible, or accessible only to individuals authorized to handle or use them, or to work in the vicinity; or

(5) Installed in manufacturing, process, or other equipment, such as reactor components, piping, and tanks; or

(6) The radioactive material consists solely of nuclear weapons or their components.

(b) Radioactive material labels applied to sealed radioactive sources may be excepted from the color specifications of § 835.601(a).

Subpart H—Records

29. In § 835.702, paragraphs (a), (b), (c), (d), and (e) are revised to read as follows:

§ 835.702 Individual monitoring records.

(a) Records shall be maintained to document doses received by all individuals for whom monitoring was required pursuant to § 835.402 and to document doses received during planned special exposures, unplanned doses exceeding the monitoring thresholds of § 835.402, and authorized emergency exposures.

(b) The results of individual external and internal dose monitoring that is performed, but not required by § 835.402, shall be recorded. Recording of non-uniform shallow dose equivalent to the skin is not required if the dose is less than 2 percent of the limit specified for the skin at § 835.202(a)(4).

(c) The records required by this section shall:

(1) Be sufficient to evaluate compliance with subpart C of this part;

(2) Be sufficient to provide dose information necessary to complete reports required by subpart I of this part;

(3) Include the following quantities for external dose received during the year:

(i) The effective dose equivalent from external sources of radiation (deep dose equivalent may be used as effective dose equivalent for external exposure);

(ii) The lens of the eye dose equivalent;

(iii) The shallow dose equivalent to the skin; and

(iv) The shallow dose equivalent to the extremities.

(4) Include the following information for internal dose resulting from intakes received during the year:

(i) Committed effective dose equivalent;

(ii) Committed dose equivalent to any organ or tissue of concern; and

(iii) Identity of radionuclides.

(5) Include the following quantities for the summation of the external and internal dose:

(i) Total effective dose equivalent in a year;

(ii) For any organ or tissue assigned an internal dose during the year, the sum of the deep dose equivalent from external exposures and the committed dose equivalent to that organ or tissue; and

(iii) Cumulative total effective dose equivalent.

(6) Include the dose equivalent to the embryo/fetus of a declared pregnant worker.

(d) Documentation of all occupational doses received during the current year, except for doses resulting from planned special exposures conducted in compliance with § 835.204 and emergency exposures authorized in accordance with § 835.1302(d), shall be obtained to demonstrate compliance with § 835.202(a). If complete records documenting previous occupational dose during the year cannot be obtained, a written estimate signed by the individual may be accepted to demonstrate compliance.

(e) For radiological workers whose occupational dose is monitored in accordance with § 835.402, reasonable efforts shall be made to obtain complete records of prior years occupational internal and external doses.

* * * * *

30. In § 835.703, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 835.703 Other monitoring records.

* * * * *

(a) Results of monitoring for radiation and radioactive material as required by subparts E and L of this part, except for monitoring required by § 835.1102(d);

(b) Results of monitoring used to determine individual occupational dose from external and internal sources;

(c) Results of monitoring for the release and control of material and equipment as required by § 835.1101; and

(d) Results of maintenance and calibration performed on instruments and equipment as required by § 835.401(b).

31. Section 835.704, paragraph (a) is amended by removing the reference to ’’, 835.902, and 835.903’’; paragraphs (d) and (e) are revised and a new paragraph (f) is added as follows:

§ 835.704 Administrative records.

* * * * *

(d) Written declarations of pregnancy, including the estimated date of conception, and revocations of declarations of pregnancy shall be maintained.

(e) Changes in equipment, techniques, and procedures used for monitoring shall be documented.

(f) Records shall be maintained as necessary to demonstrate compliance with the requirements of §§ 835.1201 and 835.1202 for sealed radioactive source control, inventory, and source leak tests.

Subpart I—Reports to Individuals

32. Section 835.801, paragraph (a) is revised to read as follows:

§ 835.801 Reports to individuals.

(a) Radiation exposure data for individuals monitored in accordance with § 835.402 shall be reported as specified in this section. The information shall include the data required under § 835.702(c). Each notification and report shall be in writing and include: the DOE site or facility name, the name of the individual, and the individual’s social security number, employee number, or other unique identification number.

* * * * *

Subpart J—Radiation Safety Training

33. In subpart J, § 835.901 is revised to read as follows:

§ 835.901 Radiation safety training.

(a) Each individual shall complete radiation safety training on the topics established at § 835.901(c) commensurate with the hazards in the area and the required controls:

(1) Before being permitted unescorted access to controlled areas; and

(2) Before receiving occupational dose during access to controlled areas at a DOE site or facility.

(b) Each individual shall demonstrate knowledge of the radiation safety training topics established at § 835.901(c), commensurate with the hazards in the area and required controls, by successful completion of an examination and performance demonstrations:

(1) Before being permitted unescorted access to radiological areas; and

(2) Before performing unescorted assignments as a radiological worker.

(c) Radiation safety training shall include the following topics, to the extent appropriate to each individual’s prior training, work assignments, and degree of exposure to potential radiological hazards:

(1) Risks of exposure to radiation and radioactive materials, including prenatal radiation exposure;

(2) Basic radiological fundamentals and radiation protection concepts;

(3) Physical design features, administrative controls, limits, policies, procedures, alarms, and other measures implemented at the facility to manage doses and maintain doses ALARA, including both routine and emergency actions;

(4) Individual rights and responsibilities as related to

implementation of the facility radiation protection program;

(5) Individual responsibilities for implementing ALARA measures required by § 835.101; and

(6) Individual exposure reports that may be requested in accordance with § 835.801.

(d) When an escort is used in lieu of training in accordance with paragraph (a) or (b) of this section, the escort shall:

(1) Have completed radiation safety training, examinations, and performance demonstrations required for entry to the area and performance of the work; and

(2) Ensure that all escorted individuals comply with the documented radiation protection program.

(e) Radiation safety training shall be provided to individuals when there is a significant change to radiation protection policies and procedures that may affect the individual and at intervals not to exceed 24 months. Such training provided for individuals subject to the requirements of § 835.901(b)(1) and (b)(2) shall include successful completion of an examination.

§§ 835.902 and 835.903 [Removed and Reserved]

34. Sections 835.902 and 835.903 of subpart J are removed and reserved.

Subpart K—Design and Control

35. In Subpart K, section 835.1002 is amended by changing the word ''old'' to ''existing'', and section 835.1001 is revised to read as follows:

§ 835.1001 Design and control.

(a) Measures shall be taken to maintain radiation exposure in controlled areas ALARA through physical design features and administrative control. The primary methods used shall be physical design features (e.g., confinement, ventilation, remote handling, and shielding). Administrative controls shall be employed only as supplemental methods to control radiation exposure.

(b) For specific activities where use of physical design features is demonstrated to be impractical, administrative controls shall be used to maintain radiation exposures ALARA.

36. Section 835.1003 is revised to read as follows:

§ 835.1003 Workplace controls.

During routine operations, the combination of physical design features and administrative controls shall provide that:

(a) The anticipated occupational dose to general employees shall not exceed the limits established at § 835.202; and

(b) The ALARA process is utilized for personnel exposures to ionizing radiation.

Subpart L—Radioactive Contamination Control

37. The heading of subpart L is revised to read as set forth above.

37a. Section 835.1101 is revised and § 835.1102 is added to read as follows:

§ 835.1101 Control of material and equipment.

(a) Except as provided in paragraphs (b) and (c) of this section, material and equipment in contamination areas, high contamination areas, and airborne radioactivity areas shall not be released to a controlled area if:

(1) Removable surface contamination levels on accessible surfaces exceed the removable surface contamination values specified in appendix D of this part; or

(2) Prior use suggests that the removable surface contamination levels on inaccessible surfaces are likely to exceed the removable surface contamination values specified in appendix D of this part.

(b) Material and equipment exceeding the removable surface contamination values specified in appendix D of this part may be conditionally released for movement on-site from one radiological area for immediate placement in another radiological area only if appropriate monitoring is performed and appropriate controls for the movement are established and exercised.

(c) Material and equipment with fixed contamination levels that exceed the total contamination values specified in appendix D of this part may be released for use in controlled areas outside of radiological areas only under the following conditions:

(1) Removable surface contamination levels are below the removable surface contamination values specified in appendix D of this part; and

(2) The material or equipment is routinely monitored and clearly marked or labeled to alert personnel of the contaminated status.

§ 835.1102 Control of areas.

(a) Appropriate controls shall be maintained and verified which prevent the inadvertent transfer of removable contamination to locations outside of radiological areas under normal operating conditions.

(b) Any area in which contamination levels exceed the values specified in appendix D of this part shall be controlled in a manner commensurate with the physical and chemical characteristics of the contaminant, the radionuclides present, and the fixed and removable surface contamination levels.

(c) Areas accessible to individuals where the measured total surface contamination levels exceed, but the removable surface contamination levels are less than, corresponding surface contamination values specified in appendix D of this part, shall be controlled as follows when located outside of radiological areas:

(1) The area shall be routinely monitored to ensure the removable surface contamination level remains below the removable surface contamination values specified in appendix D of this part; and

(2) The area shall be conspicuously marked to warn individuals of the contaminated status.

(d) Individuals exiting contamination, high contamination, or airborne radioactivity areas shall be monitored, as appropriate, for the presence of surface contamination.

(e) Protective clothing shall be required for entry to areas in which removable contamination exists at levels exceeding the removable surface contamination values specified in appendix D of this part.

38. Subpart M is added, consisting of §§ 835.1201 and 835.1202, to read as follows:

Subpart M—Sealed Radioactive Source Control

§ 835.1201 Sealed radioactive source control.

Sealed radioactive sources shall be used, handled, and stored in a manner commensurate with the hazards associated with operations involving the sources.

§ 835.1202 Accountable sealed radioactive sources.

(a) Each accountable sealed radioactive source shall be inventoried at intervals not to exceed six months. This inventory shall:

(1) Establish the physical location of each accountable sealed radioactive source;

(2) Verify the presence and adequacy of associated postings and labels; and

(3) Establish the adequacy of storage locations, containers, and devices.

(b) Except for sealed radioactive sources consisting solely of gaseous radioactive material or tritium, each accountable sealed radioactive source shall be subject to a source leak test upon receipt, when damage is suspected, and at intervals not to exceed six months. Source leak tests shall be capable of detecting radioactive material leakage equal to or exceeding 0.005 microcurie.

(c) Notwithstanding the requirements of paragraph (b) of this section, an accountable sealed radioactive source is not subject to periodic source leak testing if that source has been removed from service. Such sources shall be stored in a controlled location, subject to periodic inventory as required by paragraph (a) of this section, and subject to source leak testing prior to being returned to service.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, an accountable sealed radioactive source is not subject to periodic inventory and source leak testing if that source is located in an area that is unsafe for human entry or otherwise inaccessible.

(e) An accountable sealed radioactive source found to be leaking radioactive material shall be controlled in a manner that minimizes the spread of radioactive contamination.

Subpart N—Emergency Exposure Situations

39. In § 835.1301, paragraphs (a), introductory text, (b), (c), and (d) are revised to read as follows:

§ 835.1301 General provisions.

(a) A general employee whose occupational dose has exceeded the numerical value of any of the limits specified in § 835.202 as a result of an authorized emergency exposure may be permitted to return to work in radiological areas during the current year providing that all of the following conditions are met:

* * * * *

(b) All doses exceeding the limits specified in § 835.202 shall be recorded in the affected individual's occupational dose record.

(c) When the conditions under which a dose was received in excess of the limits specified in § 835.202, except those received in accordance with § 835.204, have been eliminated, operating management shall notify the Head of the responsible DOE field organization.

(d) Operations after a dose was received in excess of the limits specified in § 835.202, except those received in accordance with § 835.204, may be resumed only with the approval of DOE.

40. Section 835.1302 is revised in paragraphs (b), (c), and (d) as follows:

§ 835.1302 Emergency exposure situations.

* * * * *

(b) Operating management shall weigh actual and potential risks against the benefits to be gained.

(c) No individual shall be required to perform a rescue action that might involve substantial personal risk.

(d) Each individual authorized to perform emergency actions likely to result in occupational doses exceeding the values of the limits provided at § 835.202(a) shall be trained in accordance with § 835.901(b) and briefed beforehand on the known or anticipated hazards to which the individual will be subjected.

* * * * *

41. At § 835.1304, paragraphs (a) and (b)(1), the word ''personnel'' is revised to read ''individuals'' and paragraph (b)(4) is revised as follows:

§ 835.1304 Nuclear accident dosimetry.

* * * * *

(b) * * *

(4) Personal nuclear accident dosimeters.

42. Appendix A of Part 835 is amended by removing footnote 5 from the Footnotes for Appendix A and, adding the following two paragraphs at the beginning of the introductory text:

Appendix A to Part 835—Derived Air Concentrations (DAC) for Controlling Radiation Exposure to Workers at DOE Facilities

The data presented in appendix A are to be used for controlling individual internal doses in accordance with § 835.209, identifying the need for air monitoring in accordance with § 835.403, and identifying the need for posting of airborne radioactivity areas in accordance with § 835.603(d).

The DAC values are given for individual radionuclides. For known mixtures of radionuclides, determine the sum of the ratio of the observed concentration of a particular radionuclide and its corresponding DAC for all radionuclides in the mixture. If this sum exceeds unity (1), then the DAC has been exceeded. For unknown radionuclides, the most restrictive DAC (lowest value) for those isotopes not known to be absent shall be used.

* * * * *

Appendix B—[Removed and Reserved]

43. Appendix B to Part 835 is removed and reserved.

44. Appendix C to Part 835 is amended by removing the entries for the radionuclides Rn-220 and Rn-222 and their corresponding half-lives and air immersion DACs from the table and revising the introductory text preceding the table as follows:

Appendix C to Part 835—Derived Air Concentration (DAC) for Workers From External Exposure During Immersion in a Contaminated Atmospheric Cloud

* * * * *

a. The data presented in appendix C are to be used for controlling occupational exposures in accordance with § 835.209, identifying the need for air monitoring in accordance with § 835.403, and identifying the need for posting of airborne radioactivity areas in accordance with § 835.603(d).

b. The air immersion DAC values shown in this appendix are based on a stochastic dose limit of 5 rems (0.05 Sv) per year or a nonstochastic (organ) dose limit of 50 rems (0.5 Sv) per year. Four columns of information are presented: (1) Radionuclide; (2) half-life in units of seconds (s), minutes (min), hours (h), days (d), or years (yr); (3) air immersion DAC in units of μCi/ml; and (4) air immersion DAC in units of Bq/m^3. The data are listed by radionuclide in order of increasing atomic mass. The air immersion DACs were calculated for a continuous, nonshielded exposure via immersion in a semi-infinite atmospheric cloud. The DACs listed in this appendix may be modified to allow for submersion in a cloud of finite dimensions.

c. The DAC value for air immersion listed for a given radionuclide is determined either by a yearly limit on effective dose equivalent, which provides a limit on stochastic radiation effects, or by a limit on yearly dose equivalent to any organ, which provides a limit on nonstochastic radiation effects. For most of the radionuclides listed, the DAC value is determined by the yearly limit on effective dose equivalent. Thus, the few cases where the DAC value is determined by the yearly limit on shallow dose equivalent to the skin are indicated in the table by an appropriate footnote. Again, the DACs listed in this appendix account only for immersion in a semi-infinite cloud and do not account for inhalation or ingestion exposures.

d. Three classes of radionuclides are included in the air immersion DACs as described below.

(1) *Class 1.* The first class of radionuclides includes selected noble gases and short-lived activation products that occur in gaseous form. For these radionuclides, inhalation doses are negligible compared to the external dose from immersion in an atmospheric cloud.

(2) *Class 2.* The second class of radionuclides includes those for which a DAC value for inhalation has been calculated, but for which the DAC value for external exposure to a contaminated atmospheric cloud is more restrictive (i.e., results in a lower DAC value). These radionuclides generally have half-lives of a few hours or less, or are eliminated from the body following inhalation sufficiently rapidly to limit the inhalation dose.

(3) *Class 3.* The third class of radionuclides includes selected isotopes with relatively short half-lives. These radionuclides typically have half-lives that are less than 10 minutes, they do not occur as a decay product of a longer lived radionuclide, or they lack sufficient decay data to permit internal dose calculations. These radionuclides are also typified by a radioactive emission of highly intense, high-energy photons and rapid removal from the body following inhalation.

e. The DAC values are given for individual radionuclides. For known mixtures of radionuclides, determine the sum of the ratio of the observed concentration of a particular

radionuclide and its corresponding DAC for all radionuclides in the mixture. If this sum exceeds unity (1), then the DAC has been exceeded. For unknown radionuclides, the most restrictive DAC (lowest value) for those isotopes not known to be absent shall be used.

* * * * *

45. Appendix D to part 835 is revised as follows:

Appendix D to Part 835—Surface Contamination Values

The data presented in appendix D are to be used in identifying the need for posting of contamination and high contamination areas in accordance with § 835.603(e) and (f) and identifying the need for surface contamination monitoring and control in accordance with §§ 835.1101 and 835.1102.

SURFACE CONTAMINATION VALUES [1] IN DPM/100 CM [2]

Radionuclide	Removable [2] [4]	Total (Fixed + Removable) [2], [3]
U-nat, U-235, U-238, and associated decay products	[7] 1,000	[7] 5,000
Transuranics, Ra-226, Ra-228, Th-230, Th-228, Pa-231, Ac-227, I-125, I-129	20	500
Th-nat, Th-232, Sr-90, Ra-223, Ra-224, U-232, I-126, I-131, I-133	200	1,000
Beta-gamma emitters (nuclides with decay modes other than alpha emission or spontaneous fission) except Sr-90 and others noted above [5]	1,000	5,000
Tritium and tritiated compounds [6]	10,000	N/A

[1] The values in this appendix, with the exception noted in footnote 5, apply to radioactive contamination deposited on, but not incorporated into the interior or matrix of, the contaminated item. Where surface contamination by both alpha-and beta-gamma-emitting nuclides exists, the limits established for alpha-and beta-gamma-emitting nuclides apply independently.

[2] As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.

[3] The levels may be averaged over one square meter provided the maximum surface activity in any area of 100 cm^2 is less than three times the value specified. For purposes of averaging, any square meter of surface shall be considered to be above the surface contamination value if: (1) From measurements of a representative number of sections it is determined that the average contamination level exceeds the applicable value; or (2) it is determined that the sum of the activity of all isolated spots or particles in any 100 cm^2 area exceeds three times the applicable value.

[4] The amount of removable radioactive material per 100 cm^2 of surface area should be determined by swiping the area with dry filter or soft absorbent paper, applying moderate pressure, and then assessing the amount of radioactive material on the swipe with an appropriate instrument of known efficiency. (Note—The use of dry material may not be appropriate for tritium.) When removable contamination on objects of surface area less than 100 cm^2 is determined, the activity per unit area shall be based on the actual area and the entire surface shall be wiped. It is not necessary to use swiping techniques to measure removable contamination levels if direct scan surveys indicate that the total residual surface contamination levels are within the limits for removable contamination.

[5] This category of radionuclides includes mixed fission products, including the Sr-90 which is present in them. It does not apply to Sr-90 which has been separated from the other fission products or mixtures where the Sr-90 has been enriched.

[6] Tritium contamination may diffuse into the volume or matrix of materials. Evaluation of surface contamination shall consider the extent to which such contamination may migrate to the surface in order to ensure the surface contamination value provided in this appendix is not exceeded. Once this contamination migrates to the surface, it may be removable, not fixed; therefore, a ''Total'' value does not apply.

[7] (alpha)

46. Appendix E to Part 835 is added as follows:

Appendix E to Part 835—Values for Establishing Sealed Radioactive Source Accountability and Radioactive Material Posting and Labeling Requirements

The data presented in this appendix E are to be used for identifying accountable sealed radioactive sources as defined at § 835.2(a), establishing the need for radioactive material area posting in accordance with § 835.603(g), and establishing the need for radioactive material labeling in accordance with § 835.605.

Note: The data are listed in alphabetical order by nuclide.

Nuclide	Activity (μCi)	Nuclide	Activity (μCi)	Nuclide	Activity (μCi)
Ac-227	1.5E+00	H-3	1.6E+08	Re-184m	1.5E+02
Ag-105	2.1E+06	Hf-172	3.1E+04	Re-186m	2.8E+05
Ag-108m	1.8E+01	Hf-175	1.8E+06	Rh-101	2.5E+05
Ag-110m	2.2E+01	Hf-178m	4.1E+03	Rh-102	8.3E+04
Al-26	1.6E+01	Hf-181	3.5E+02	Rh-102m	2.1E+05
Am-241	2.3E+01	Hf-182	3.0E+03	Ru-103	4.4E+02
Am-242m	2.4E+01	Hg-194	3.5E+04	Ru-106	2.1E+04
Am-243	2.3E+01	Hg-203	4.9E+02	S-35	4.0E+06
As-73	5.4E+02	Ho-166m	2.2E+01	Sb-124	9.1E+01
Au-195	4.8E+02	I-125	3.5E+02	Sb-125	6.8E+01
Ba-133	5.2E+01	I-129	1.8E+02	Sc-46	6.2E+01
Be-10	2.8E+04	In-114m	7.8E+02	Se-75	6.4E+01
Be-7	3.2E+03	Ir-192	1.4E+02	Se-79	1.0E+06
Bi-207	1.7E+01	Ir-192m	2.6E+04	Si-32	9.9E+03
Bi-208	1.5E+01	Ir-194m	2.7E+01	Sm-145	9.1E+05
Bi-210m	1.3E+03	K-40	2.8E+02	Sm-146	1.2E+02
Bk-247	1.7E+01	La-137	1.1E+05	Sm-151	2.5E+05
Bk-249	7.2E+03	Lu-173	4.4E+05	Sn-113	3.1E+02
C-14	4.8E+06	Lu-174	2.5E+05	Sn-119m	3.3E+02
Ca-41	7.4E+06	Lu-174m	3.9E+05	Sn-121m	8.7E+05
Ca-45	1.5E+06	Lu-177m	5.8E+01	Sn-123	1.3E+04
Cd-109	1.6E+02	Md-258	6.0E+02	Sn-126	1.8E+02
Cd-113m	6.5E+03	Mn-53	2.0E+07	Sr-85	1.2E+02

Nuclide	Activity (μCi)	Nuclide	Activity (μCi)	Nuclide	Activity (μCi)
Cd-115m	1.0E+04	Mn-54	6.5E+01	Sr-89	2.4E+05
Ce-139	2.4E+02	Mo-93	7.7E+01	Sr-90	7.7E+03
Ce-141	2.4E+03	Na-22	1.9E+01	Ta-179	1.5E+06
Ce-144	1.5E+03	Nb-91	7.0E+01	Ta-182	7.3E+01
Cf-248	2.0E+02	Nb-91m	3.6E+02	Tb-157	2.5E+03
Cf-249	1.7E+01	Nb-92	1.8E+01	Tb-158	3.9E+04
Cf-250	3.8E+01	Nb-93m	4.4E+02	Tb-160	1.2E+02
Cf-251	1.7E+01	Nb-94	2.3E+01	Tc-95m	1.3E+02
Cf-252	6.4E+01	Nb-95	3.4E+02	Tc-97	8.1E+01
Cf-254	3.4E+01	Ni-59	7.5E+06	Tc-97m	3.6E+02
Cl-36	4.6E+05	Ni-63	3.2E+06	Tc-98	2.5E+01
Cm-241	6.8E+04	Np-235	1.2E+02	Tc-99	6.8E+06
Cm-242	5.8E+02	Np-236	2.2E+01	Te-121m	1.9E+02
Cm-243	3.3E+01	Np-237	1.9E+01	Te-123m	2.8E+02
Cm-244	4.0E+01	Os-185	1.4E+02	Te-125m	4.4E+02
Cm-245	2.2E+01	Os-194	1.5E+04	Te-127m	8.0E+02
Cm-246	2.2E+01	Pa-231	7.8E+00	Te-129m	2.3E+03
Cm-247	2.4E+01	Pb-202	1.0E+05	Th-228	2.9E+01
Cm-248	6.0E+00	Pb-205	9.1E+01	Th-229	4.7E+00
Cm-250	1.1E+00	Pb-210	9.2E+01	Th-230	3.1E+01
Co-56	4.0E+01	Pd-107	7.8E+05	Th-232	6.1E+00
Co-57	2.3E+02	Pm-143	1.3E+02	Ti-44	1.6E+02
Co-58	1.4E+02	Pm-144	2.9E+01	Tl-204	2.2E+04
Co-60	1.8E+01	Pm-145	2.6E+02	Tm-170	8.4E+03
Cs-134	2.7E+01	Pm-146	4.5E+01	Tm-171	2.8E+04
Cs-135	2.2E+06	Pm-147	2.5E+05	U-232	1.5E+01
Cs-137	6.0E+01	Pm-148m	1.1E+02	U-233	7.4E+01
Dy-159	4.1E+06	Po-209	6.3E+03	U-234	7.5E+01
Es-254	6.3E+01	Po-210	1.1E+03	U-235	6.7E+01
Es-255	4.6E+04	Pt-193	4.4E+07	U-236	8.0E+01
Eu-148	7.0E+05	Pu-236	6.9E+01	U-238	8.4E+01
Eu-149	5.3E+06	Pu-237	3.3E+02	V-49	2.9E+07
Eu-152	3.1E+01	Pu-238	2.5E+01	W-181	1.1E+03
Eu-154	3.1E+01	Pu-239	2.3E+01	W-185	3.9E+06
Eu-155	3.7E+02	Pu-240	2.3E+01	W-188	6.4E+04
Fe-55	3.7E+06	Pu-241	1.2E+03	Y-88	3.4E+01
Fe-59	2.0E+02	Pu-242	2.4E+01	Y-91	5.0E+04
Fe-60	1.3E+04	Pu-244	2.5E+01	Yb-169	5.5E+02
Fm-257	4.3E+02	Ra-226	1.2E+03	Zn-65	1.1E+02
Gd-146	2.6E+05	Ra-228	2.1E+03	Zr-88	1.2E+02
Gd-148	3.0E+01	Rb-83	9.2E+01	Zr-93	3.1E+04
Gd-151	1.1E+06	Rb-84	2.0E+02	Zr-95	2.0E+02
Gd-153	2.1E+02	Re-183	5.4E+02		
Ge-68	5.7E+02	Re-184	2.6E+02		

Any alpha emitting radionuclide not listed above and mixtures of alpha emitters of unknown composition have a value of 10 microcuries.

Any radionuclide other than alpha emitting radionuclides not listed above and mixtures of beta emitters of unknown composition have a value of 100 microcuries.

Note: Where there is involved a combination of radionuclides in known amounts, derive the value for the combination as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the value otherwise established for the specific radionuclide when not in combination. If the sum of such ratios for all radionuclides in the combination exceeds unity (1), then the accountability criterion has been exceeded.

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