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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–99–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1999–2000 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which begins on June 1, 1999. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,199,290 pounds and 65 percent, respectively, and for Class 3 (Native) spearmint oil of 1,125,755 pounds and 55 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule to avoid extreme fluctuations in supplies and prices, and to help maintain stability in the spearmint oil market.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1999–2000 marketing year, which begins on June 1, 1999. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1999–2000 marketing year at its October 7, 1998, meeting. With 6 members in favor, 1 member opposed, and 1 member abstaining, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 1,199,290 pounds and 65 percent, respectively. The member in opposition favored the establishment of a lower salable quantity and allotment percentage. With 6 members in favor and 2 members abstaining, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 1,125,755 pounds and 55 percent, respectively. The member abstaining does not currently produce Native spearmint oil. The chairman, as is traditional with this Committee, abstained on both the Scotch and the Native spearmint oil recommendations.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which begins on June 1, 1999. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 65 percent of the annual U.S. production of Scotch spearmint oil and approximately 90 percent of the annual U.S. production of Native spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 80 percent was produced in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. Although still a leader in production, the Far West's market share has decreased to approximately 39 percent of the world total. Therefore, the Committee's recommendation for Scotch spearmint oil is designed to maintain market stability by avoiding extreme fluctuations in supplies and prices, and would help the industry remain competitive on an international level by potentially regaining some of the Far West's historical share of the global market. The Committee's recommendation is intended to foster market stability so that the Far West's Scotch spearmint oil market share will not only be retained, but expanded as well.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. The average price for Native spearmint oil in 1997 was $11.00. With approximately 90 percent of the U.S. production located in the Far West, the method of calculating the Native spearmint oil salable quantity and allotment percentage primarily utilizes information on price and available supply as they are affected by the estimated trade demand.

The salable quantity and allotment percentage for each class of spearmint oil for the 1999–2000 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June l, 1999—598,929 pounds. This figure is derived by subtracting the estimated 1998–99 marketing year trade demand of 900,000 pounds from the revised 1998–99 marketing year total available supply of 1,498,929 pounds.

(B) Estimated world production for the 1998–99 marketing year—3,280,758 pounds. This figure is based on information the Committee has compiled.

(C) Estimated Far West production for the 1998–99 marketing year—1,278,508 pounds.

(D) Approximate Far West percentage of total world production in 1998–99—39 percent. This is down from the 1980 level of approximately 80 percent.

(E) Total estimated allotment base for the 1999–2000 marketing year—1,845,061 pounds. This figure represents a one percent increase over the revised 1998–99 allotment base.

(F) Recommended 1999–2000 allotment percentage—65 percent. This figure is based upon recommendations made at the October 7, 1998, meeting, as well as at the five Scotch spearmint oil production area meetings held during September.

(G) The Committee's computed 1999–2000 salable quantity—1,199,290 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 1999–2000 marketing year—1,798,219 pounds. This figure is derived by adding the computed salable quantity to the estimated June 1, 1999, carry-in volume, and represents the total amount of Scotch spearmint oil that could be available to the market during the 1999–2000 marketing year.

(I) Estimated trade demand for Far West Scotch spearmint oil during the 1999–2000 marketing year—910,000 pounds. This figure is based upon estimates provided to the Committee by buyers of spearmint oil.

(J) Estimated carry-out on June 1, 2000—888,219 pounds. This figure is the difference between the 1999–2000 estimated trade demand and the 1999–2000 estimated available supply.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1999—54,815 pounds. This figure is the difference between the estimated 1998–99 marketing year trade demand of 1,170,000 pounds and the revised 1998–99 marketing year total available supply of 1,224,815 pounds.

(B) Estimated trade demand (domestic and export) for the 1999–2000 marketing year—1,155,000 pounds. This figure is based on the average of the three most recent years' sales figures and input from spearmint oil buyers.

(C) Salable quantity required from 1999 production—1,100,185 pounds. This figure is the difference between the estimated 1999–2000 marketing year trade demand and the estimated carry-in on June 1, 1999.

(D) Total estimated allotment base for the 1999–2000 marketing year—2,046,828 pounds. This figure represents a one percent increase over the revised 1998–99 allotment base.

(E) Computed allotment percentage—53.8 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—55 percent. This is the Committee's recommendation based on the computed allotment percentage and input received at the four Native spearmint oil production area meetings held during September.

(G) The Committee's recommended salable quantity—1,125,755 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

The salable quantity is the total quantity of each class of spearmint oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch spearmint oil salable quantity of 1,199,290 pounds and allotment percentage of 65 percent are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and thereby helping the industry remain competitive on the international level. The Committee's recommended Native spearmint oil salable quantity of 1,125,755 pounds and allotment percentage of 55 percent are based on anticipated supply and trade demand during the 1999–2000 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1999–2000 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this final rule, the Committee's marketing policy statement for the 1999–2000 marketing year has

been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 1999–2000 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages allows for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil which should be produced for next season in order to meet anticipated market demand.

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

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

There are 9 spearmint oil handlers subject to regulation under the order, and approximately 124 producers of Class 1 (Scotch) spearmint oil and approximately 110 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 9 handlers regulated by the order would be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 29 of the 124 Scotch spearmint oil producers and 14 of the 110 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the SBA category of large businesses.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year. The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and to help maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51, and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. The average price for Native spearmint oil in 1997 was $11.00.

Alternatives to this rule were discussed at the meeting and included not regulating the handling of spearmint oil during the 1999–2000 marketing year, and recommending either higher or lower levels for the salable quantities and allotment percentages. The Committee reached its decision to recommend the establishment of salable quantities and allotment percentages for both classes of spearmint oil after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of the nearly 1.3 million pounds of spearmint oil reserves would have on the market.

According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended goals of market and price stability, with market share maintenance and growth.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule was published in the **Federal Register** (63 FR 63804) on November 17, 1998. A 30-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. Copies of this rule were faxed and mailed to the Committee office, which in turn notified Committee members and spearmint oil producers and handlers of the proposed action. In addition, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. A copy of the proposal was also made available on the Internet by the U.S. Government Printing Office. No comments were received. Accordingly, no changes are made to the rule as proposed.

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

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.218 is added to read as follows:

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

§ 985.218 Salable quantities and allotment percentages—1999–2000 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1999, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,199,290 pounds and an allotment percentage of 65 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,125,755 pounds and an allotment percentage of 55 percent.

Dated: January 12, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–1133 Filed 1–15–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AF 52

Tobacco—Importer Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, the proposed rule published in the **Federal Register** on September 29, 1998 (63 FR 51864). The rule amends the definition of ''de minimis special entries'' in the tobacco program regulations which applies to the collection of the ''budget deficit'' and ''no-net-cost'' assessments on certain kinds of imported tobacco. The current definition of ''de minimis special entries'' exempts entries of unmanufactured imported tobacco of five (5) kilograms or less if certain conditions are met. This rule raises the maximum allowable exempt weight to 100 kilograms, thereby saving administrative costs without compromising the purpose of the exemption.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: David McCarty, USDA/FSA/TPD/STOP 0514, 1400 Independence Avenue, SW, Washington DC 20250–0514, telephone (202)720–6389, E-mail DMCCARTY@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and therefore was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR 3015, subpart V, published at 48 FR 29115 (June 24, 1983). This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR 1464, the administrative appeal provisions set forth at 7 CFR 780, and those of 7 CFR 11, must be exhausted.

Paperwork Reduction Act

The **Federal Register** information collection notice was published in the proposed rule on September 29, 1998 (63 FR 51864). A revised information collections package was submitted to the Office of Management and Budget and approved under OMB control number 0560–0148.

Discussion of Comments

Five comments, all in favor of the proposed change, were received from tobacco importers and brokers in response to the proposed rule which was published in the **Federal Register** at 63 FR 51864 (September 29, 1998). There were no unfavorable comments. Accordingly, for the reasons given when the proposed rule was published, it has been determined to adopt the proposed rule as a final rule.

List of Subjects in 7 CFR Part 1464

Imports, Loan programs—agriculture, Tobacco.

For the reasons set forth in the preamble, 7 CFR 1464 is amended as follows:

PART 1464—TOBACCO [Amended]

1. The authority citation for 7 CFR 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b, 714c.

2. Section 1464.101(b) is amended by revising the definition of ''de minimis special entries'' to read as follows:

§ 1464.101 Definitions.

* * * * *

(b) Terms. * * *

De minimis special entries. Imports of unmanufactured tobacco when the total importation at any time or on any date is 100 kilograms or less and such tobacco is imported segregated from other tobacco for use as samples, for research, or other use approved by the Director.

* * * * *

Signed at Washington, DC, on January 11, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–1134 Filed 1–15–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Chapter III

[Docket No. 97–068N]

Beef Products Contaminated With *Escherichia Coli* O157:H7

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Policy on beef products contaminated with E. coli O157:H7.

SUMMARY: In 1994, the Food Safety and Inspection Service (FSIS) notified the public that raw ground beef products contaminated with the pathogen *Escherichia coli* O157:H7 are adulterated under the Federal Meat Inspection Act unless the ground beef is further processed to destroy this pathogen. FSIS is publishing this notice to provide the public with information about its policy regarding beef products contaminated with *Escherichia coli* O157:H7 and to afford the public an opportunity to submit comments and recommendations relevant to the Agency's policy, and any regulatory requirements that may be appropriate to prevent the distribution of beef products adulterated with this pathogen.

DATES: Comments must be received by March 22, 1999.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket No. 97–068N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Introduction

The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) to protect the health and welfare of consumers by preventing the distribution of meat and meat food products that are unwholesome, adulterated, or misbranded. This notice explains the Agency's policy governing beef products that contain the pathogen *Escherichia coli* O157:H7 (*E. coli* O157:H7). Interested parties are encouraged to submit their views, relevant information, and suggestions regarding this policy or any regulatory requirements that the commenters believe may be appropriate to prevent the distribution of products contaminated with *E. coli* O157:H7.

Beef Products of Concern

In 1994, FSIS notified the public that raw ground beef products contaminated with *E. coli* O157:H7 are adulterated within the meaning of the FMIA unless the ground beef is further processed to destroy this pathogen. Exposure to *E. coli* O157:H7 has been linked with serious, life-threatening human illnesses (hemorrhagic colitis and hemolytic uremic syndrome). Raw ground beef products present a significant public health risk because they are frequently consumed after preparation (*e.g.*, cooking hamburger to a rare or medium rare state) that does not destroy *E. coli* O157:H7 organisms that have been introduced below the product's surface by chopping or grinding (*e.g.*, ground beef, veal patties, and beef pattie mix).

The public health risk presented by beef products contaminated with *E. coli* O157:H7 is not limited, however, to raw ground beef products. Given the low infectious dose of *E. coli* O157:H7 associated with foodborne disease outbreaks and the very severe consequences of an *E. coli* O157:H7 infection, the Agency believes that the status under the FMIA of beef products contaminated with *E. coli* O157:H7 must depend on whether there is adequate assurance that subsequent handling of the product will result in food that is not contaminated when consumed.

In evaluating the public health risk presented by *E. coli* O157:H7-contaminated beef products, FSIS has carefully considered the deliberations of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) and its Meat and Poultry Subcommittee. Last year, the Food and Drug Administration (FDA) requested recommendations, for use in the 1999 edition of its Food Code, on appropriate cooking temperatures for, among other foods, intact beef steaks for the control of vegetative enteric pathogens. In discussing intact product, the Committee stated that:

> Due to a low probability of pathogenic bacteria being present in or migrating from the external surface to the interior of beef muscle, cuts of intact muscle (steaks) should be safe if the external surfaces are exposed

to temperatures sufficient to effect a cooked color change. In addition, the cut (exposed) surfaces must receive additional heat to effect a complete sear across the cut surfaces. . . .

The Committee's definition of ''Intact Beef Steak'' limited the applicability of this conclusion to ''[a] cut of whole muscle(s) that has not been injected, mechanically tenderized, or reconstructed.'' [1] For purposes of FDA's current Food Code (1997, Subpart 1–201.10(B)(41)), ''injected'' means:

manipulating a MEAT so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the MEAT such as with juices which may be referred to as ''injecting,'' ''pinning,'' or ''stitch pumping.'' [2]

FSIS believes that in evaluating beef products contaminated with *E. coli* O157:H7, intact cuts of muscle that are to be distributed for consumption as intact cuts should be distinguished from non-intact products, as well as from intact cuts of muscle that are to be further processed into non-intact product prior to distribution for consumption. Intact beef cuts of muscle include steaks, roasts, and other intact cuts (*e.g.*, briskets, stew beef, and beef ''cubes for stew,'' [3] as well as thin-sliced strips of beef for stir-frying) in which the meat interior remains protected from pathogens migrating below the exterior surface).

Non-intact beef products include beef that has been injected with solutions, mechanically tenderized by needling, cubing,[4] Frenching, or pounding devices, or reconstructed into formed entrees (*e.g.*, beef that has been scored to incorporate a marinade, beef that has a solution of proteolytic enzymes applied to or injected into the cut of meat, or a formed and shaped product such as beef gyros). Pathogens may be introduced below the surface of these products as a result of the processes by which they are made. In addition, non-intact beef products include those beef products in which pathogens may be introduced below the surface by a comminution process such as chopping, grinding, flaking, or mincing (*e.g.*, fresh veal sausage and fabricated beef steak).

Intact cuts of beef that are to be further processed into non-intact cuts prior to distribution for consumption must be treated in the same manner as non-intact cuts of beef, since pathogens may be introduced below the surface of these products when they are further processed into non-intact products. Manufacturing trimmings (*i.e.*, pieces of meat remaining after steaks, roasts, and other intact cuts are removed) are an example of this type of product. Although manufacturing trimmings may be intact, they are generally further processed into non-intact products.

The Agency believes that with the exception of beef products that are intact cuts of muscle that are to be distributed for consumption as intact cuts, an *E. coli* O157:H7-contaminated beef product must not be distributed until it has been processed into a ready-to-eat product—*i.e.*, a food product that may be consumed safely without any further cooking or other preparation. Otherwise, such products (*i.e.*, non-intact products and intact cuts of muscle that are to be further processed into non-intact products prior to distribution for consumption) must be deemed adulterated. Intact steaks and roasts and other intact cuts of muscle with surface contamination are customarily cooked in a manner that ensures that these products are not contaminated with *E. coli* O157:H7 when consumed. Consequently, such intact products that are to be distributed for consumption as intact cuts are not deemed adulterated.

E. coli O157:H7 Sampling and Testing Program

FSIS currently samples and tests various raw ground beef products (including veal products) for *E. coli* O157:H7.[5] The program sampling is done at inspected establishments and retail stores. The Agency has limited the sampling and testing program to beef products because foodborne illness from *E. coli* O157:H7 has not been associated, to date, with other types of livestock or poultry subject to federal inspection.

The sampling and testing program does not cover intermediate products, such as beef derived from advanced meat/bone separation machinery and recovery systems, since these products are generally further processed to formulate products such as hamburger, but they are not themselves distributed to consumers. Additionally, the sampling and testing program does not cover multi-ingredient products that contain beef, as well as other livestock or poultry ingredients (*e.g.*, sausage that contains both fresh beef and pork).

If FSIS confirms the presence of *E. coli* O157:H7 in a raw ground beef product sampled in the sampling and testing program, it takes regulatory action (coordinating with State officials for products found at retail). The action taken by FSIS is based on the facts of the particular case (*e.g.*, the quantity of product that the sample represents; whether the product is associated with an outbreak of foodborne illness), but in all cases it reflects the Agency's determination that, unless further processed in a manner that destroys this pathogen (*e.g.*, into ready-to-eat beef patties), the product involved that is contaminated with *E. coli* O157:H7 is adulterated.

At this time, FSIS is not expanding its sampling and testing program to include all types of non-intact beef products or intact cuts of muscle that are to be further processed into non-intact products prior to distribution. The Agency may reconsider its sampling and testing program, as well as the scope of products deemed adulterated, in response to any comments received on the Agency's position regarding application of the FMIA's adulteration standards.

Other FSIS Activities

FSIS's effort to reduce the risk of foodborne illness associated with beef products has included development of a guidance document to assist processors of ground beef in developing procedures to minimize the risk of *E. coli* O157:H7, and other pathogens, in their products. Draft Agency guidance, along with materials developed by two trade associations, was made available to the public and was the subject of an April 22, 1998, public meeting (63 FR 13618, March 20, 1998).[6] The Agency has reviewed the comments received on the draft materials and is publishing a notice of the availability of the revised guidance in this issue of the **Federal Register**.

FSIS is participating in a risk assessment regarding *E. coli* O157:H7. A public meeting regarding the risk assessment was announced in an earlier

[1] The NACMCF-adopted minutes of the Subcommittee on Meat and Poultry are available for viewing in the FSIS docket room.

[2] A copy of the 1997 FDA Food Code is available for viewing in the FSIS docket room. In addition, an electronic version of the Code is linked on line through the FSIS web page located at http://www.fsis.usda.gov.

[3] The phrase ''cubes for stew'' generally refers to meat hand-cut into uniform squares.

[4] The term ''cubing'' generally refers to the process of flattening and knitting together meat into cutlet size products by means of a machine.

[5] For the Agency's current sampling and testing program instructions, see FSIS Directive 10,010.1, Microbiological Testing Program for *Escherichia coli* O157:H7 in Raw Ground Beef, February 1, 1998. A copy of this document is available for viewing in the FSIS docket room.

[6] Copies of the comments received on the guidance document (Docket #98–004N), along with the transcript of the public meeting and the draft guidance document are available for viewing in the FSIS docket room. In addition, an electronic version of the FSIS and industry guidance documents are available on line through the FSIS web page located at http://www.fsis.usda.gov (see the link for HACCP guidance documents).

Federal Register notice and was held on October 28, 1998 (63 FR 4432, August 18, 1998).[7]

FSIS is now reviewing its regulations to determine what changes the Agency should make to increase consumer protection against meat and poultry products adulterated with *E. coli* O157:H7, or other pathogens. Therefore, FSIS is soliciting input from the public about regulatory requirements that may be appropriate to prevent the distribution of products adulterated with *E. coli* O157:H7. Any changes that the Agency would make in the regulations would have to be consistent with the Agency's view expressed in this notice that beef products, other than surface-contaminated intact cuts that are to be distributed for consumption as intact products, that contain *E. coli* O157:H7 are adulterated unless conditions of transportation and other handling ensure that they will not be distributed until they have been processed into ready-to-eat products.

Because FDA has amended its regulations to permit the use of ionizing radiation for refrigerated or frozen uncooked meat, meat byproducts, and certain meat food products to control foodborne pathogens (62 FR 64107, December 3, 1997), FSIS is preparing a proposed rule on procedural and labeling requirements for irradiated products. Interested persons will have the opportunity, in that rulemaking, to submit comments to the Agency on irradiation treatment of *E. coli* O157:H7-contaminated products as an option for effectively eliminating this one specific pathogen.

Done at Washington, DC, on January 13, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–1123 Filed 1–15–99; 8:45 am]

BILLING CODE 3410–DM–P

[7] Copies of the comments received on the risk assessment process (Docket #98–037N), the transcript of the risk assessment public meeting, and a preliminary scoping document are available for viewing in the FSIS docket room. In addition, an electronic version of the preliminary scoping document is available on line through the FSIS web page located at http://www.fsis.usda.gov (see the link for the Office of Public Health and Science, *E. coli* risk).

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563, 563b

[No. 99–1]

RIN 1550–AA72

Capital Distributions

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule revising its capital distribution regulation. Today's rule updates, simplifies, and streamlines this regulation to reflect OTS's implementation of the system of prompt corrective action (PCA) established under the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). The final rule also conforms OTS's capital distribution requirements more closely to those of the other banking agencies.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Edward J. O'Connell, III, Project Manager, (202) 906–5694; Evelyne Bonhomme, Counsel (Banking and Finance), (202) 906–7052; Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 1998, the OTS published a proposed rule adding a new subpart E to part 563 to govern capital distributions by savings associations.[1] The proposal was intended to update, simplify, and streamline the existing capital distribution rule to reflect OTS's implementation of the system of prompt corrective action (PCA) established under the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Consistent with section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA), the proposed rule was also designed to conform the OTS capital distribution regulation to the rules of the other banking agencies, to the extent possible.

[1] 63 FR 1044 (Jan. 7, 1998).

II. Summary of Comments and Description of Final Rule

A. General Discussion of the Comments

The public comment period on the proposed rule closed on March 9, 1998. Four commenters responded: one federal savings bank, one savings and loan holding company, one law firm representing a federal savings bank, and one trade association. Two commenters supported the proposed rule with certain modifications and clarifications. One commenter, the savings and loan holding company, opposed the proposed changes. Another commenter addressed coverage of capital distributions by operating subsidiaries. The issues raised by the commenters are addressed in the section-by-section analysis below.

B. Section-by-Section Analysis

Proposed § 563.140—What Does this Subpart Cover?

Section 563.140 of the proposed rule described the scope of the regulation. Proposed subpart E would apply to all capital distributions by savings associations. The OTS specifically requested comment on whether the capital distribution rule should also apply to capital distributions by operating subsidiaries of savings associations. This issue is addressed below under § 563.141.

Proposed § 563.141—What is a Capital Distribution?

Proposed § 563.141 defined the term ''capital distribution'' as a distribution of cash or other property to a savings association's owners, made on account of their ownership. The proposed definition, at § 563.141(a), excluded dividends consisting only of a savings association's shares or rights to purchase shares, and excluded payments that a mutual savings association is required to make under the terms of a deposit instrument.

Capital distributions would also include a savings association's payment to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, any payment to repurchase, redeem, or otherwise acquire debt instruments included in total capital, and any extension of credit to finance an affiliate's acquisition of those shares or interests. Proposed § 563.141(b). Additionally, a capital distribution would include any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate

restructuring. Proposed § 563.141(c). Finally, proposed § 563.141(d) included as a capital distribution, any transaction the OTS or the Federal Deposit Insurance Corporation (FDIC) determines, by order or regulation, to be in substance a distribution of capital.

Two commenters addressed this proposed definition. Both responded to OTS's request for comment on whether the final rule, like OTS's existing regulation, should state that a capital distribution includes other distributions charged against the capital accounts of an association. *See* current § 563.134(a)(1)(iii). Both commenters agreed with the OTS's initial conclusion that all distributions described by this section would be covered under other provisions of the proposed definition of capital distribution.[2] The OTS, however, has decided to retain this provision based on its review of a related issue regarding distributions by operating subsidiaries.

In the preamble to the proposed rule, the OTS specifically requested comment on whether the capital distribution rule should apply to capital distributions made by operating subsidiaries of savings associations. One commenter argued that the application of the rule to operating subsidiaries would make it more difficult for institutions to raise capital at favorable pricing for the operating subsidiary. The commenter also noted that, in certain instances, distributions by an operating subsidiary would have no impact on the capital accounts of savings associations.

The final rule does not apply to capital distributions by wholly-owned operating subsidiaries. Rather, the OTS believes that its capital distribution rule should apply only when a distribution by an operating subsidiary (or any other subordinate organization) is made to minority shareholders and consequently affects the capital accounts of an association. Generally, for reporting purposes, the accounts of a majority-owned subsidiary are consolidated with those of the parent savings association. For regulatory capital purposes, where the consolidated subsidiary is not wholly owned, the balance sheet account ''minority interests in the equity accounts of subsidiaries that are fully consolidated'' may be included in Tier 1 capital and total capital if certain conditions are met.[3] Distributions by such consolidated subsidiaries to shareholders other than the savings association reduce the cited balance sheet account and, therefore, reduce regulatory capital. Accordingly, final § 563.141(d) states that a capital distribution includes any distribution charged against the capital accounts of an association. For example, any distribution by a subsidiary, as defined under the capital rules at 12 CFR 567.1, falls under this subsection if the distribution reduces the savings association's regulatory capital. To ensure that this application of the regulation does not impose undue regulatory burdens that are not justified by safety and soundness considerations, these distributions are not considered capital distributions under the final rule if the savings association will be well capitalized following the distribution.[4]

Proposed § 563.142—What Other Definitions Apply to this Subpart?

Proposed § 563.142 included other definitions of terms used in Subpart E, including ''affiliate,'' ''capital,'' ''net income,'' ''retained net income,'' and ''shares.'' No commenter addressed this section.

The final rule amends the definition of affiliate. The proposed rule defined affiliate as any company that controls, is controlled by, or is under common control with another company. The term ''affiliate'' is used twice in the final definition of capital distribution. *See* § 563.141 (b) and (c), which provide that a capital distribution includes any direct payment of cash or property to owners or affiliates made in connection with a corporate restructuring and includes any extension of credit to finance an affiliate's acquisition of the savings association's shares or ownership interests. The OTS does not believe that direct payments of cash or property or extensions of credit to a subsidiary that is controlled by the thrift should be considered to be a capital distribution. The definition of ''affiliate'' at 12 CFR 563.41(b) generally excludes a thrift's subsidiaries. The OTS believes that this definition is better suited to the capital distribution rule and has amended the final rule accordingly.[5] This change will also promote the use of consistent and uniform definitions in OTS regulations.

Proposed § 563.143—Must I File With the OTS?

The current OTS capital distribution regulation requires all savings associations to file a notice or an application for approval before making any capital distribution.[6] The OTS proposed to amend existing procedures to exempt certain savings associations from filing with the OTS.

Proposed § 563.143(a) described when a savings association must file an application and obtain prior OTS approval of a proposed capital distribution. Under this proposed section, a savings association would be required to file an application if the association is not eligible for expedited treatment under OTS's application processing rules at 12 CFR 516.3(a), or the total amount of all capital distributions, including the proposed capital distribution, for the applicable calendar year would exceed an amount equal to the savings association's net income for that year to date plus the savings association's retained net income for the preceding two years (the ''retained net income standard'').

Proposed § 563.143(b) described when a savings association must file a notice of a proposed capital distribution. Under the proposed rule, a savings association would be required to file a notice whenever an application would not be required under § 563.143(a) and: (1) The savings association will not be at least adequately capitalized following the capital distribution; (2) The capital distribution would reduce the amount of, or retire any part of the savings association's common or preferred stock, or retire any part of debt instruments such as notes or debentures included in capital under part 567; (3) The proposed distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between the savings association and the OTS (or the FDIC), or a condition imposed on the savings association in an OTS-approved application or notice; or (4) The savings association is a subsidiary of a savings and loan holding company.

If neither the savings association nor the proposed capital distribution met any of the criteria listed in § 563.143 (a) or (b), the savings association would not be required to file a notice or an application before making a distribution. *See* proposed § 563.143(c).

Two commenters addressed the proposed retained net income standard. One commenter claimed that this standard is too stringent because it would require applications from savings associations that have a large amount of capital, but low retained earnings in the years preceding the capital distribution. Another commenter suggested a

[2] 63 FR 1044, at 1046.

[3] 12 CFR 567.5(a)(1)(iii).

[4] Of course, OTS may, nonetheless, determine that such a distribution is, in substance, a distribution of capital under final § 563.141(e).

[5] The proposed definition of ''affiliate'' was based on the Federal Deposit Insurance Act definition. *See* 12 U.S.C. 1813(w). However, since the PCA capital distribution restrictions do not use this term, the OTS is not required to apply this definition in its rule.

[6] 12 CFR 563.134 (b) and (c).

different standard which would require an application whenever a capital distribution exceeded the association's net income for the year plus an amount equal to the greater of the retained net income for the preceding two years or the amount of available capital above the well capitalized level. The commenter asserted that this change would provide additional flexibility because it would permit associations with strong capital positions to provide dividend distributions or other types of capital distributions through all phases of the economic and business cycle.

The final rule continues to require an application whenever a proposed capital distribution exceeds the retained net income standard. This standard is based on similar requirements currently imposed on national banks and state member banks. Under 12 U.S.C. 60 and 12 CFR 5.64 (1998), a national bank may not declare a dividend if the total amount of all dividends (common and preferred), including the proposed dividend, declared by the national bank in any calendar year exceeds the total of the national bank's retained net income of that year to date, combined with its retained net income of the preceding two years, unless the dividend is approved by the OCC. The Federal Reserve System regulation at 12 CFR 208.19(b)(1998) imposes a similar requirement on state member banks. Adoption of the net income standard will bring the OTS capital distribution regulation into greater uniformity with these other banking agencies and is, thus, consistent with section 303 of the CDRIA.

One commenter feared that the OTS would use the retained net income standard as a benchmark for approving capital distributions. The final rule does not prohibit capital distributions in excess of this uniform retained net income standard, but rather merely subjects these distributions to greater regulatory scrutiny through the application process. Under the final rule, the OTS may disapprove or deny a capital distribution if it raises safety and soundness concerns. The OTS will make this determination on a case-by-case basis. It has not proposed, and will not use, the retained net income standard as a proxy for a safety and soundness review.

One commenter recommended that an application and prior OTS approval should be required whenever an institution would not be at least adequately capitalized following the distribution and whenever a proposed distribution would violate a statute or regulation, an agreement with the OTS or the FDIC, or a condition in an OTS-approved application. OTS agrees that a notice procedure is not appropriate under these circumstances. Where a savings association would not be adequately capitalized following a distribution or where a distribution would violate an applicable statute, regulation, agreement or condition, OTS must have a sufficient opportunity to review the specific facts and circumstances and to affirmatively determine whether a proposed distribution should, nonetheless, be permitted.[7] To ensure that OTS is permitted to fully and adequately make these determinations, the final rule has been revised to require an application under these circumstances.

One commenter, a savings and loan holding company, asserted that the proposed regulation inappropriately exempts many adequately capitalized institutions from any advance notice or application. The commenter argued that the proposed rule does not provide a sufficient cushion against losses, could pose an unjustifiable risk to the insurance fund, and would not permit the OTS to consider trends within the institution and the long-term consequences of disbursal of capital.

The OTS has modified the final § 563.143(b) to require a notice when an institution would not be well capitalized following the distribution. Such advance notice will provide the OTS with the opportunity to consider whether a proposed distribution by an adequately capitalized institution raises safety and soundness concerns. Such safety and soundness concerns may arise, for example, where the amount of capital held by an adequately capitalized institution following a distribution would be insufficient to offset other factors, such as high risk activities conducted by the institution.

The proposed and final rule require a notice or application whenever the savings association is a subsidiary of a savings and loan holding company. This provision implements 12 U.S.C. 1467a(f), which requires such savings associations to notify OTS at least 30 days before the proposed declaration of any dividend. Two commenters objected to this provision, but recognized its statutory basis.

Proposed § 563.144—How Do I File With the OTS?

Proposed § 563.144 prescribed the procedures for filing of capital distribution notices or applications with the OTS. Proposed § 563.144(c) would permit a savings association to file schedules of proposed capital distributions over a specified period not to exceed 12 months. One commenter urged the OTS to clarify that if the agency objects to one or more capital distributions in the proposed schedule, the savings association would not be required to refile a notice or application for the other capital distributions on the schedule. Section 563.146 has been revised to specifically state that the OTS may disapprove a notice or deny an application ''in whole or in part.'' Accordingly, under the final rule, the savings association would not be required to refile its application or notice for the approved distributions on the schedule.

Proposed § 563.145—May I Combine my Notice or Application With Other Notices or Applications?

Proposed § 563.145 would allow a savings association to combine a capital distribution notice or application with any related notice or application filed with the OTS.

One commenter objected to combined filings, particularly combined filings by a less than well capitalized association. When a savings association combines a capital distribution notice or application with another filing, it must include all relevant information necessary to support each request. The OTS will review each request under the applicable review standards for that request. Since combined filings will not affect the OTS's review of requests, but may reduce the regulatory burden of filing separate applications, the final rule continues to permit these filings.

Another commenter argued that the reference to ''related'' notices or applications was vague and urged the OTS to permit combined filings without restrictions. As noted above, OTS policy is to minimize burden, including paperwork burdens associated with applications and notices, whenever possible. The final rule has been clarified to state that a savings association may combine filings when the proposed capital distribution is a part of, or proposed in connection with,

[7] For example, the PCA statute provides that OTS may permit certain repurchases, redemptions, retirements or other acquisitions of shares or other ownership interests notwithstanding the general prohibition on distributions by inadequately capitalized institutions. To do so, however, OTS must have an opportunity to consult with FDIC and must review the circumstances to determine whether it should permit the capital distribution under the statutory exemption authority. *I.e.*, the OTS must determine that the proposed transaction will be made in connection with the issuance of additional shares or obligations of the institution in at least an equivalent amount, and that the proposed distribution will reduce the institution's financial obligations or otherwise improve the institution's financial position. 12 U.S.C. 1831o(d)(1)(B).

any other transaction requiring a notice or application under OTS regulations.

Proposed § 563.146—Will the OTS Permit my Capital Distribution?

Proposed § 563.146 set forth the standards under which the OTS would disapprove a notice or deny an application for a capital distribution. Under proposed § 563.146, the OTS could deny a capital distribution if the savings association would be undercapitalized following the distribution and the distribution did not fall within the statutory exemption at 12 U.S.C. 1831o(d)(1)(B). This statutory exception permits the OTS, in consultation with the FDIC, to approve an undercapitalized institution's repurchase, redemption, retirement or acquisition of shares or ownership interests. To be exempt, however, the distribution must be made in connection with the issuance of additional shares in at least an equivalent amount, and must either reduce the institution's financial obligations or otherwise improve its financial condition.

One commenter urged the OTS to authorize the use of the statutory exception if the distribution would improve the savings association's capital position, even though the savings association would not become adequately capitalized as a result of the distribution. Provided all other statutory conditions for exemption are met, the statutory prerequisite that a capital distribution must ''otherwise improve the institution's financial condition'' does not, on its face, require that the association be adequately capitalized following the transaction. In exercising its discretion under the statute, the OTS may consider this factor. The OTS, however, will make the decision to grant or deny an exemption on a case-by-case basis.

The OTS has made a minor change to § 563.146 to clarify that the OTS will review all notices and applications under the review procedures in 12 CFR 516, subpart A. In light of this clarifying change, the OTS has also revised the application and notice content requirements at § 563.144(a) to delete the unnecessary cross-reference to application review standards at § 516.3(b).

Conditions Imposed in Written Agreements

Existing § 563.134(e)(2) and (3) address the impact of the capital distribution rule on more stringent and less stringent provisions or conditions imposed in written agreements between a savings association and the OTS, or imposed on a savings association in an OTS-approved application or notice. Specifically, existing § 563.134(e)(2) states that the capital distribution rule supersedes less stringent agreements and conditions of approved applications. Under existing § 563.134(e)(3), a savings association is subject to agreements and approval conditions that are more stringent than the capital distribution rule.[8]

One commenter argued that these provisions would be helpful in determining when a proposed distribution would violate a prohibition contained in an agreement between the savings association and the OTS (or the FDIC), or a condition in an OTS-approved application. *See* final § 563.143(a)(4), which requires an application under these circumstances. The OTS, however, believes that § 563.134(e)(2) and (3) do not provide significant useful guidance in interpreting the regulation. Moreover, because these paragraphs have only a limited applicability, they have not been included in the final rule.

III. Executive Order 12866

The Director of the OTS has determined that this final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The final rule conforms the capital distribution regulation to standards already in place for all depository institutions, including savings associations, as a result of PCA and makes other revisions designed to lower paperwork and other burdens on savings associations.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. As discussed in the preamble, the final rule merely conforms the capital distribution regulation to standards already in place for all depository institutions as a result of PCA and makes other revisions designed to lower paperwork and other burdens on savings associations. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VI. Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control No. 1550–0059. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0059), Washington, D.C. 20503, with copies to the Regulations & Legislation Division (1550–0059), Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

The information collection requirements contained in this rule are found in 12 CFR 563.143–563.146. The OTS requires this information for the proper supervision of capital distributions by savings associations. The likely respondents/recordkeepers are savings associations.

Respondents/recordkeepers are not required to respond to the collections of information unless the collection displays a currently valid OMB control number.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Security bonds.

12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12 of the Code of Federal Regulations as set forth below.

PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

[8] The savings association may file a written notice with the OTS requesting relief from the application of the more stringent condition or agreement. *See* 12 CFR 563.134(e)(3).

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 42 U.S.C. 4106.

§ 563.134 [Removed]

2. Section 563.134 is removed.

3. Subpart E is revised to read as follows:

Subpart E—Capital Distributions

Sec.
563.140 What does this subpart cover?
563.141 What is a capital distribution?
563.142 What other definitions apply to this subpart?
563.143 Must I file with the OTS?
563.144 How do I file with the OTS?
563.145 May I combine my notice or application with other notices or applications?
563.146 Will the OTS permit my capital distribution?

Subpart E—Capital Distributions

§ 563.140 What does this subpart cover?

This subpart applies to all capital distributions by a savings association (''you'').

§ 563.141 What is a capital distribution?

A capital distribution is:

(a) A distribution of cash or other property to your owners made on account of their ownership, but excludes:

(1) Any dividend consisting only of your shares or rights to purchase your shares; or

(2) If you are a mutual savings association, any payment that you are required to make under the terms of a deposit instrument and any other amount paid on deposits that the OTS determines is not a distribution for the purposes of this section;

(b) Your payment to repurchase, redeem, retire or otherwise acquire any of your shares or other ownership interests, any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in your total capital under § 567.5 of this chapter, and any extension of credit to finance an affiliate's acquisition of your shares or interests;

(c) Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. This includes your payment of cash or property to shareholders of another association or to shareholders of its holding company to acquire ownership in that association, other than by a distribution of shares;

(d) Any other distribution charged against your capital accounts if you would not be well capitalized, as set forth in § 565.4(b)(1) of this chapter, following the distribution; and

(e) Any transaction that the OTS or the Corporation determines, by order or regulation, to be in substance a distribution of capital.

§ 563.142 What other definitions apply to this subpart?

The following definitions apply to this subpart:

Affiliate means an affiliate, as defined under § 563.41(b) of this part.

Capital means total capital, as defined under § 567.5(c) of this chapter.

Net income means your net income computed in accordance with generally accepted accounting principles.

Retained net income means your net income for a specified period less total capital distributions declared in that period.

Shares means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term ''share'' also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution.

§ 563.143 Must I file with the OTS?

Whether and what you must file with the OTS depends on whether you and your proposed capital distribution fall within certain criteria.

(a) *Application required.*

If:	Then you:
(1) You are not eligible for expedited treatment under § 516.3(a) of this chapter	Must file an application with the OTS.
(2) The total amount of all of your capital distributions (including the proposed capital distribution) for the applicable calendar year exceeds your net income for that year to date plus your retained net income for the preceding two years.	Must file an application with the OTS.
(3) You would not be at least adequately capitalized, as set forth in § 565.4(b)(2) of this chapter, following the distribution.	Must file an application with the OTS.
(4) Your proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between you and the OTS (or the Corporation), or violate a condition imposed on you in an OTS-approved application or notice.	Must file an application with the OTS.

(b) *Notice required.*

If you are not required to file an application under paragraph (a) of this section, but:	Then you:
(1) You would not be well capitalized, as set forth under § 565.4(b)(1), following the distribution.	Must file a notice with the OTS.
(2) Your proposed capital distribution would reduce the amount of or retire any part of your common or preferred stock or retire any part of debt instruments such as notes or debentures included in capital under part 567 of this chapter (other than regular payments required under a debt instrument approved under § 563.81).	Must file a notice with the OTS.
(3) You are a subsidiary of a savings and loan holding company	Must file a notice with the OTS.

(c) *No prior notice required.*

If neither you nor your proposed capital distribution meet any of the criteria listed in paragraphs (a) and (b) of this section.	Then you do not need to file a notice or an application with the OTS before making a capital distribution.

§ 563.144 How do I file with the OTS?

(a) *Contents.* Your notice or application must:

(1) Be in narrative form.

(2) Include all relevant information concerning the proposed capital distribution, including the amount, timing, and type of distribution.

(3) Demonstrate compliance with § 563.146.

(b) *Schedules.* Your notice or application may include a schedule proposing capital distributions over a specified period, not to exceed 12 months.

(c) *Timing.* You must file your notice or application at least 30 days before the proposed declaration of dividend or approval of the proposed capital distribution by your board of directors.

§ 563.145 May I combine my notice or application with other notices or applications?

You may combine the notice or application required under § 563.143 with any other notice or application, if the capital distribution is a part of, or is proposed in connection with, another transaction requiring a notice or application under this chapter. If you submit a combined filing, you must:

(a) State that the related notice or application is intended to serve as a notice or application under this subpart; and

(b) Submit the notice or application in a timely manner.

§ 563.146 Will the OTS permit my capital distribution?

The OTS will review your notice or application under the review procedures in 12 CFR part 516, subpart A. The OTS may disapprove your notice or deny your application filed under § 563.143, in whole or in part, if the OTS makes any of the following determinations.

(a) You will be undercapitalized, significantly undercapitalized, or critically undercapitalized as set forth in § 565.4(b) of this chapter, following the capital distribution. If so, the OTS will determine if your capital distribution is permitted under 12 U.S.C. 1831o(d)(1)(B).

(b) Your proposed capital distribution raises safety or soundness concerns.

(c) Your proposed capital distribution violates a prohibition contained in any statute, regulation, agreement between you and the OTS (or the Corporation), or a condition imposed on you in an OTS-approved application or notice. If so, the OTS will determine whether it may permit your capital distribution notwithstanding the prohibition or condition.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

4. The authority citation for part 563b continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

§ 563b.3 [Amended]

5. Section 563b.3(g)(2) is amended by removing the phrase ''§ 563.134'', and by adding in lieu thereof the phrase ''§§ 563.140–563.146''.

Dated: January 8, 1999.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 99–1040 Filed 1–15–99; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–24–AD; Amendment 39–10989; AD 98–12–30]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Helicopter Systems Model MD–900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–12–30 which was sent previously to all known U.S. owners and operators of McDonnell Douglas Helicopter Systems (MDHS) Model MD–900 helicopters by individual letters. This AD requires inspecting the main rotor upper hub assembly (hub assembly) for cracks, and if a crack is found, replacing the hub assembly. The AD also requires verifying attachment nut torque values and a repetitive inspection at intervals not to exceed 150 hours time-in-service. This amendment is prompted by the discovery of cracks in 6 main rotor upper hub assemblies. This condition, if not corrected, could result in failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter.

DATES: Effective February 3, 1999, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–12–30, issued on June 4, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–24–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Greg DiLibero, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5231, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On June 4, 1998, the FAA issued priority letter AD 98–12–30, applicable to MDHS Model MD–900 helicopters, which requires inspecting the hub assembly, part number 900R2101006–101 or –103, for cracks, and if a crack is found, replacing the hub assembly. The AD also requires verifying attachment nut torque values and a repetitive inspection at intervals not to exceed 150 hours time-in-service. That action was prompted by the discovery of cracks in 6 hub assemblies. This condition, if not corrected, could result in failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other MDHS Model MD–900 helicopters of the same type design, the FAA issued priority letter AD 98–12–30 to prevent failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter. The AD requires inspecting the hub assembly, part number 900R2101006–101 or –103, for cracks, and if a crack is found, replacing the hub assembly. The AD

also requires verifying attachment nut torque values and a repetitive inspection at intervals not to exceed 150 hours time-in-service. Due to the criticality of the hub assembly, the short compliance time is required. The previously described unsafe condition can adversely affect the controllability of the helicopter and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on June 4, 1998 to all known U.S. owners and operators of MDHS Model MD–900 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 26 helicopters of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $21,610 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $583,700 to accomplish the required actions and replace the hub assemblies on all the fleet, if necessary.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–24–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–12–30 McDonnell Douglas Helicopter Systems: Amendment 39–10989. Docket No. 98–SW–24–AD.

Applicability: Model MD–900 helicopters, with main rotor upper hub assembly (hub assembly), part number (P/N) 900R2101006–101 or –103, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hub assembly, loss of drive to the main rotor assembly, and subsequent loss of control of the helicopter, accomplish the following:

(a) For a hub assembly that has accumulated 300 or more hours time-in-service (TIS), accomplish the inspection procedures in paragraph (b) of this AD before further flight. For a hub assembly that has accumulated less than 300 hours TIS, accomplish the inspection procedures in paragraph (b) of this AD within the next 25 hours TIS.

(b) Inspect and reassemble the hub assembly as follows:

(1) If present, remove sealant from the drive plate attachment to the main rotor assembly.

(2) Using an indelible marker, number the main rotor drive plate attachment fastener torque sequence on the drive plate (Figure 1).

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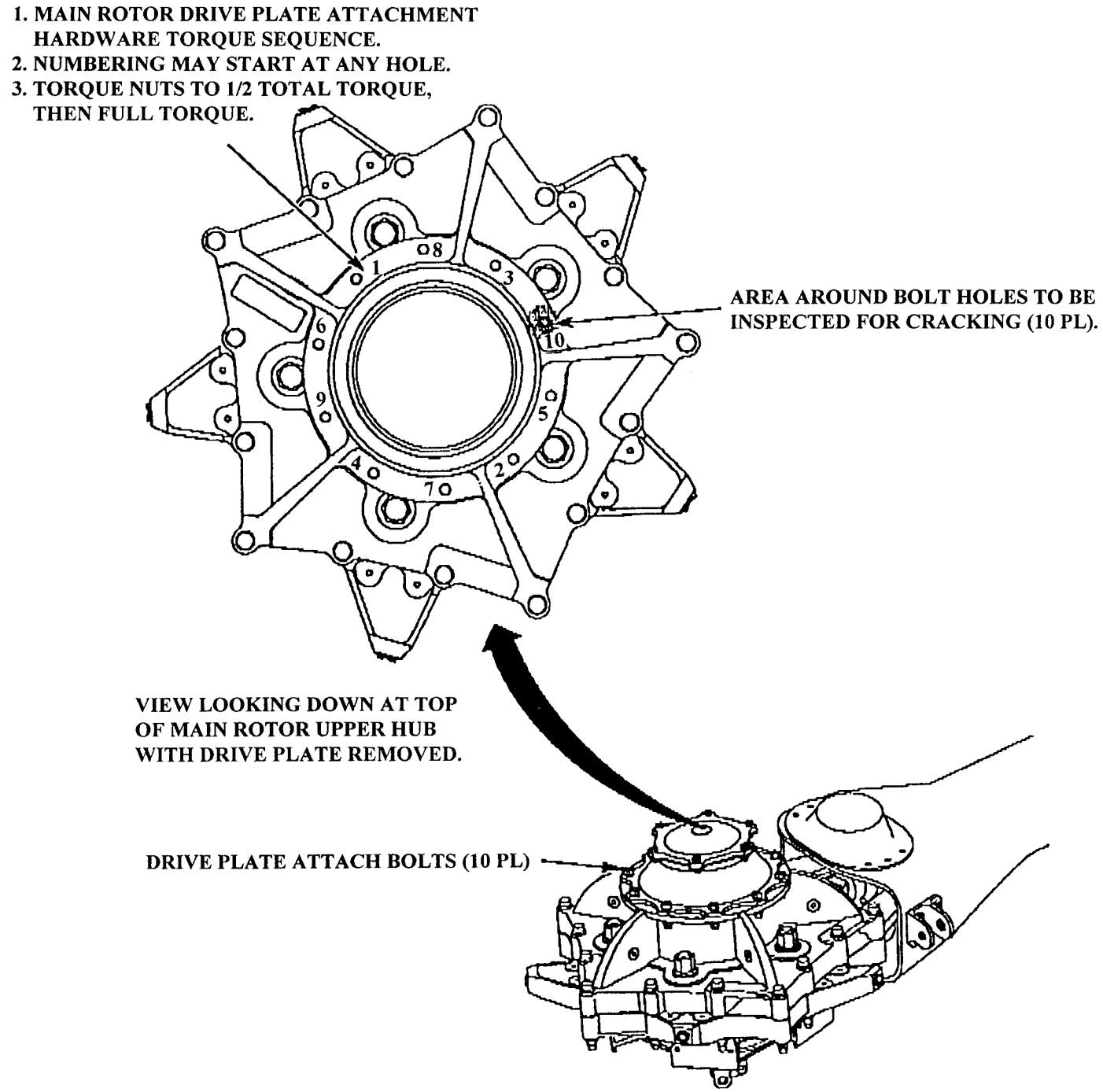

Figure 1. Main Rotor Upper Hub Assembly Inspection.

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(3) Remove the main rotor drive plate assembly (drive plate assembly) and fretting buffer. Discard the 10 bolts and nuts and 20 washers.

(4) Using paint stripper (C313 or equivalent) and cleaning solvent (C420 or equivalent), remove the paint from the upper mating surface of the hub assembly to enable an accurate visual inspection of the drive plate attachment bolt hole (bolt hole) area for cracking (Figure 1). Ensure the paint stripper and solvent DO NOT contaminate the upper bearing and upper grease seal areas.

(5) Using a 10-power or higher magnifying glass, inspect the area around the 10 bolt holes of the hub assembly for cracks. If a crack is found, replace the hub assembly with an airworthy hub assembly.

(6) Remove any fretting from the mating surfaces of the hub assembly and the drive plate assembly.

Note 2: Boeing McDonnell Douglas Helicopter Systems Service Letter SL900–039, dated May 20, 1998, pertains to the subject of this AD.

(7) Reinstall the main rotor drive plate using 10 new sets of replacement attachment hardware. Torque the nuts to 160–180 in.-lbs. above locknut locking/run-on torque in the sequence shown (Figure 1). Record in the rotorcraft log book the locknut locking/run-on torque for each nut.

(c) After the next flight, verify that the torque on each of the 10 nuts is at least 160 in.-lbs. above the locknut locking/run-on torque (minimum torque). Re-torque as required without loosening nuts. Fillet surface seal main rotor drive plate to fretting buffer to hub assembly mating lines, and seal all exposed unpainted upper surfaces of the hub assembly.

(d) Thereafter, at intervals of at least 4 hours TIS, not to exceed 6 hours TIS, verify that the torque of each of the 10 nuts is at least the minimum torque. Re-torque as required without loosening nuts. This torque verification is no longer required after the torque on each of the 10 nuts has stabilized at the minimum torque for each nut during two successive torque verifications.

(e) Repeat the requirements specified in this AD at intervals not to exceed 150 hours TIS.

Note 3: Rotorcraft Maintenance Manual, CSP–900RMM–2, Section 62–20–00 and 63–10–00, pertain to the subject of this AD.

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

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

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

(h) This amendment becomes effective on February 3, 1999, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–12–30, issued June 4, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 4, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–683 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–310–AD; Amendment 39–10997; AD 99–02–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–301, –321, –322, –341, –342, and A340–211, –212, –213, –311, –312, and –313 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330–301, –321, –322, –341, –342, and A340–211, –212, –213, –311, –312, and –313 series airplanes. This action requires repetitive high-frequency eddy current (HFEC) inspections to detect cracking of the inner flange of the rear fuselage frame FR73A, between beams 5 and 6; and corrective actions, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct fatigue cracking of the inner flange of the rear fuselage frame FR73A, which could result in reduced structural integrity of the fuselage.

DATES: Effective February 3, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 18, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–310–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330–301, –321, –322, –341, –342, and A340–211, –212, –213, –311, –312, and –313 series airplanes. The DGAC advises that, during full-scale fatigue testing, fatigue cracking occurred at 31,409 simulated flights on the right-hand side of the rear fuselage frame FR73A, between beams 5 and 6. The crack ran the full width of the inner flange, and extended 33 millimeters (1.3 inches) into the web of the frame. Such fatigue cracking of the inner flange of the rear fuselage frame FR73A, if not detected and corrected, could result in reduced structural integrity of the fuselage.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–53–3037, Revision 01 (for Model A330 series airplanes), and A340–53–4051, Revision 01 (for Model A340 series airplanes), both dated January 30, 1998. These service bulletins describe procedures for repetitive high-frequency eddy current (HFEC) inspections to detect cracking of the inner flange left and right sides, of the rear fuselage frame FR73A, between beams 5 and 6; and corrective actions, if necessary. The corrective actions involve reworking and replacing the affected area with a new, improved section of FR73A, if necessary. This replacement eliminates the need for repetitive HFEC inspections for the affected area only, as described in the Airbus service bulletins.

Airbus also has issued Service Bulletins A330–53–3036, Revision 01, dated December 22, 1997 (for Model

A330 series airplanes), and A340–53–4050, dated February 19, 1997 (for Model A340 series airplanes). These service bulletins describe procedures for modification of the inner flange (left and right sides) of the rear fuselage frame FR73A, between beams 5 and 6. The modification involves reworking and flap peening the inner flange of the rear fuselage frame FR73A. Additionally, for Model A330 series airplanes, the modification also involves installing a reinforcing strap and cold working specific holes that attach the reinforcing strap. Accomplishment of these actions eliminates the need for the repetitive HFEC inspections described in Airbus Service Bulletins A330–53–3037, Revision 01 (for Model A330 series airplanes), and A340–53–4051, Revision 01 (for Model A340 series airplanes), both dated January 30, 1998.

Accomplishment of the actions specified in Airbus Service Bulletins A330–53–3037, Revision 01, or A330–53–3036, Revision 01 (for Model A330 series airplanes); and A340–53–4051, Revision 01, or A340–53–4050 (for Model A340 series airplanes), is intended to adequately address the identified unsafe condition.

The DGAC classified Airbus Service Bulletins A330–53–3037, Revision 01 (for Model A330 series airplanes), and A340–53–4051, Revision 01 (for Model A340 series airplanes as mandatory; and classified Airbus Service Bulletins A330–53–3036, Revision 01 (for Model A330 series airplanes), and A340–53–4050 (for Model A340 series airplanes) as recommended. The DGAC has issued French airworthiness directives 97–270–055(B) (for Model A330 series airplanes), and 97–271–071(B) (for Model A340 series airplanes), both dated September 24, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct fatigue cracking of the inner flange of the rear fuselage frame FR73A, which could result in reduced structural integrity of the fuselage. This AD requires accomplishment of the actions specified in Airbus Service Bulletins A330–53–3037, Revision 01 (for Model A330 series airplanes), or A340–53–4051, Revision 01 (for Model A340 series airplanes), described previously, except as discussed below. This proposed AD also provides for optional terminating action for the repetitive inspections required by this AD.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections required by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Differences Between This AD and Service Bulletins

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain cracking conditions, this AD requires the repair of the fatigue cracking to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that will be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required high-frequency eddy current (HFEC) inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD would be $120 per airplane, per inspection cycle.

For Model A330 series airplanes: Should an operator elect to accomplish the optional terminating modification rather than continue the repetitive inspection, it would take approximately 24 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $708 per airplane. Based on these figures, the cost impact of the optional terminating action for Model A330 series airplanes would be $2,148 per airplane.

For Model A340 series airplanes: Should an operator elect to accomplish the optional terminating modification rather than continue the repetitive inspections, it would take approximately 12 work hours to accomplish, at an average labor rate of $60 per work hours. Based on these figures, the cost impact of the optional terminating action for Model A340 series airplanes would be $720 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–310–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–02–08 Airbus Industrie: Amendment 39–10997. Docket 98–NM–310–AD.

Applicability: Model A330–301, –321, –322, –341, and –342 series airplanes, except those on which Airbus Modification 41849 has been installed, or Airbus Modification 43337 (reference Airbus Service Bulletin A330–53–3036, Revision 01, dated December 22, 1997) has been accomplished; and Model A340–211, –212, –213, –311, –312, and –313 series airplanes, except those on which Airbus Modification 41849 has been installed, or Airbus Modification 43338 (reference Airbus Service Bulletin A340–53–4050, dated February 19, 1997) has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the inner flange of the rear fuselage frame FR73A, which could result in reduced structural integrity of the fuselage, accomplish the following:

(a) Perform a high-frequency eddy current (HFEC) inspection to detect cracking of the inner flange (left and right sides) of the rear fuselage frame FR73A, between beams 5 and 6, in accordance with Airbus Service Bulletin A330–53–3037, Revision 01 (for Model A330 series airplanes), or A340–53–4051, Revision 01 (for Model A340 series airplanes), both dated January 30, 1998; at the applicable times specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For Model A330 series airplanes: Inspect prior to the accumulation of 10,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later. Thereafter, repeat the HFEC inspection at intervals not to exceed 1,600 flight cycles.

(2) For Model A340 series airplanes: Inspect prior to the accumulation of 8,750 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later. Thereafter, repeat the HFEC inspection at intervals not to exceed 1,200 flight cycles.

(b) If any crack is detected during any HFEC inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with Airbus Service Bulletin A330–53–3037, Revision 01 (for Model A330 series airplanes), or A340–53–4051, Revision 01 (for Model A340 series airplanes), both dated January 30, 1998.

(1) If any crack is less than or equal to 5.0 millimeters (0.20 inch) in length:

(i) Prior to further flight, rework the affected area in accordance with the applicable service bulletin; and

(ii) Within 2,000 flight cycles after accomplishing the rework of the affected area: Replace the affected area of the rear fuselage frame FR73A with a new, improved section of FR73A in accordance with the applicable service bulletin. This replacement constitutes terminating action for the repetitive HFEC inspections required by paragraph (a) of this AD for the affected area only.

(2) If any crack is greater than 5.0 millimeters (0.20 inch) in length:

(i) Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent); or

(ii) Prior to further flight, replace the affected area of the rear fuselage frame FR73A with a new, improved section of FR73A in accordance with the applicable service bulletin. This replacement constitutes terminating action for the repetitive HFEC inspections required by paragraph (a) of this AD for the affected area only.

(c) Accomplishment of the modification of the inner flange (left and right sides), of the rear fuselage frame FR73A, between beams 5 and 6, in accordance with Airbus Service Bulletins A330–53–3036, Revision 01, dated December 22, 1997 (for Model A330 series airplanes), or A340–53–4050, dated February 19, 1997 (for Model A340 series airplanes), constitutes terminating action for the repetitive HFEC inspections required by paragraph (a) of this AD.

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

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

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

(f) Except as provided by paragraph (b)(2)(i) of this AD, the actions shall be done in accordance with Airbus Service Bulletin

A330–53–3037, Revision 01, dated January 30, 1998; Airbus Service Bulletin A330–53–3036, Revision 01, dated December 22, 1997; Airbus Service Bulletin A340–53–4051, Revision 01, dated January 30, 1998; or Airbus Service Bulletin A340–53–4050, dated February 19, 1997; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 97–270–055(B) and 97–271–071(B), both dated September 24, 1997.

(g) This amendment becomes effective on February 3, 1999.

Issued in Renton, Washington, on January 8, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–913 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–279–AD; Amendment 39–10996; AD 99–02–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0070 series airplanes, that requires modification of the power supply system of the horizontal stabilizer control unit. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the loss of primary hydraulic stabilizer control during use of certain emergency procedures, which could result in the inability of the flight crew to control the airplane.

DATES: Effective February 23, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 23, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0070 series airplanes was published in the **Federal Register** on November 23, 1998 (63 FR 64656). That action proposed to require modification of the power supply system of the horizontal stabilizer control unit.

Comments

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

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $350 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $1,180, or $590 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–02–07 Fokker Services B.V.: Amendment 39–10996. Docket 98–NM–279–AD.

Applicability: Model F.28 Mark 0070 series airplanes, as listed in Fokker Service Bulletin SBF100–27–071, dated December 21, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of primary hydraulic stabilizer control during use of certain emergency procedures, which could result in the inability of the flight crew to control the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the power supply system of the horizontal stabilizer control unit in accordance with Fokker Service Bulletin SBF100–27–071, dated December 21, 1996.

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

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

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

(d) The modification shall be done in accordance with Fokker Service Bulletin SBF100–27–071, dated December 21, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 1996–158(A), dated December 31, 1996.

(e) This amendment becomes effective on February 23, 1999.

Issued in Renton, Washington, on January 8, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–912 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–215–AD; Amendment 39–11001; AD 99–02–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires modification of the trimmable horizontal stabilizer (THS). This amendment adds a requirement for a one-time inspection of the flexible hoses of the elevator return lines on the THS to detect installation of incorrect clamps, or missing clamps or bonding leads; and for replacement of the clamps or bonding leads with new parts, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent leakage from hydraulic pipe fittings in the THS, which could result in failure of the THS and consequent reduced controllability of the airplane.

DATES: Effective February 23, 1999.

The incorporation by reference of certain publications as listed in the regulations, is approved by the Director of the Federal Register as of February 23, 1999.

The incorporation by reference of certain other publications as listed in the regulations, was approved previously by the Director of the Federal Register as of September 21, 1995 (60 FR 43519, August 22, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–17–12, amendment 39–9342 (60 FR 43519, August 22, 1995), which is applicable to certain Airbus Model A320 series airplanes, was published in the **Federal Register** on October 15, 1998 (63 FR 55352). The action proposed to continue to require modification of the trimmable horizontal stabilizer (THS). In addition, the action proposed to add requirements for a one-time inspection of the flexible hoses of the elevator return lines on the THS to detect installation of incorrect clamps, or missing clamps or bonding leads; and for replacement of the clamps or bonding leads with new parts, if necessary.

Comments Received

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

Two commenters indicate that they are not affected by the proposed rule.

Request To Revise Applicability of the AD

Two commenters request that the applicability of the proposed AD be revised to exclude airplanes on which Airbus Service Bulletin A320–29–1058, Revision 1, dated November 28, 1994, has been accomplished. One commenter, an operator, notes that it has already modified its fleet in accordance with Revision 1 of the service bulletin, which provides for installation of clamps having the correct part numbers. Therefore, the operator states that the additional one-time inspection to detect installation of incorrect clamps, as proposed in the AD, should not be required for its fleet.

Another commenter, the manufacturer, suggests a revision to paragraph (a) of the proposed AD to delete references to Airbus Modifications 22621 and 23556, and a revision to paragraph (c) of the proposed AD to narrow its applicability to those airplanes on which Airbus Modification 23556 has been installed in production, or on which Airbus Service Bulletin A320–29–1058, dated July 16, 1993, has been accomplished. The manufacturer states that these changes would correctly exclude airplanes on which Revision 1 of service bulletin A320–29–1058 has been accomplished.

The FAA concurs that airplanes on which Revision 1 of the referenced service bulletin has been accomplished

are not affected by the new requirements of the AD. The applicability in the proposed AD correctly specifies effectivity based on manufacturer serial numbers, as did the effectivity of the parallel French airworthiness directive. However, the FAA has determined that the applicability may be narrowed to exclude airplanes on which Revision 1 of service bulletin A320–29–1058 has been accomplished, and has revised the final rule accordingly. Although the changes suggested by the manufacturer have not been incorporated verbatim, the FAA has determined that the final rule, as revised, will meet the intent of the changes proposed by these commenters.

Conclusion

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

Cost Impact

There are approximately 126 airplanes of U.S. registry that will be affected by this AD.

The modification that is currently required by AD 95–17–12, takes approximately 13 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $98,280, or $780 per airplane.

The inspection that is required by this new AD will take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection of this AD on U.S. operators is estimated to be $37,800, or $300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9342 (60 FR 43519, August 22, 1995), and by adding a new airworthiness directive (AD), amendment 39–11001, to read as follows:

99–02–10 Airbus Industrie: Amendment 39–11001. Docket 98–NM–215–AD. Supersedes AD 95–17–12, Amendment 39–9342.

Applicability: Model A320 series airplanes; serial numbers 002 through 008 inclusive, 010 through 014 inclusive, 016 through 078 inclusive, 080 through 104 inclusive, 106 through 363 inclusive, 365 through 384 inclusive, 386 through 411 inclusive, 413 through 433 inclusive, 435 through 457 inclusive, 459 through 467 inclusive, and 469 through 472 inclusive; except for airplanes on which Airbus Service Bulletin A320–29–1058, Revision 1, dated November 28, 1994, has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage from hydraulic pipe fittings in the trimmable horizontal stabilizer (THS), which could result in failure of the THS and consequent reduced controllability of the airplane, accomplish the following:

(a) For airplanes on which Airbus Modification 22621 and Airbus Modification 23556 have not been installed: Within 3,500 flight hours after September 21, 1995 (the effective date of AD 95–17–12), modify the THS in accordance with Airbus Service Bulletin A320–29–1058, dated July 16, 1993, or Revision 1, dated November 28, 1994, and Airbus Service Bulletin A320–27–1041, Revision 2, dated April 20, 1994. After the effective date of this AD, only Revision 1 of Airbus Service Bulletin A320–29–1058 shall be used.

(b) For airplanes other than those identified in paragraph (a) of this AD: Within 3,500 flight hours after the effective date of this AD, modify the THS in accordance with Airbus Service Bulletin A320–29–1058, Revision 1, dated November 28, 1994, and Airbus Service Bulletin A320–27–1041, Revision 2, dated April 20, 1994.

(c) Within 500 flight hours after the effective date of this AD, perform a one-time inspection of the flexible hoses of the elevator return lines on the THS to detect installation of incorrect clamps, or missing clamps or bonding leads, in accordance with Airbus All Operator Telex (AOT) 29–10, Revision 02, dated February 13, 1995.

(1) If the correct clamps are installed, and there are no missing clamps or bonding leads, no further action is required by paragraph (b) of this AD.

(2) If any incorrect clamp is installed, prior to further flight, replace the incorrect clamp with the correct clamp; and, if any bonding lead is missing, prior to further flight, install a new bonding lead, in accordance with the AOT.

(3) If any clamp or bonding lead is missing, prior to further flight, install new parts in accordance with the AOT.

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

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(f) The inspection shall be done in accordance with Airbus All Operator Telex (AOT) 29–10, Revision 02, dated February 13, 1995. The modification shall be done in accordance with Airbus Service Bulletin A320–29–1058, dated July 16, 1993; Airbus Service Bulletin A320–29–1058, Revision 1, dated November 28, 1994; and Airbus Service Bulletin A320–27–1041, Revision 2, dated April 20, 1994; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A320–29–1058, Revision 1, dated November 28, 1994, and Airbus All Operator Telex (AOT) 29–10, Revision 02, dated February 13, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A320–29–1058, dated July 16, 1993, and Airbus Service Bulletin A320–27–1041, Revision 2, dated April 20, 1994, was approved previously by the Director of the Federal Register as of September 21, 1995 (60 FR 43519, August 22, 1995).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 93–123–046(B)R1, dated May 10, 1995.

(g) This amendment becomes effective on February 23, 1999.

Issued in Renton, Washington, on January 8, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–911 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–68–AD; Amendment 39–10998; AD 98–24–31]

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–24–31, which was sent previously to all known U.S. owners and operators of BHTC Model 430 helicopters by individual letters. This AD requires, within 10 hours time-in-service (TIS), inspecting the lateral control tube (control tube) assembly and the forward fairing assembly for chafing. If chafing is found, replace the control tube assembly and rework the forward fairing assembly before further flight. If no chafing is found during the initial inspection, perform the corrective actions within the next 150 hours TIS. This amendment is prompted by two incidents of binding of the control tube assembly that occurred during flight. The actions specified by this AD are intended to prevent binding of the control tube assembly with the inside surface of the forward fairing assembly under certain load conditions and subsequent loss of control of the helicopter.

DATES: Effective February 3, 1999, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–24–31, issued on November 19, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–68–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, 2601 Meacham Blvd., Fort Worth, Texas, 76137, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On November 19, 1998, the FAA issued priority letter AD 98–24–31, applicable to BHTC Model 430 helicopters, which requires, within 10 hours TIS, inspecting the control tube assembly and the forward fairing assembly for chafing. If chafing is found, the AD requires replacing the control tube assembly and reworking the forward fairing assembly before further flight. If no chafing is found during the initial inspection, the AD requires the corrective actions be accomplished within the next 150 hours TIS. Replacing the control tube assembly and reworking the forward fairing assembly as prescribed in this AD constitute terminating action for the requirements of this AD. That action was prompted by two incidents of binding of the control tube assembly that occurred during flight. This condition, if not corrected, could result in binding of the control tube assembly with the inside surface of the forward fairing assembly under certain load conditions and subsequent loss of control of the helicopter.

The FAA has reviewed Bell Helicopter Textron Alert Service Bulletin No. 430–98–6, dated June 12, 1998, which describes procedures for replacing the control tube assembly and reworking the forward fairing assembly. Additionally, Transport Canada, which is the Airworthiness Authority for Canada, has issued AD CF–98–29, dated August 31, 1998, to mandate these actions.

Since the unsafe condition described is likely to exist or develop on other BHTC Model 430 helicopters of the same type design, the FAA issued priority letter AD 98–24–31 to prevent binding of the control tube assembly with the inside surface of the forward fairing assembly under certain load conditions and subsequent loss of control of the helicopter. The AD requires, within 10 hours TIS, inspecting the control tube assembly, part number (P/N) 430–001–018–101, and the forward fairing assembly, P/N 430–061–822–101, for chafing between the inner surface of the forward fairing assembly and the top surface of the control tube assembly. If chafing is found, replacing the control tube assembly with an airworthy control tube assembly, P/N 430–001–018–113, and reworking the forward fairing assembly is required before further flight. If no chafing is found during the initial inspection, these corrective actions are required within the next 150 hours TIS. Replacing the control tube assembly and reworking the forward fairing assembly as prescribed in this AD constitute terminating action for the requirements

of this AD. The actions are required to be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspecting the control tube assembly and the forward fairing assembly for chafing is required within 10 hours TIS, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on November 19, 1998, to all known U.S. owners and operators of BHTC Model 430 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 12 helicopters of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,870 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $31,080, assuming the control tube assembly is replaced in the entire U.S. fleet.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–68–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–24–31 Bell Helicopter Textron Canada: Amendment 39–10998. Docket No. 98–SW–68–AD.

Applicability: Model 430 helicopters, serial numbers 49001 through 49018, 49020 through 49036, and 49038, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent binding of the lateral control tube (control tube) assembly with the inside surface of the forward fairing assembly under certain load conditions and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), inspect for chafing between the inner surface of the forward fairing assembly, part number (P/N) 430–061–822–101, and the top surface of the control tube assembly, P/N 430–001–018–101.

(b) If any chafing is found, prior to further flight, replace the control tube assembly with an airworthy control tube assembly, P/N 430–001–018–113, and rework the forward fairing assembly, P/N 430–061–822–101. This reworking and replacing must be accomplished in accordance with Part II of the Accomplishment Instructions of Bell Helicopter Textron Alert Service Bulletin No. 430–98–6, dated June 12, 1998 (ASB), except that contact with PSE is not required.

(c) If no chafing is found during the inspection in paragraph (a), within the next 150 hours TIS, replace the control tube assembly with an airworthy control tube assembly, P/N 430–001–018–113, and rework the forward fairing assembly in accordance with Part II of the Accomplishment Instructions of the ASB.

(d) Replacing the control tube assembly, P/N 430–001–018–101, with an airworthy control tube assembly, P/N 430–001–018–113, and reworking the forward fairing assembly as prescribed by this AD constitute terminating action for the requirements of this AD.

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

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

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

(g) The replacing of the control tube assembly and the reworking of the forward fairing assembly shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin No. 430–98–6, dated June 12, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on February 3, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–24–31, issued November 19, 1998, which contained the requirements of this amendment.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–29, dated August 31, 1998.

Issued in Fort Worth, Texas, on January 7, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–909 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–13–AD; Amendment 39–11002; AD 98–26–06]

Airworthiness Directives; Schweizer Aircraft Corporation Model 269D Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–26–06 which was sent previously to all known U.S. owners and operators of Schweizer Aircraft Corporation (Schweizer) Model 269D helicopters by individual letters. This AD requires removing the main rotor drive shaft (shaft) and inspecting it for cracks. If a crack is found, replacing the shaft with an airworthy shaft is required. This AD also requires periodically verifying the torque of the main rotor hub (hub) bolts. This amendment is prompted by four reports of cracking in the shaft of helicopters with a large diameter hub. Wear patterns indicate cracking was caused by loss of clamping torque on the hub and shaft assembly due to the use of grease between the hub and shaft. This condition, if not corrected, could result in failure of the shaft and subsequent loss of control of the helicopter.

DATES: Effective February 3, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–26–06, issued on December 9, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–13–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Raymond H. Reinhardt, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth St., Valley Stream, NY, telephone (516) 256–7532, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On December 9, 1998, the FAA issued Priority Letter AD 98–26–06, applicable to Schweizer Model 269D helicopters, which requires removing the shaft and inspecting it for cracks. If a crack is found, replacing the shaft with an airworthy shaft is required. That AD also requires periodically verifying the torque of the hub bolts. That action was prompted by four reports of cracking in the shaft of helicopters with a large diameter hub. Wear patterns indicate cracking was caused by loss of clamping torque on the hub and shaft assembly due to the use of grease between the hub and shaft. A pilot reported excessive vibration in one incident. An inspection following that incident revealed a 2.5-inch horizontal crack in the shaft. The crack started from one of the three lower bolt holes, propagated to an adjacent bolt hole, and then propagated from the second bolt hole in a downward direction. This condition, if not corrected, could result in failure of the shaft and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other Schweizer Model 269D helicopters of the same type design, the FAA issued Priority Letter AD 98–26–06 to prevent failure of the shaft and subsequent loss of control of the helicopter. The AD requires, prior to 200 hours time-in-service (TIS), and thereafter at intervals not to exceed 100 hours TIS, inspecting the shaft for cracks in the area of the six hub attach bolts using a 10-power or higher magnifying glass and bright light. If no crack is found as a result of the visual inspection, the AD requires inspecting the shaft using a magnetic particle inspection method. If a crack is found, the AD requires replacing the shaft with an airworthy shaft. The AD also requires periodically verifying the torque of the hub bolts. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the inspections and replacement, if necessary, are required prior to further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 9, 1998, to all known U.S. owners and operators of Schweizer Model 269D helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 6 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours for the periodic inspections and 22 work hours to replace the shaft, if necessary, per helicopter, and the average labor rate is $60 per work hour. Required parts will cost approximately $12,000 per replacement shaft. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $80,640 to replace the shafts in all the helicopters, and $7,200 a year for 10 inspections per year on each helicopter.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–13–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

98–26–06 Schweizer Aircraft Corporation: Amendment 39–11002. Docket No. 98–SW–13–AD.

Applicability: Model 269D helicopters with a large diameter main rotor hub (hub), part number (P/N) 269A1002–11, and main rotor drive shaft (shaft), P/N 269A5305–139, –143, –145, or –147, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the shaft and subsequent loss of control of the helicopter, accomplish the following:

(a) Prior to 200 hours time-in-service (TIS) since the assembly of the hub and a shaft having zero hours TIS, and thereafter at intervals not to exceed 100 hours TIS,

(1) Remove the shaft from the power train system.

(2) Clean and inspect the shaft for a crack in the area of the six hub attach bolt (bolt) holes using a 10-power or higher magnifying glass and bright light.

(3) If no crack is found, inspect the shaft using a direct or indirect magnetic particle inspection method in accordance with ASTM Standard No. E1444 as follows:

(i) For direct magnetization, use an AC, DC, or AC/DC wet continuous method with fluorescent or nonfluorescent particles.

(A) Circular (Head Shot)—1,100 amperes
Look for a longitudinal crack.

(B) Longitudinal (Coil Shot)—Because of variations in coil design, only the length-to-diameter ratio based on effective diameter and inspection region is provided.
Effective diameter—1.279 inches,
Length—6.00 inches,
L/D Ratio—5,
Look for a circumferential crack.

(C) Demagnetize and clean the inspection areas with solvent to remove residual particles.

(ii) For indirect magnetization, use an AC electromagnetic yoke (Magnaflux product No. Y–6 or equivalent). Set the spacing and the angle to suit the external diameter of the shaft.

(A) Magnetize each of the six hole areas by applying the AC electromagnetic yoke (yoke) circumferentially across the hole.

(B) During each magnetization, apply dry color contrasting particles to the inspection area and look for a circumferential crack propagating from any hole.

(C) Demagnetize and repeat the inspections with the poles of the yoke positioned longitudinally across each hole group looking for a circumferential crack.

(D) Demagnetize and clean the inspection areas with solvent to remove residual particles.

(iii) If no crack is found as a result of the magnetic particle inspection, reassemble the hub and shaft.

Note 2: Procedures in Model 269D Handbook of Maintenance Instructions (HMI) revised on June 12, 1998, include installing a three-piece retention fitting, applying a higher torque to each bolt, assembling with no lubricant, and applying zinc chromate primer between the hub and the shaft.

(4) If a crack is found, replace the shaft with an airworthy shaft.

(b) At intervals not to exceed 50 hours TIS after accomplishing paragraph (a),

(1) Unsafety and clean the exterior of the bolts.

(2) Unsafety and loosen the droop stop nut.

(3) Apply 390 in-lbs of torque to each of the six bolts. If any bolt rotates, accomplish the requirements of paragraph (a).

(4) Apply 390 to 410 in-lbs of torque to each of the six bolts and resafety.

(5) Torque and safety the droop stop nut.

(6) Seal the exterior of the bolts and washers with a corrosion preventative compound.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office, FAA. Operators

shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

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

(e) This amendment becomes effective on February 3, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–26–06, issued December 9, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 8, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–1064 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–55]

Amendment to Class E Airspace; Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Des Moines International Airport, Des Moines, IA. A review of the Class E airspace area for Des Moines International Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Airport Reference Point (ARP) coordinates are revised, and the Instrument Landing System (ILS) and coordinates have been added to the airspace designation for Des Moines, IA. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP, add the ILS and coordinates, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 10, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–55, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Des Moines, IA. A review of the Class E airspace for Des Moines International Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Des Moines International Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP, add the ILS and coordinates, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to

Docket No. 98–ACE–55.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE IA E5 Des Moines, IA [Revised]

Des Moines International Airport, IA
(Lat. 41°32′06″ N., long. 93°39′38″ W.)
Newton VOR/DME
(Lat. 41°47′02″ N., long. 93°06′32″ W.)
CLIVE INT/OM
(Lat. 41°35′59″ N., long 93°45′19″ W.)
FOREM LOM
(Lat. 41°28′56″ N., long. 93°34′51″ W.)
Des Moines Regional Airport ILS
(Lat. 41°31′40″ N., long. 93°38′54″ W.)
Des Moines Regional Airport ILS
(Lat. 41°32′50″ N., long 93°40′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Des Moines International Airport and within 3 miles each side of the Des Moines International Airport ILS localizer NW course extending from the 6.9-mile radius area to 16 miles northwest of the CLIVE INT/OM and within 3 miles each of the Des Moines International Airport ILS localizer SE course extending from the 6.9-mile radius to 16 miles southwest of the FOREM LOM and within 3 miles either side of the 239° radial of the Newton VOR/DME extending from the 6.9-mile radius to 18 miles northeast of the Des Moines International Airport.

* * * * *

Issued in Kansas City, MO on December 11, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–1096 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–56]

Amendment to Class E Airspace; Burlington, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Burlington Regional Airport, Burlington, IA. A review of the Class E airspace area for Burlington Regional Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The name of the Burlington Municipal Airport has been changed to Burlington Regional Airport and is included in this document. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), amend the name of Burlington Municipal Airport, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 10, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–56, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Burlington, IA. A review of the Class E airspace for Burlington Regional Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Burlington Regional Airport, IA, will provide additional airspace for aircraft operating under IFR, change the airport name, and comply with the criteria of FAA Order 7400.2D. The Area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–56.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended].

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE IA E5 Burlington, IA [Revised]

Burlington Regional Airport, IA
(Lat. 40°47′00″ N., long. 91°07′32″ W.)
Burlington VORTAC
(Lat. 40°43′24″ N., long. 90°55′33″ W.)

The airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Burlington Regional Airport and within 1.8 miles each side of the 293° radial of the Burlington VORTAC extending from the 6.8-mile radius to the Burlington VORTAC.

* * * * *

Issued in Kansas City, MO, on December 11, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–1095 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–61]

Amendment to Class E Airspace; Fort Dodge, IA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends Class E airspace area at Fort Dodge Regional Airport, Fort Dodge, IA. A review of the Class E airspace area for Fort Dodge Regional Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 19, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager,

Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–61, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Fort Dodge, IA. A review of the Class E airspace for Fort Dodge Regional Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Fort Dodge Regional Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–61.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE IA E5 Fort Dodge, IA [Revised]

Fort Dodge Regional Airport, IA
(Lat. 42°33′05″N., long. 94°11′33″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Fort Dodge Regional Airport.

* * * * *

Issued in Kansas City, MO, on December 22, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–1094 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–62]

Amendment to Class E Airspace; Columbus, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Columbus Municipal Airport, Columbus, NE. A review of the Class E airspace area for Columbus Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, the Airport Reference Point (ARP) is amended and is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), amend the ARP, and comply with the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 19, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–62, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Columbus, NE. A review of the Class E airspace for Columbus Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Columbus Municipal Airport, NE, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received with the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–62.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE NE E5 Columbus, NE [Revised]

Columbus Municipal Airport, NE
(Lat. 41°26′52″ N., long. 97°20′24″ W.)
Columbus VOR/DME
(Lat. 41°27′00″ N., long. 97°20′27″ W.)
Columbus Municipal Airport ILS
(Lat. 41°26′25″ N., long. 97°20′12″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Columbus Municipal Airport and within 4.2 miles each side of the 157° radial of the Columbus VOR/DME extending from the 6.6-mile radius to 9.5 miles southeast of the VOR/DME and within 4 miles each side of the Columbus ILS localizer course extending from the 6.6-mile radius to 10.5 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on December 22, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–1093 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29438; Amdt. No. 1910]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on January 8, 1999.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701, 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS; ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
01/05/99	AL	BIRMINGHAM	BIRMINGHAM INTL	9/0084	RADAR–1, AMDT 19.
01/05/99	CA	MERCED	MERCED MUNI-MACREADY FIELD	9/0078	ILS RWY, 30, AMDT 14A.
01/05/99	CA	MERCED	MERCED MUNI-MACREADY FIELD	9/0079	LOC BC RWY 12, AMDT 10.
01/05/99	CA	MERCED	MERCED MUNI-MACREADY FIELD	9/0080	VOR RWY 12, AMDT 7.
01/05/99	CA	MERCED	MERCED MUNI-MACREADY FIELD	9/0081	ILS RWY 30, AMDT 18.
01/05/99	CA	MERCED	MERCED MUNI-MACREADY FIELD	9/0082	GPS RWY 30, ORIG.
01/05/99	CA	MERCED	MERCED MUNI-MACREADY FIELD	9/0083	GPS RWY 12, ORIG.
01/05/99	MO	CAMERON	CAMERON MEMORIAL	9/0068	NDB OR GPS RWY 35, AMDT 1.
01/05/99	MO	JEFFERSON CITY	JEFFERSON CITY MEMORIAL	9/0055	LOC BC RWY 12, AMDT 6B.
01/05/99	MO	JEFFERSON CITY	JEFFERSON CITY MEMORIAL	9/0056	NDB RWY 12, AMDT 2.
01/06/99	NC	GREENVILLE	PITT-GREENVILLE	9/0104	ILS RWY 19, AMDT 14B.
01/06/99	NC	GREENVILLE	PITT-GREENVILLE	9/0105	ILS RWY 19, AMDT 2C.
01/06/99	NC	GREENVILLE	PITT-GREENVILLE	9/0106	VOR/DME RNAV RWY 25, AMDT 3A.
01/06/99	OK	TULSA	TULSA	9/0099	NDB RWY 36R, AMDT 19D.
01/06/99	TX	AUSTIN	AUSTIN-BERGSTROM INTL	9/0097	GPS RWY 35R, ORIG.
01/06/99	VA	CHARLOTTESVILLE	CHARLOTTESVILLE-ALBEMARLE	9/0093	ILS RWY 3, AMDT 12A.
12/10/98	GA	ATLANTA	PEACHTREE CITY-FALCON FIELD	9/8640	VOR/DME RNAV OR GPS RWY 31, ORIG-B.
12/10/98	NJ	WILDWOOD	CAPE MAY COUNTY	8/8651	GPS RWY 10 ORIG.
12/11/98	IL	MARION	WILLIAMSON COUNTY REGIONAL	8/8701	VOR OR GPS RWY 2 AMDT 12.
12/17/98	OK	BARTLESVILLE	BARTLESVILLE MUNI	8/8878	GPS RWY 35, ORIG.
12/17/98	OK	BARTLESVILLE	BARTLESVILLE MUNI	8/8879	GPS RWY 17, ORIG.
12/17/98	TX	AUSTIN	LAKEWAY AIRPARK	8/8881	GPS RWY 16, ORIG.
12/17/98	TX	AUSTIN	LAKEWAY AIRPARK	8/8882	VOR/DME–A, ORIG.
12/17/98	TX	BRYAN	COULTER FIELD	8/8872	VOR/DME OR GPS–A, AMDT 2.
12/18/98	NC	WADESBORO	ANSON COUNTY	8/8897	NDB OR GPS RWY 16 AMDT 1C.
12/22/98	PA	ALTOONA	ALTONNA-BLAIR COUNTY	8/8967	ILS RWY 20 AMDT 5.

FDC date	State	City	Airport	FDC No.	SIAP
12/22/98	PA	BRADFORD	BRADFORD REGIONAL	8/8968	VOR/DME OR GPS RWY 14 AMDT 8.
12/22/98	PA	DU BOISE	DU BOSI-JEFFERSON COUNTY	8/8965	ILS RWY 25 AMDT 7.
12/22/98	PA	PHILADELPHIA	PHILADELPHIA INTL	8/8963	ILS RWY 17 AMDT 5.
12/22/98	PA	PHILADELPHIA	PHILADELPHIA INTL	8/8964	CONVERGING ILS RWY 17 AMDT 2.
12/22/98	TN	MEMPHIS	MEMPHIS INTL	8/8985	ILS RWY 36R (CAT I, II, III) AMDT 1.
12/22/98	TX	AUSTIN	ROBERT MUELLER MUNI	8/8975	GPS RWY 31L, ORIG.
12/22/98	WI	OSHKOSH	WITTMAN REGIONAL	8/8980	VOR RWY 36, AMDT 16A.
12/22/98	WI	OSHKOSH	WITTMAN REGIONAL	8/8981	ILS RWY 36, AMDT 6A.
12/22/98	WI	OSHKOSH	WITTMAN REGIONAL	8/8982	NDB OR GPS RWY 36, AMDT 5A.
12/23/98	FL	BOCA RATON	BOCA RATON	8/9006	VOR/DME OR GPS–A ORIG.
12/23/98	FL	BOCA RATON	BOCA RATON	8/9007	GPS RWY 5 ORIG .
12/24/98	AK	ANCHORAGE	ANCHORAGE INTL	8/9004	GPS RWY 14, AMDT 1.
12/24/98	AK	ANCHORAGE	ANCHORAGE INTL	8/9005	ILS RWY 14, AMDT 1.
12/24/98	TX	FOLLETT	FOLLETT-LIPSCOMB COUNTY	8/8997	VOR/DME OR GPS–A, AMDT 2.
12/28/98	IA	SPENCER	SPENCER MUNI	8/9077	VOR OR GPS RWY 30, ADMT 2.
12/28/98	VA	STAUNTON-WAY-NESBORO-HARRI-SONBURG.	SHENANDOAH VALLEY REGIONAL	8/9049	NDB OR GPS RWY 5 AMDT 9.
12/28/98	VA	STAUNTON-WAY-NESBORO-HARRI-SONBURG.	SHENANDOAH VALLEY REGIONAL	8/9050	ILS RWY 5 AMDT 8.
12/29/98	IA	DENISON	DENISON MUNI	8/9084	NDB OR GPS RWY 30, AMDT 4.
12/29/98	IA	SPENCER	SPENCER MUNI	8/9078	NDB RWY 30, AMDT 8.
12/29/98	IA	SPENCER	SPENCER MUNI	8/9081	VOR OR GPS RWY 12, AMDT 2.
12/29/98	IA	SPENCER	SPENCER MUNI	8/9082	NDB RWY 12, AMDT 1.
12/29/98	IA	SPENCER	SPENCER MUNI	8/9083	ILS RWY 12, AMDT 1
12/29/98	IA	WASHINGTON	WASHINGTON MUNI	8/9067	VOR/DME RWY 36, ORIG.
12/29/98	IA	WASHINGTON	WASHINGTON MUNI	8/9068	NDB RWY 31, AMDT 1.
12/29/98	IA	WASHINGTON	WASHINGTON MUNI	8/9069	VOR/DME RNAV OR GPS RWY 31, AMDT 4A.
12/29/98	NE	YORK	YORK MUNI	8/9079	NDB RWY 35, AMDT 3.
12/30/98	IA	CLARINDA	SCHENCK FIELD	8/9134	NDB OR GPS–A, AMDT 4.
12/30/98	IA	CRESTON	CRESTON MUNI	8/9135	NDB OR GPS RWY 34, AMDT 1.
12/30/98	NE	GOTHENBURG	QUINN FIELD	8/9111	NDB OR GPS RWY 32, AMDT 1A.
12/30/98	NY	JAMESTOWN	CHAUTAUQUA COUNTY/JAMES-TOWN.	8/9101	ILS RWY 25 AMDT 5A.
12/30/98	NY	NEW YORK	JOHN F. KENNEDY INTL	8/9102	ILS RWY 13L (CAT I AND II) AMDT 14B.
12/30/98	NY	ROCHESTER	GREATER ROCHESTER INTL	8/9099	ILS RWY 28 AMDT 27.
12/30/98	NY	ROCHESTER	GREATER ROCHESTER INTL	8/9100	NDR OR GPS RWY 28 AMDT 20.
12/30/98	OK	TULSA	TULSA INTL	8/9136	ILS RWY 36R, AMDT 28B.

[FR Doc. 99–1104 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29437; Amdt. No. 1909]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 8, 1999.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective 25 February 1999*

St Louis, MO, Spirit of St Louis, VOR OR GPS RWY 8R, Amdt 7A, CANCELLED
St Louis, MO, Spirit of St Louis, VOR RWY 26L, Amdt 5, CANCELLED

** * * Effective 25 March 1999*

Homer, AK, Homer, LOC/DME RWY 3, Amdt 9
Homer, AK, Homer, LOC/DME BC RWY 21, Amdt 4
Homer, AK, Homer, NDB–A, Orig
Homer, AK, Homer, NDB OR GPS RWY 3, Amdt 2B, CANCELLED
Homer, AK, Homer, GPS RWY 3, Orig
Kenai, AK, Kenai Muni, ILS RWY 19R, Amdt 6A, CANCELLED
Kenai, AK, Kenai Muni, ILS/DME RWY 19R, Orig
Windsor Locks, CT, Bradley Intl, ILS RWY 24, Amdt 9
Chicago/Romeoville, IL, Lewis University, LOC/DME RWY 9, Orig
Burlington, KS, Coffey County, NDB RWY 36, Amdt 2
Burlington, KS, Coffey County, GPW RWY 18, Orig
Burlington, KS, Coffey County, GPS RWY 36, Orig
Bolivar, MO, Bolivar Municipal, VOR/DME RWY 36, Orig
Bolivar, MO, Bolivar Municipal, GPS RWY 18, Orig
Bolivar, MO, Bolivar Municipal, GPS RWY 36, Orig
Kansas City, MO, Kansas City Intl, ILS RWY 27, Orig
Trenton, MO, Trenton Muni, NDB RWY 18, Amdt 7
Trenton, MO, Trenton Muni, NDB RWY 36, Amdt 9
Trenton, MO, Trenton Muni, GPS RWY 18, Orig
Trenton, MO, Trenton Muni, GPS RWY 36, Orig
West Plains, MO, West Plains Muni, NDB RWY 36, Amdt 1
West Plains, MO, West Plains Muni, GPS RWY 18, Amdt 1

West Plains, MO, West Plains Muni, GPS RWY 36, Orig
Fairbury, NE, Fairbury Municipal, NDB–A, Amdt 3
Fairbury, NE, Fairbury Municipal, GPS RWY 17, Orig
Fairbury, NE, Fairbury Municipal, GPS RWY 35, Orig
Reading, PA, Reading Regional/Carl A. Spaatz Field, NDB RWY 36, Amdt 24
Reading, PA, Reading Regional/Carl A. Spaatz Field, ILS RWY 13, Orig
Reading, PA, Reading Regional/Carl A. Spaatz Field, ILS RWY 36, Amdt 29
Reading, PA, Reading Regional/Carl A. Spaatz Field, GPS RWY 18, Orig
Reading, PA, Reading Regional/Carl A. Spaatz Field, VOR/DME RNAV OR GPS RWY 13, Amdt 7, CANCELLED
Reading, PA, Reading Regional/Carl A. Spaatz Field, VOR/DME RNAV OR GPS RWY 18, Amdt 5, CANCELLED

The FAA published a procedure in Docket No. 29404; Amdt No. 1904 to part 97 to the Federal Aviation Regulations (VOL. 63, FR No. 41, Page 69549, dated Thursday, December 17, 1998) under Section 94.23 which is hereby amended as follows:

Muscatine, IA, Muscatine Muni, VOR/DME RNAV RWY 24, Orig-B, CANCELLED Effective 28 January 1999.

[FR Doc. 99–1103 Filed 1–15–99; 8:45 am]
BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Final Clarification of Statement of Policy; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14

AGENCY: Consumer Product Safety Commission.

ACTION: Final Clarification of Statement of Policy.

SUMMARY: The Commission amends the policy statements at 16 CFR 1615.64(d) and 1616.65(d) so that infant garments (sized for a child nine months and under) and ''tight-fitting'' garments (as defined in the sleepwear standards) can be marketed and promoted with other sleepwear.

DATES: This clarification of statements of policy shall become effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Commission enforces two flammability standards for children's sleepwear. The flammability standard for children's sleepwear in sizes 0 through 6X is codified at 16 CFR Part 1615. The flammability standard for children's sleepwear in sizes 7 through 14 is codified at 16 CFR Part 1616.

On September 9, 1996, the Commission issued a final rule amending the flammability standards for children's sleepwear to exclude from the definition of ''children's sleepwear,'' codified at 16 CFR 1615.1(a) and 1616.2(a), (1) garments sized for infants nine months of age or younger and (2) tight-fitting garments for children older than nine months. 61 FR 47,634. The Commission found that such tight-fitting garments did not present an unreasonable risk of injury. Rather, the Commission's information showed that many severe incidents occurred with loose-fitting garments such as oversized t-shirts used inappropriately as sleepwear. The Commission concluded that garments fitting closely and that touch the body at key points should be exempt from the sleepwear standards because they do not present the same risk as loose-fitting garments. These amendments became effective on January 1, 1997. However, the Commission also issued a stay of enforcement for close-fitting garments which are labeled and promoted as underwear. That stay expired on June 9, 1998.

B. Clarification

The Commission has become aware that the garment industry is concerned about the policy statements in 16 CFR 1615.64(d) and 1616.65(d), which suggest segregation of items covered by the children's sleepwear standards from all fabrics and garments that are beyond the scope of the children's sleepwear standards. The purpose of the September 9, 1996 final rule was to allow garments sized for a child nine months and under and tight-fitting garments in sizes above nine months to be sold and used as sleepwear. Therefore, the Commission proposed on May 21, 1998 (63 FR 27885) to modify the policy statements at 1615.64(d) and 1616.65(d) to provide that infant garments (defined in the amended sleepwear standard at 16 CFR 1615.1(c)(1) as sized for a child nine months and under) and ''tight-fitting'' garments (defined in the amended sleepwear standard at 16 CFR 1615.1(o) and 1616.2(m)) can be marketed and promoted with other sleepwear.

One comment was received on the proposed clarification to the sleepwear segregation policy. This comment, from the National Cotton Council, supported the proposed clarification. The comment stated that the amendment is necessary to prevent confusion to the consumer that would come from not allowing infant and tight-fitting sleepwear to be marketed and promoted as sleepwear. The Commission is unaware of any reason not to issue the amendments, and thus, by this notice, the amendments are issued, as they were proposed, in final form.

C. Effective date

Because this document issues statements of policy, the requirement of 5 U.S.C. 553(d) that the effective date of substantive rules shall not be less than 30 days from their date of publication is not applicable. Consequently, these amended policy statements shall become effective upon their publication in the **Federal Register**.

D. Issuance

For the reasons stated above, and pursuant to the authority of Section 4 of the Flammable Fabrics Act (15 U.S.C. 1193), the Commission amends 16 CFR 1615 and 1616 as follows:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X

1. The authority citation for part 1615 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–70; 15 U.S.C. 1193.

2. Section 1615.64 is amended by revising paragraph (d) introductory text to read as follows:

§ 1615.64 Policy to clarify scope of the standard.

* * * * *

(d) Retailers, distributors, and wholesalers, as well as manufacturers, importers, and other persons (such as converters) introducing a fabric or garment into commerce which does not meet the requirements of the flammability standards for children's sleepwear, have an obligation not to promote or sell such fabric or garment for use as an item of children's sleepwear. Also, retailers, distributors, and wholesalers are advised not to advertise, promote, or sell as an item of children's sleepwear any item which a manufacturer, importer, or other person (such as a converter) introducing the item into commerce has indicated by label, invoice, or, otherwise, does not meet the requirements of the children's sleepwear flammability standards and is not intended or suitable for use as sleepwear. ''Infant garments'' as defined by § 1615.1(c) and ''tight-fitting'' garments as defined by § 1615.1(o) are exempt from the standard

which requires flame resistance. They may be marketed as sleepwear for purposes of this section. Additionally, retailers are advised:

* * * * *

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14

1. The authority citation for part 1616 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–70; 15 U.S.C. 1193.

2. Section 1616.65 is amended by revising paragraph (d) introductory text to read as follows:

§ 1616.65 Policy scope of the standard.

* * * * *

(d) Retailers, distributors, and wholesalers, as well as manufacturers, importers, and other persons (such as converters) introducing a fabric or garment into commerce which does not meet the requirements of the flammability standards for children's sleepwear, have an obligation not to promote or sell such fabric or garment for use as an item of children's sleepwear. Also, retailers, distributors, and wholesalers are advised not to advertise, promote, or sell as an item of children's sleepwear any item which a manufacturer, importer, or other person (such as a converter) introducing the item into commerce has indicated by label, invoice, or, otherwise, does not meet the requirements of the children's sleepwear flammability standards and is not intended or suitable for use as sleepwear. ''Tight-fitting'' garments as defined by § 1616.2(m) are exempt from the standard which requires flame resistance. They may be marketed as sleepwear for purposes of this section. Additionally, retailers are advised:

* * * * *

Dated: January 13, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–1139 Filed 1–15–99; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Final Technical Changes; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14

AGENCY: Consumer Product Safety Commission.

ACTION: Final technical changes.

SUMMARY: The Commission is amending the flammability standards for children's sleepwear in sizes 0 through 6X and 7 through 14 to make several technical changes that would correct the definition of ''tight-fitting garment.'' The changes will clarify the points where garment measurements should be made.

DATES: The amendments will become effective on February 18, 1999].

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission administers two rules issued under section 4 of the Flammable Fabrics Act (''FFA''), 15 U.S.C. 1193, that prescribe flammability tests for children's sleepwear garments and fabrics intended for use in children's sleepwear. The first, issued in 1971 by the Secretary of Commerce, covers children's sleepwear in sizes 0 through 6X. 16 CFR Part 1615. After responsibility for administration and enforcement of the FFA was transferred to the Consumer Product Safety Commission by provisions of section 30(b) of the Consumer Product Safety Act, 15 U.S.C. 2079(b), the Commission issued a flammability standard for children's sleepwear in sizes 7 through 14. The tests in that standard are substantially the same as those in the standard for children's sleepwear in sizes 0 through 6X. The flammability standard for children's sleepwear in sizes 7 through 14 is codified at 16 CFR Part 1616.

Both standards require that test specimens must self-extinguish when exposed to a small open-flame ignition source. Self-extinguishing fabrics and garments are those that stop burning when removed from an ignition source. Both standards require manufacturers of sleepwear garments to perform prototype tests on specimens of fabric, seams, and trim with acceptable results before beginning production of sleepwear garments. Both standards also require manufacturers of sleepwear fabrics and garments to group fabrics and garments into production units and to randomly sample and test products from each production unit. Neither standard requires that specific fabrics or flame-retardant treatments be used in the manufacture of children's sleepwear.

On September 9, 1996, the Commission issued a final rule amending the flammability standards for children's sleepwear to exclude from the definition of ''children's sleepwear'' (1) garments sized for infants nine months of age or younger and (2) tight-fitting sleepwear garments for children older than nine months. 61 FR 47634.

The Commission found that such tight-fitting sleepwear did not present an unreasonable risk of injury. Rather, the Commission's information showed that sleepwear incidents occurred with loose-fitting garments such as T-shirts. A review of literature for that amendment showed that fit can influence garment flammability. Garments that fit close to the body are less likely to catch fire in the first place and less likely to allow heat to develop between the fabric and the body, thus decreasing the likelihood of thermal injury. *Id*. The Commission concluded that garments fitting closely and that touch the body at key points should be exempt from the sleepwear standards as they do not present the same risk as loose-fitting garments. These amendments became effective on January 1, 1997. However, the Commission also issued a stay of enforcement for close-fitting garments which are labeled and promoted as underwear. That stay expired on June 1, 1998. 62 FR 60163.

The Commission defined tight-fitting garments as those that did not exceed certain measurements in the chest, waist, seat, upper arm, thigh, wrist, and ankle for each size ranging from over 9 months through children's size 14. In the amendments, the Commission specified maximum allowable measurements for each of these locations for each size garment. 61 FR 47644–47.

B. Statutory Provisions and the Proposed Rule

The FFA provides that the Commission can issue or amend a flammability standard when the standard may be needed to protect the public from an unreasonable risk of the occurrence of fire leading to death, injury or significant property damage. 15 U.S.C. 1193(a).

Section 4(g) of the FFA states that a proceeding ''for the promulgation of a regulation under this section'' shall be initiated by publication of an advance notice of proposed rulemaking (''ANPR''). 15 U.S.C. 1193(g). Due to the technical nature and narrow scope of this proceeding, the Commission concluded that an ANPR would be of no value to the public or the Commission.

Thus, the Commission began this proceeding on May 21, 1998, with a notice of proposed rulemaking (''NPR''). 63 FR 27877 (corrected on June 11, 1998, 63 FR 31950). That notice explained that once manufacturers began to design tight-fitting sleepwear that would meet the amendments, they

identified some problems with design and construction of these garments. After meeting with industry members and considering various suggestions, the staff concluded that some adjustments needed to be made to the locations for measurements specified in the amendments for some points on the garments. The staff believed that these adjustments would be needed for the point of measurement of the upper arm, the seat, and the thigh. The staff also examined possible changes to the sweep (bottom of the top of a two-piece garment).

In order to better assess this need and to determine if the possible changes would result in practical, wearable garments, the staff conducted structured observations of some garments. As explained in the NPR, these observations demonstrated that garments made according to measurement locations contemplated by the staff were wearable, comfortable and suitable for sleeping and play. They also demonstrated that making changes to the sweep of the top of a two-piece garment by allowing an hourglass silhouette would allow the sweep to flare away from the body, exposing the bottom edge when a child raised her arms. Thus, the Commission did not propose making any changes to the sweep of the garments.

C. Comments on the NPR

In response to the proposal of May 21, 1998, six written comments were received. In addition, nine related comments and several oral inquiries were received. The significant issues addressed by these comments are discussed below.

1. Issuance of the Amendments

American Marketing Enterprises, Inc., an importer of childrenswear, commented that it agrees to a certain extent with the proposed amendments. Similarly, the National Cotton Council, representing cotton producers, believes that the proposed technical changes are an improvement.

The Safe Children's Sleepwear Coalition (SCSC), a group formed in response to the Commission's decision in 1996 to exempt certain tight-fitting garments and garments intended for infants from the sleepwear flammability standards, commented that it opposes the 1996 amendments. SCSC stated that its members ''do not believe any technical changes to the amendments can make the new requirements for children's sleepwear effective'' and thus ''it would be counter-productive and misleading'' to comment on specific measurement protocols. Rather, SCSC would like the Commission to rescind the 1996 amendments. The Commission also received nine other letters from hospitals, public interest groups, and fire or emergency groups asking that the Commission reconsider the 1996 exemption for tight-fitting and infant garments.

Garments on children observed by the staff while it was developing the proposed technical amendments demonstrated that comfortable, practical, snug-fitting sleepwear could be produced with these slight changes in the standards. The purpose of the May 21, 1998 proposed rule was to propose necessary technical changes that would clarify the points where garment measurements should be made.

The proposed rule has a very narrow scope. The comments of the SCSC and the others mentioned above are responding to the broader 1996 rulemaking and are beyond the scope of the May 21, 1998 notice. However, as required by the recent appropriations bill enacted by Congress, Pub. L. 105–276, the Commission intends to propose for comment a revocation of the September 9, 1996 amendments to the standards for the flammability of children's sleepwear and any subsequent amendments.

2. Consumer Education Campaign

Letters received from hospitals, public interest and fire and emergency groups were critical of the consumer education campaign promised by the American Apparel Manufacturers Association at the time the exemption for tight-fitting sleepwear was published. These letters said that the ''apparel industry has failed to agree on labeling or tight-fitting requirements or design and implement the promised educational campaign . . . [and that] it is virtually impossible for consumers to judge the relative safety of such sleepwear garments in the marketplace.''

These comments are beyond the scope of the proposed technical amendments, but the issue is an important one. AAMA has declined to initiate a comprehensive consumer information campaign as originally planned with a press conference. AAMA indicated that it is prepared to do so when the sleepwear amendments are final and it is satisfied that saleable, wearable, and comfortable snug-fitting garments can be produced.

Nevertheless, AAMA is actively distributing the art work for the hang tags and reproducing copies of the brochure developed to inform consumers about safety and the new snug-fitting sleepwear at the point of sale. Early in 1997, AAMA distributed the art work and brochure information to 40 organizations (AAMA members, non-members, and other interested parties.) Since March 1998, 13 companies have requested the art work for the hang tags. Approximately 3,500 brochures have been distributed by a major retailer and two major AAMA member companies. On December 14, 1998 AAMA issued a holiday press release giving children's sleepwear safety tips about snug-fitting and FR sleepwear.

There is still no formal industry coordination of consumer information efforts at this time. However, at trade shows, meetings, and in other communications with industry members, the CPSC staff has encouraged the use of a consistent message on hang tags to facilitate consumer understanding. All known manufacturers of snug-fitting sleepwear are marketing their garments with the basic information from the AAMA hang tag. Some flame-resistant garments also carry a version of this information. The label states ''Fabric and fit are important safety considerations for children's sleepwear. Sleepwear should be flame resistant or snug-fitting to meet U.S. Consumer Product Safety Commission sleepwear requirements.'' Labels further state that the garment attached is either flame-resistant or should be worn snug-fitting. Some retailers have expanded their use of this labeling to store displays and have informed their salespeople and customers through training courses and in-house publications.

Also, in November 1998 the Commission issued a video news release (VNR) warning about the use of loose-fitting garments, especially T-shirts, for sleepwear. The VNR also described the safer alternatives available under the existing sleepwear regulations—flame-resistant and snug-fitting sleepwear—and the hang tags that commonly identify them in retail stores.

3. Measurement Standard

A major retailer commented that ''the measurements proposed by the CPSC for sizes 7–14 are based on one university study, rather than generally accepted industry standards. Standards CS 53–48 (Girls) and CS 51–50 (Boys) should be the applicable measurement standards for children's sizes 7–14.''

The standards recommended in the comment were incorrectly titled. The correct titles are CS 153–48 (Girls) and CS 155–50 (Boys). However, these are not the latest versions of the former National Bureau of Standards (NBS) sizing standards (last updated in 1970 and 1972 before the NBS was renamed

the National Institute of Standards and Technology (NIST)). The most recent versions are NBS Voluntary Product Standards PS 54–72 (Girls) and PS 36–70 (Boys).

The snug-fitting dimensions for sizes 7–14 in the children's sleepwear standards are based on the latest NBS standards and data from the University of Michigan's study ''Anthropometry of Infants, Children, and Youths to Age 18 for Product Safety Design.'' The majority of the CPSC snug-fitting dimensions match those of the NBS standards.

During an April 25, 1995 meeting with CPSC staff, sleepwear industry representatives indicated that they do not adhere to any consistent sizing standards. Therefore, CPSC staff developed the snug-fitting dimensions from the most current and reliable data available that pertain to typical body dimensions of children.

4. Upper Arm Dimensions

Two commenters requested an increase in the upper arm dimensions of the snug-fitting requirements. Gap, Inc., a garment producer, recommends an increase of ¼ inch in the upper arm dimensions of baby garments from size 9 months to 36 months (or size 3T) to improve comfort and fit. AAMA recommends all upper arm measurements be increased 2 inches. AAMA disagrees with Commission staff conclusions that saleable, wearable, and comfortable garments can be produced with current upper arm dimensions.

The Commission is not persuaded that an increase in upper arm dimensions is needed to produce comfortable, functional garments. Previous presentations from AAMA in 1997, requesting an additional 2 inches in the upper arm dimension, were based on garments made with popular interlock fabrics that only had 55% stretch. No further technical support was provided with this most recent recommendation, and no substantiation was provided for the claim that such an addition to the upper arm dimension would not affect safety.

Fabrics with inadequate stretch are not appropriate for use in this style of garment where the fabric must be worn in the stretched condition. The best fabrics available for the 1997 staff observations worked well in this snug-fitting style with 65%–85% stretch. Some of the newer fabrics being introduced to the snug-fitting sleepwear market since July 1998 stretch over 100% of their original dimension. This is more than enough to ensure comfort and accommodate a child's arm motion. Even the additional ¼ inch increase in the upper arm dimension proposed by Gap appears unnecessary under these circumstances.

While AAMA believes that saleable garments cannot be produced with current upper arm dimensions, manufacturers estimate that snug-fitting cotton sleepwear accounts for 20–25% of total children's sleepwear sales. By these figures, there is a significant market for these garments. Manufacturers contacted by the staff were optimistic about this market as well.

5. Measurement Method for Upper Arm

Several commenters suggested that the current method for measuring the upper arm (three steps) is complicated and should be reduced to two. J.C. Penney commented that the ''upper arm measurement is too complicated for factory inspection and will lead to controversy between manufacturers, retailers and CPSC enforcement staff.'' J.C. Penney, along with AAMA, suggests measuring down the under arm seam 2 inches for infants and toddler sizes (12 mos. to 4T) and 3 inches down for sizes 4 to 14 before measuring the upper arm. Gap also suggests a measurement along the underarm seam as easier to follow and less prone to error.

The Commission recognizes that the measurement method for the upper arm is more complicated than for other typical garment dimensions measured by the industry. This is because the upper arm of the body is defined as a point between the shoulder and the elbow. Sleeves do not have elbows; and since some sleeve designs do not have a defined shoulder, the shoulder was defined by a logical extension of the side seam. The location of the upper arm can then be measured down the sleeve according to average body dimensions for each size. The CPSC staff observations described in the April 1998 briefing package showed this method to produce a fairly accurate match with the upper arm of the children wearing the garments.

AAMA and Gap suggested an easier way to measure the upper arm—a specified distance along the underarm sleeve seam. CPSC staff evaluated a large sample of snug-fitting garment styles to determine the impact of the simplified measurement method. Because the style of the sleeves varied, so did the location for the upper arm to be measured by the suggested method. In some cases, the upper arm would be measured further down the sleeve than where the child's upper arm is, allowing the sleeve to be larger or fuller for more of the sleeve than currently specified. In other cases, the measurement would be closer to the armhole than measurement by the current proposed amendment. This would create even more restrictions in the upper sleeve design, already the area offering the greatest design challenge to manufacturers.

Even with the dimensional restrictions of the snug-fitting requirements, garment styles vary considerably. Manufacturers could, for various sizes of a particular style, determine the distance(s) down the underarm seam(s) that coincides with the point(s) where the measurement should be made by the standard method. This could provide the simplicity of the industry measurement proposals and the accuracy and maximum allowance for the upper arm dimension provided by the standard method. Because of style variations among garments and manufacturers, CPSC would continue to use the standard method for measuring the upper arm.

6. Need for Diaper/Training Pant Ease

J.C. Penney notes that the standard garment dimensions do not allow for diaper or training pant ease (an increase in the width of the garment in the seat area). An allowable increase in the rise (the length of the garment in the seat area) produces ill-fitting garments.

For garments made of woven fabrics or knits with little or no stretch, extra fabric or ease in the seat is necessary for a practical, wearable garment. However, with the use of fabrics that stretch adequately for this style of garment (85 to 100% stretch), diaper ease is unnecessary.

7. Thigh Measurement

AAMA recommended that the thigh measurement be taken 1 1/2 inches below the crotch seam for all sizes instead of 1 inch. Although no specific justification was given for the recommendation in this comment, AAMA designers provided rationale in an August 14, 1997, phone conference. They indicated that because of the changing dimension of the pant in this area, the lower measuring point would help with getting the correct stride in the pant.

The Commission is not persuaded to change this measurement point further. In developing the proposed technical amendments, the staff received input from a wide variety of industry contacts, including childrenswear and actionwear design instructors. They indicated that it is typical industry practice to measure the thigh 1 inch down on the inseam. In August 1997, when AAMA members originally made this recommendation, they were still trying to design snug-fitting garments with interlock knits

with inadequate stretch for this garment design. CPSC staff observations in 1998 showed that snug-fitting sleepwear on children could be made well following the industry practice of measuring 1 inch down the inseam. Again, the fabrics used in these successful observation garments had considerable stretch (65–85%).

8. Hourglass Silhouette

Two commenters requested that the bottom sweep (hem of the top) of a two piece garment be increased to the standard seat dimension rather than the waist dimension. Examples given by the J.C. Penney Company showed that the sweep of various sizes of boys and girls garments would have to stretch 14 to 28% of their original dimension to fit the hip. They noted other problems from their perspective: (1) a questionable pajama silhouette, (2) difficulty pulling the top over the head and shoulders, (3) the sweep would ride up to the waist with body movement, and (4) the fabric would be stretched loose (wrinkled) around the chest and waist.

Gap expressed similar concerns about the exaggerated undersizing of the sweep to the waist dimension, especially when factories are already manufacturing garments toward a negative ''tolerance''. They observed bunching as the garment rides up toward the waist and are concerned that this is a safety hazard. They propose that the sweep be less than or equal to the standard seat dimension for girls sizes 7 to 14 and toddler sizes 2XL and 3XL (similar to 2T and 3T in the standards) for reasons of comfort and fit.

The snug-fitting garment silhouette is very different than the silhouette consumers have come to expect for pajamas. One reason the Commission wanted the industry to move forward with the consumer education campaign was to help consumers make the necessary adjustment in their expectations. These snug-fitting garments should be viewed realistically and appreciated for the safety of their design.

CPSC staff observed a variety of snug-fitting garments made of different fabrics and by different manufacturers during the development of the proposed technical amendments. None of the child models or parents, in the case of the infant, had difficulty putting on or removing the garments made to the proposed technical amendments.

The sweep is one of several dimensions for which commenters requested increased dimensions to improve fit and comfort. The sweep sized to the standard waist dimension has no problem stretching to fit the larger hip, if made of fabrics that stretch adequately. Even if the sweep is undersized one inch in production (Gap's concern), the J.C. Penney examples discussed above must still only stretch approximately 14–28% of their original dimension. This is a small portion of the available stretch of the fabric.

During the proposal's development, several manufacturers thought the hourglass silhouette option might be helpful for larger girls' sizes where the seat is considerably larger than the waist, but not helpful for other sizes. The staff included the hourglass option in the observations because it had the potential to reduce fabric bunching at the waist and/or produce a more functional garment.

For the CPSC staff observations, a girls' size 12 garment was constructed with a conservative hourglass silhouette; the sweep was equal to the smaller chest dimension required by the standard rather than the larger seat dimension. The top of the garment fit nicely while the model stood still; however, when she raised her arms or moved during the observation, the sweep flared away from the body significantly, exposing the bottom edge of the garment.

All of the garments observed on children by the staff showed some wrinkling or bunching of fabric at various points, most commonly around the waist, knees and elbows. None of the pajama tops pulled up to the waist as anticipated. The concept of snug-fitting was readily defeated with the flaring of the sweep of the hourglass silhouette in the 2-piece garment. For this reason, the Commission declines to increase the size of the bottom sweep.

9. Sewing Tolerances

Three commenters supported the addition of sewing tolerances to the standards. American Marketing Enterprises, Inc., commented that tolerances are currently used during sewing and manufacturing of knit garments. ''It is impossible to not have 'plus or minus' tolerances in a size specification. . . . [In] CPSC's policy . . . only minus tolerances are allowed.'' Manufacturers are forced to undercut these already snug fitting garments which results ''in substandard garments.'' Not allowing for both a positive and negative tolerance is ''asking the trade to operate outside of the normal manufacturing procedures.''

AAMA commented that its manufacturers have to undercut garments to comply with the published measurements. ''This yields a garment that is too tight and will force the consumer to buy a larger size creating new safety hazards from garments that are too long.'' Also, the National Cotton Council ''strongly believes that there is a need for a sewing tolerance.''

Plus or minus tolerances are normally used in the production of all garments and allow for permissible variations to the pattern specifications that can occur during cutting or sewing of the garment. However, a production tolerance that increases the garment dimensions specified in the sleepwear standards would result in a less than snug-fitting sleepwear garment. The snug fit is important because the ease of ignition increases when the wearer's clothing stands away from the body. Without a snug fit, if ignition occurs, the oxygen under the garment and the absence of a heat sink increase the opportunity for sustained burning.

The garment dimensions specified in the standard are maximum dimensions for the seven body locations indicated. Manufacturers are allowed to sell snug-fitting sleepwear garments so long as the garment dimensions for a specific size are not exceeded. Knit fabrics are available with a sufficient degree of stretch that even if the manufacturer undercuts the fabric somewhat, the garment will still fit the intended size child.

Snug-fitting sleepwear garments acceptable to consumers have been available for purchase since the fall of 1997. Manufacturers are able to produce acceptable sleepwear garments through the selective use of specific knit fabrics that allow for necessary stretch and recovery. These garments hug the body. Through careful planning before and during the manufacturing process, manufacturers can build in acceptable tolerances to the pattern so that the finished garments will meet the required specification after assembly.

10. Shrinkage Tolerances

The National Cotton Council ''strongly believes that there is a need for a * * * 5% shrinkage tolerance.''

The amount of shrinkage that occurs in a garment varies and is dependent on the fiber type (or types in the case of blends), quality of fiber, fabric construction and weight, method of manufacture, type of finishing process, and subsequent laundering conditions. The amendments to the children's sleepwear standards do not specify a particular fiber or fabric; therefore, manufacturers may choose among a variety of fiber contents, fabric constructions, etc., for snug-fitting garments. A 5% tolerance for shrinkage may not be needed for all fabrics. Those

garments with less than 5% shrinkage would be less than snug-fitting because they would exceed the maximum dimensions after laundering. In addition, with laundering required before measurements could be taken, it would be burdensome and impractical for the Commission's staff and others to determine compliance at the retail or manufacturing levels.

Difficulties in controlling shrinkage were previously cited by industry members as reasons for allowing positive manufacturing tolerances. Manufacturers of successful products this fall are using several methods to control the shrinkage of their snug-fitting garments: fabric compacting, garment washing, and fabrics made of more stable cotton/polyester blends. For these reasons, the Commission declines to add tolerances for shrinkage.

11. Fit and Consumer Preference

The National Cotton Council commented that the proposed amendments ''do not go far enough in correcting the garment fit problems and could be further improved without affecting the safety provided by the standard.'' SCSC is concerned that any changes may not help the situation because it believes parents will purchase larger sizes and defeat the tight fit intended by the rule.

Neither commenter provided data or other evidence to support its position. CPSC staff observations from fittings with real garments and children were reported in April 1998. These showed that comfortable, functional garments that fit the size child intended can and are being produced with the measurement clarifications proposed, and that are being made final in this document.

12. Chest Measurement

Gap proposes that the chest measurement be taken 1 inch below the armpit to armpit line. ''Because the armpit is a sewing point, the garment is prone to stretching in this area, compromising the accuracy of the measurement. The one inch modification will eliminate this inaccuracy.''

Although other industry members have previously mentioned that this measurement could be shifted to 1 inch below the armpit, none indicated that it was troublesome to have the chest measured at the armpit. For that reason, it was not included in the staff observations of snug-fitting garments for developing the proposed technical amendments. During the CPSC fittings reported in April 1998, the staff observed no fit or function problems with garments made with chest measurements determined at the armpit.

13. Enforcement Sample Size and Tolerances

Gap commented that clarification of CPSC's enforcement policy is necessary to further set quality assurance guidelines. This is important, Gap believes, because of the high variability inherent in manufacturing knitted products. Specifically, Gap requests the sample size and tolerance to be used by the Commission in enforcement testing.

Measurements defined in the tight-fitting amendments to the sleepwear standards refer to maximum dimensions at specified locations on garments. There are no positive tolerances specified in the proposed amendments. The staff will consider enforcement of these measurements on a case-by-case basis, and the staff will exercise enforcement discretion where appropriate. The staff will consider the overall compliance of the garments and may base enforcement actions on more than one garment and/or dimension exceeding the maximum measurement, including the frequency and size of the dimensional difference(s).

14. Sleeve Taper Clarification

During the comment period for the NPR, the Compliance staff received several inquiries and comments from the industry regarding the design and style of short sleeves and their acceptability under the definition of tight-fitting garments. Several industry representatives requested clarification about the required tapering of a sleeve that is shorter than where the upper arm is to be measured.

With the proposed technical changes (May 21, 1998), the upper arm measurement point is moved from the armpit to a location that more closely approximates the true upper arm of a child wearing the garment. The proposed location (approximately one quarter length down the sleeve) is the midpoint between the shoulder and the elbow. The maximum upper arm dimensions remain unchanged.

The original amendments of September 1996 (§ 1615.1(o)(3) and § 1616.2(m)(3)) define sleeves of a tight-fitting garment ''which diminish in width gradually from the *upper arm* to the wrist''. The upper arm of the garment was measured from the armpit. However, in the proposed technical amendments, the upper arm measurement is made further down the sleeve. The change, if interpreted literally, allows for short or cap sleeves on garments that could realistically end at a point above where the upper arm measurement is to be made.

In order to avoid flaring sleeves and maintain the desired safety of the tapering sleeve silhouette, the language describing the sleeve is changed to ''which diminish in width gradually from the top of the shoulder (point G in diagram 1) [of sections 1615.1(o) and 1616.2(m)] to the wrist.'' If a short sleeve ends before the location of the upper arm measurement, the sleeve should still taper (rather than flare) toward the wrist along the same lines as a long sleeve. This clarification reflects the original intent of the amendment.

D. The Technical Changes

This final rule makes the technical changes that were proposed in the NPR. These changes alter some of the locations where measurements should be taken to determine if a sleepwear garment is tight-fitting.

Measurement of Upper Arm. As explained in the NPR, this change will allow manufacturers to measure sleepwear garments at a location that better approximates the true upper arm of the garment. In an effort to simplify the definition of ''tight-fitting garment'' the 1996 sleepwear amendments called for measuring from the arm pit; however, this does not allow sufficient room at the upper opening of the sleeve. Under this correction, the upper arm will be measured from the shoulder to approximately one quarter the length of the arm.

The maximum upper arm dimensions for each size specified in the 1996 sleepwear amendments remain unchanged. The amendment only changes the location where the upper arm is measured.

Measurement of Seat. The 1996 sleepwear amendments stated that the seat should be measured ''at widest location between waist and crotch.'' 16 CFR 1615.1(o) and 1616.2(m) (see footnotes to chart). If read literally, this describes a location immediately above the bottom of the crotch and is essentially the same location as specified for the thigh measurement. This is not where the seat/hip measurement is normally made under general industry practices. A literal reading of this direction results in a more constricted pant in the seat and thigh area.

During the staff observations of children wearing snug-fitting garments, the staff found that specifying the point of measurement as 4 inches above the crotch consistently matched the seat/hip location on the wearer. Specifying a uniform measurement for all sizes also has the advantage of being easier to

apply both for manufacturers and for Commission enforcement. Thus, the Commission is specifying that the seat should be measured 4 inches above the crotch for all sizes.

Measurement of Thigh. The 1996 amendments stated that the thigh measurement should be taken ''at a line perpendicular to the leg extending from the outer edge of the leg to the crotch.'' 16 CFR 1615.1(o) and 1616.2(m) (see footnotes to chart). This calls for measuring the thigh right at the bottom of the crotch. This is not really the location of the thigh and means measuring at a point where bulky seams join. Typical practice in the garment design and manufacturing industry is to measure the thigh at a point one inch down the inseam from its intersection with the crotch seam. This provides a more accurate measurement of the thigh without interference from the bulky intersection of the seams. Thus, the Commission is now specifying that the thigh be measured at this point.

Sleeve Taper. As discussed with the comments above, changing the point where the upper arm should be measured may cause confusion in interpreting the requirement that sleeves taper from the upper arm. 16 CFR 1615.1(o)(3); 16 CFR 1616.2(m)(3). Because these technical changes will revise the definition of ''upper arm,'' the tapering requirement needs to be clarified. Thus, the Commission is revising the tapering requirement so that it states that the sleeves must ''diminish in width gradually from the top of the shoulder (Point G in Diagram 1) to the wrist.''

E. Effective Date

Section 4(b) of the FFA provides that an amendment of a flammability standard shall become effective one year from the date it is promulgated, unless the Commission finds for good cause that an earlier or later effective date is in the public interest and publishes that finding. 15 U.S.C. 1193(b). Section 4(b) also requires that an amendment of a flammability standard shall exempt product ''in inventory or with the trade'' on the date the amendment becomes effective, unless the Commission limits or withdraws that exemption because those products are so highly flammable that they are dangerous for use by consumers.

As explained in the NPR, the Commission believes that an effective date 30 days after publication of final amendments will be in the public interest. This provides adequate notice to the public and allows for the prompt initiation of these minor adjustments.

The Commission is not withdrawing or limiting the exemption for products in inventory or with the trade as provided by section 4(b) of the FFA. The Commission stated in the NPR that manufacturers could use the proposed points of measurement in making garments, and the staff would not take any enforcement action.

F. Impact on Small Businesses

As noted in the NPR, when an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

In the NPR, the Commission certified that the proposed amendments to the flammability standards for children's sleepwear would not have a significant impact on a substantial number of small businesses or other small entities. The Commission is not aware of any basis for changing this conclusion.

G. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, when the Commission issued the NPR, it assessed the possible environmental effects associated with the proposed amendments to the children's sleepwear standards. The Commission determined that neither an environmental assessment nor an environmental impact statement was required. The Commission is not aware of any information leading to a contrary conclusion.

H. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. These amendments would slightly modify the flammability standards for children's sleepwear under the FFA. The FFA provides that, generally, when a flammability standard issued under the FFA is in effect, ''no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire'' as the FFA standard ''unless the State or political subdivision standard or other regulation is identical'' to the FFA standard. 15 U.S.C. 1203(a). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the PPPA standard and (2) does not unduly burden interstate commerce.

Thus, the amendments modify the points specified for measuring garments exempt from the sleepwear flammability standards that preempt non-identical state or local flammability standards or regulations which are designed to protect against the same risk of occurrence of fire as the FFA flammability standards for children's sleepwear.

In accordance with Executive Order 12612 of October 26, 1987, the Commission certifies that the amendments do not have sufficient implications for federalism to warrant a Federalism Assessment.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer protection, Flammable materials, Infants and children, Labeling, Records, Sleepwear, Textiles, Warranties.

Conclusion

For the reasons stated above and pursuant to the authority of section 4 of the Flammable Fabrics Act (15 U.S.C. 1193) the Commission amends 16 CFR parts 1615 and 1616 as follows:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X

1. The authority citation for part 1615 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–70; 15 U.S.C. 1193.

2. Section 1615.1 is amended by revising the introductory language and paragraphs (o) introductory text, (o)(1) and (o)(3) to read as follows:

§ 1615.1 Definitions.

In addition to the definitions given in section 2 of the Flammable Fabrics Act, as amended (15 U.S.C. 1191), the following definitions apply for purposes of this Standard:

* * * * *

(o) Tight-fitting garment means a garment which:

(1)(i) In each of the sizes listed below does not exceed the maximum dimension specified below for the chest,

waist, seat, upper arm, thigh, wrist, or ankle:

	Chest	Waist	Seat	Upper arm	Thigh	Wrist	Ankle
Size 9–12 mos							
Maximum dimension:							
Centimeters	48.3	48.3	48.3	14.3	26.7	10.5	13
(inches)	(19)	(19)	(19)	(5⅝)	(10½)	(4⅛)	(5⅛)
Size 12–18 mos							
Maximum dimension:							
Centimeters	49.5	49.5	50.8	14.9	28.3	10.5	13.1
(inches)	(19½)	(19½)	(20)	(5⅝)	(11¼)	(4⅛)	(5⅛)
Size 18–24 mos							
Maximum dimension:							
Centimeters	52.1	50.8	53.3	15.6	29.5	11	13.6
(inches)	(20½)	(20)	(21)	(6⅛)	(11⅝)	(4¼)	(5⅜)
Size 2							
Maximum dimension:							
Centimeters	52.1	50.8	53.3	15.6	29.8	11.4	14
(inches)	(20½)	(20)	(21)	(6⅛)	(11¾)	(4½)	(5½)
Size 3							
Maximum dimension:							
Centimeters	53.3	52.1	56	16.2	31.4	11.7	14.9
(inches)	(21)	(20½)	(22)	(6⅜)	(12⅜)	(4⅝)	(5⅞)
Size 4							
Maximum dimension:							
Centimeters	56	53.3	58.4	16.8	33.0	12.1	15.9
(inches)	(22)	(21)	(23)	(6⅝)	(13)	(4¾)	(6¼)
Size 5							
Maximum dimension:							
Centimeters	58.4	54.6	61.0	17.5	34.6	12.4	16.8
(inches)	(23)	(21½)	(24)	(6⅞)	(13⅝)	(4⅞)	(6⅝)
Size 6							
Maximum dimension:							
Centimeters	61.0	55.9	63.5	18.1	36.2	12.7	17.8
(inches)	(24)	(22)	(25)	(7⅛)	(14¼)	(5)	(7)
Size 6X							
Maximum dimension:.							
Centimeters	62.9	57.2	65.4	18.7	37.8	13.0	18.7
(inches)	(24¾)	(22½)	(25¾)	(7⅜)	(14⅞)	(5⅛)	(7⅜)

(ii) Note: Measure the dimensions on the front of the garment. Lay garment, right side out, on a flat, horizontal surface. Smooth out wrinkles. Measure distances as specified below and multiply them by two. Measurements should be equal to or less than the maximum dimensions given in the standards.

(A) Chest—measure distance from arm pit to arm pit (A to B) as in Diagram 1.

(B) Waist—See Diagram 1. *One-piece garment*, measure at the narrowest location between arm pits and crotch (C to D). *Two-piece garment*, measure width at both the bottom/ sweep of the upper piece (C to D) and, as in Diagram 3, the top of the lower piece (C to D).

(C) Wrist—measure the width of the end of the sleeve (E to F), if intended to extend to the wrist, as in Diagram 1.

(D) Upper arm—draw a straight line from waist/sweep D through arm pit B to G. Measure down the sleeve fold from G to H. Refer to table below for G to H distances for each size. Measure the upper arm of the garment (perpendicular to the fold) from H to I as shown in Diagram 1.

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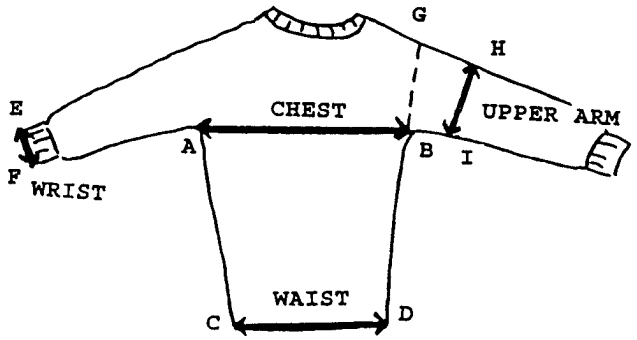

Diagram 1

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DISTANCE FROM SHOULDER (G) TO (H) FOR UPPER ARM MEASUREMENT FOR SIZES 9 MONTHS THROUGH 6X

9–12 mo	12–18 mo	18–24 mo	2	3	4	5	6	6x
5.8 cm 2 1/8″	6.6 cm 2 5/8″	7.4 cm 2 7/8″	7.4 cm 2 7/8″	8.1 cm 3 1/4″	8.8 cm 3 1/2″	9.5 cm 3 1/4″	10.3cm 4″	11 cm 4 3/8″

(E) Seat—Fold the front of the pant in half to find the bottom of the crotch at J as in Diagram 2. The crotch seam and inseam intersect at J. Mark point K on the crotch seam at 4 inches above and perpendicular to the bottom of the crotch. Unfold the garment as in Diagram 3. Measure the seat from L to M through K as shown.

(F) Thigh—measure from the bottom of the crotch (J) 1 inch down the inseam to N as in Diagram 2. Unfold the garment and measure the thigh from the inseam at N to O as shown in Diagram 3.

(G) Ankle—measure the width of the end of the leg (P to Q), if intended to extend to the ankle, as in Diagram 3.

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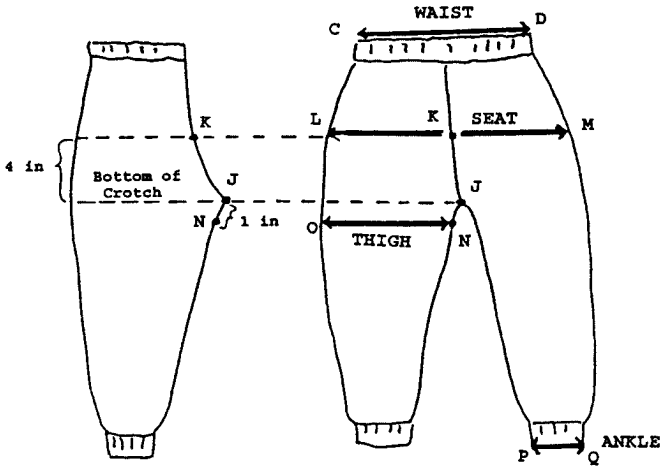

Diagram 2 Diagram 3

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* * * * *

(3) Has sleeves which do not exceed the maximum dimension for the upper arm at any point between the upper arm and the wrist, and which diminish in width gradually from the top of the shoulder (point G in Diagram 1) to the wrist;

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14

1. The authority for part 1616 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat 569–570; 15 U.S.C. 1193.

2. Section 1616.2 is amended by revising the introductory language and paragraphs (m) introductory text, (m)(1) and (m)(3) to read as follows:

§ 1616.2 Definitions.

In addition to the definitions given in section 2 of the Flammable Fabrics Act, as amended (15 U.S.C. 1191), the following definitions apply for purposes of this Standard:

* * * * *

(m) Tight-fitting garment means a garment which:

(1)(i) In each of the sizes listed below does not exceed the maximum dimension specified below for the chest, waist, seat, upper arm, thigh, wrist, or ankle:

	Chest	Waist	Seat	Upper arm	Thigh	Wrist	Ankle
Size 7 Boys [1]							
Maximum dimension:							
Centimeters	63.5	58.4	66	18.7	37.2	13.0	18.7
(inches)	(25)	(23)	(26)	(7⅜)	(14⅝)	(5⅛)	(7⅜)
Size 7 Girls							
Maximum dimension:							
Centimeters	63.5	58.4	67.3	18.7	38.7	13.0	18.7
(inches)	(25)	(23)	(26½)	(7⅜)	(15¼)	(5⅛)	(7⅜)
Size 8 Boys [1]							
Maximum dimension:							
Centimeters	66	59.7	67.3	19.4	38.4	13.3	19.1
(inches)	(26)	(23½)	(26½)	(7⅝)	(15⅛)	(5¼)	(7½)
Size 8 Girls							
Maximum dimension:							
Centimeters	66	59.7	71.1	19.4	41.3	13.3	19.1
(inches)	(26)	(23½)	(28)	(7⅝)	(16¼)	(5¼)	(7½)
Size 9 Boys [1]							
Maximum dimension:							
Centimeters	68.6	61.0	69.2	20	39.7	13.7	19.4
(inches)	(27)	(24)	(27¼)	(7⅞)	(15⅝)	(5⅜)	(7⅝)
Size 9 Girls							
Maximum dimension:							
Centimeters	68.6	61.0	73.7	20	42.6	13.7	19.4
(inches)	(27)	(24)	(29)	(7⅞)	(16¾)	(5⅜)	(7⅝)
Size 10 Boys [1]							
Maximum dimension:							
Centimeters	71.1	62.2	71.1	20.6	41.0	14	19.7
(inches)	(28)	(24½)	(28)	(8⅛)	(16⅛)	(5½)	(7¾)
Size 10 Girls							
Maximum dimension:							
Centimeters	71.1	62.2	76.2	20.6	43.8	14	19.7
(inches)	(28)	(24½)	(30)	(8⅛)	(17¼)	(5½)	(7¾)
Size 11 Boys [1]							
Maximum dimension:							
Centimeters	73.7	63.5	73.7	21	42.2	14.3	20
(inches)	(29)	(25)	(29)	(8¼)	(16⅝)	(5⅝)	(7⅞)
Size 11 Girls							
Maximum dimension:							
Centimeters	73.7	63.5	78.7	21	45.1	14.3	20
(inches)	(29)	(25)	(31)	(8¼)	(17¾)	(5⅝)	(7⅞)
Size 12 Boys [1]							
Maximum dimension:							
Centimeters	76.2	64.8	76.2	21.6	43.5	14.6	20.3
(inches)	(30)	(25½)	(30)	(8½)	(17⅛)	(5¾)	(8)
Size 12 Girls							
Maximum dimension:							
Centimeters	76.2	64.8	81.3	21.6	46.7	14.6	20.3
(inches)	(30)	(25½)	(32)	(8½)	(18½)	(5¾)	(8)

	Chest	Waist	Seat	Upper arm	Thigh	Wrist	Ankle
Size 13 Boys [1]							
Maximum dimension:							
Centimeters	78.7	66	78.7	22.2	44.8	14.9	20.6
(inches)	(31)	(26)	(31)	(8¾)	(17⅝)	(5⅞)	(8⅛)
Size 13 Girls							
Maximum dimension:							
Centimeters	78.7	66	83.8	22.2	47.6	14.9	20.6
(inches)	(31)	(26)	(33)	(8¾)	(18¾)	(5⅞)	(8⅛)
Size 14 Boys [1]							
Maximum dimension:							
Centimeters	81.3	67.3	81.3	22.9	46	15.2	21
(inches)	(32)	(26½)	(32)	(9)	(18⅛)	(6)	(8¼)
Size 14 Girls							
Maximum dimension:							
Centimeters	81.3	67.3	86.4	22.9	49.5	15.2	21
(inches)	(32)	(26½)	(34)	(9)	(19½)	(6)	(8¼)

[1] Garments not explicitly labeled and promoted for wear by girls must not exceed these maximum dimensions.

(ii) Note: Measure the dimensions on the front of the garment. Lay garment, right side out, on a flat, horizontal surface. Smooth out wrinkles. Measure distances as specified below and multiply them by two. Measurements should be equal to or less than the maximum dimensions given in the standards.

(A) Chest—measure distance from arm pit to arm pit (A to B) as in Diagram 1.

(B) Waist—See Diagram 1. *One-piece garment*, measure at the narrowest location between arm pits and crotch (C to D). *Two-piece garment*, measure width at both the bottom/sweep of the upper piece (C to D) and, as in Diagram 3, the top of the lower piece (C to D).

(C) Wrist—measure the width of the end of the sleeve (E to F), if intended to extend to the wrist, as in Diagram 1.

(D) Upper arm—draw a straight line from waist/sweep D through arm pit B to G. Measure down the sleeve fold from G to H. Refer to table below for G to H distances for each size. Measure the upper arm of the garment (perpendicular to the fold) from H to I as shown in Diagram 1.

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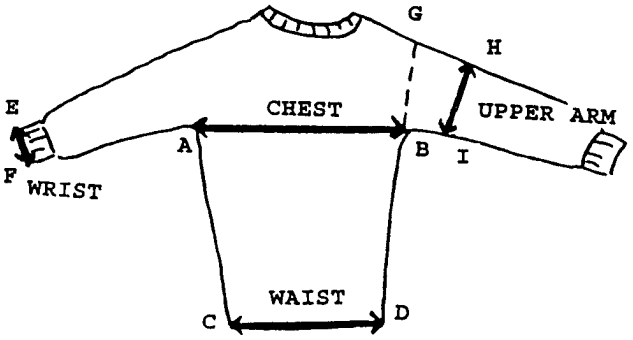

Diagram 1

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DISTANCE FROM SHOULDER (G) TO (H) FOR UPPER ARM MEASUREMENT FOR SIZES 7 THROUGH 14

7	8	9	10	11	12	13	14
11.4 cm 4½ ″	11.7 cm 4⅝″	11.9 cm 4¾″	12.5 cm 4⅞″	12.8 cm 5″	13.1 cm 5⅛″	13.7 cm 5⅜″	14.2 cm 5⅝″

(E) Seat—Fold the front of the pant in half to find the bottom of the crotch at J as in Diagram 2. The crotch seam and inseam intersect at J. Mark point K on the crotch seam at 4 inches above and perpendicular to the bottom of the

crotch. Unfold the garment as in Diagram 3. Measure the seat from L to M through K as shown.

(F) Thigh—measure from the bottom of the crotch (J) 1 inch down the inseam to N as in Diagram 2. Unfold the garment and measure the thigh from the inseam at N to O as shown in Diagram 3.

(G) Ankle—measure the width of the end of the leg (P to Q), if intended to extend to the ankle, as in Diagram 3.

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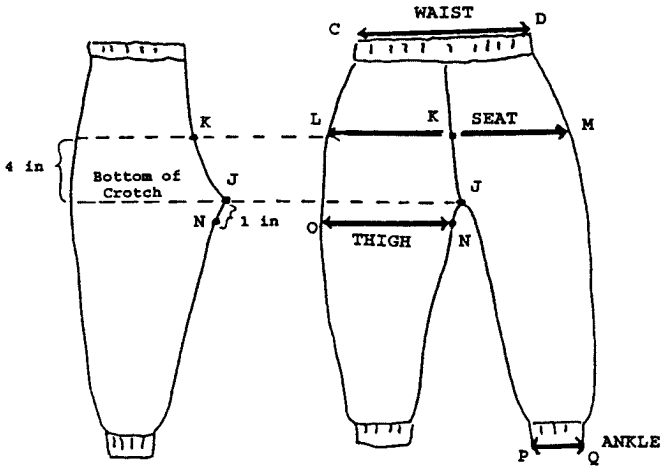

Diagram 2 Diagram 3

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* * * * *

(3) Has sleeves which do not exceed the maximum dimension for the upper arm at any point between the upper arm and the wrist, and which diminish in width gradually from the top of the shoulder (point G in Diagram 1) to the wrist;

Dated: January 13, 1999

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission

References

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland:

1. Memorandum from Margaret Neily, Project Manager, Directorate for Engineering, to the Commission, ''Children's Sleepwear Flammability Standards—Technical and Enforcement Policy Amendments—Analysis of Public Comments and Proposed Final Rules,'' January 5, 1999.

2. Memorandum from Michael A. Greene, Ph.D., Directorate for Epidemiology and Health Sciences, ''Update to the Proposed Technical Changes To Sleepwear Standard Briefing Package,'' December 18, 1998.

3. Memorandum from Margaret Neily, Project Manager, Directorate for Engineering, to File, ''Analysis of Public Comments on Proposed Technical Amendments to the Children's Sleepwear Amendments,'' November 30, 1998.

4. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Margaret Neily, ES, ''Sleepwear Market,'' December 10, 1998.

5. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Margaret Neily, ES, ''Revisions to the Children's Sleepwear Amendments,'' December 10, 1998.

6. Memorandum from Carolyn Meiers, ESHF, to Margaret Neily, ES, ''Response to Comments on Notice of Proposed Rulemaking Regarding Changes to the Amendments for Children's Sleepwear,'' December 3, 1998.

7. Memorandum from Linda Fansler, Division of Engineering, to Margaret L. Neily, ES, ''Response to Comments on Technical Amendments to the Children's Sleepwear Standards,'' November 25, 1998.

8. Memorandum from Marilyn Borsari, Compliance Officer, to Margaret L. Neily, ES, ''Clarification of sleeve taper/short sleeve garments and enforcement policy regarding sample size and tolerance,'' December 7, 1998.

9. Memorandum from Marilyn Borsari, Compliance Officer, to Margaret LO. Neily, Project Manager, ''Clarification of Proposed Clarification of Statement of Policy,'' December 7, 1998.

[FR Doc. 99–1138 Filed 1–15–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, and 249

[Release Nos. 34–40934; IC–23640. File No. S7–18–97]

RIN 3235–AG97

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to require electronic filing of Form 13F by institutional investment managers through use of the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. After the compliance date, institutional investment managers must submit all filings of Form 13F reports by either direct transmission, magnetic tape, or

diskette, giving these reports the same degree of availability to the public as other electronic filings with the Commission.

DATES: *Effective Date:* February 18, 1999.

Compliance Date: April 1, 1999. Only those Form 13F reports (including amendments to previously filed reports) filed on or after April 1, 1999, must comply with the mandatory electronic filing requirements of Regulation S–T as amended. Beginning on the Effective Date and prior to the Compliance Date, institutional investment managers may submit Form 13F reports (including amendments to previously filed reports) either electronically (EDGAR submission type 13F–HR or 13F–NT, as appropriate), in paper on the form as amended, or electronically on Form 13F–E. As of the Compliance Date, filers may no longer submit reports on Form 13F–E, which is removed as of that date.

FOR FURTHER INFORMATION CONTACT: In the Division of Investment Management, for questions concerning the electronic filing of Form 13F reports, Ruth Armfield Sanders, Senior Counsel, or Bruce R. MacNeil, Staff Attorney, at (202) 942–0591; for questions concerning substantive Form 13F reporting requirements, Stephan N. Packs, Staff Attorney, at (202) 942–0660.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to require mandatory electronic filing of Form 13F [1] by institutional investment managers in accordance with the Commission's rules implementing the EDGAR system.[2] The changes affect Regulation S–T; rules 13f–1 and 13f–2 [3] under Section 13(f) [4] of the Securities Exchange Act of 1934 (the ''Exchange Act''); [5] and Forms 13F and 13F–E [6] under the Exchange Act.

I. Background and Amendments

In February 1993, the Commission adopted Regulation S–T, governing electronic filing, and a number of amendments to its rules, schedules and forms, to implement the EDGAR system and require registrants whose filings are processed by the Division of Corporation Finance and the Division of Investment Management to submit most of their filings electronically. A graduated phase-in process to mandatory electronic filing began on April 26, 1993, and ended on May 6, 1996, when all filers became subject to mandatory electronic filing.

Regulation S–T designated most filings as mandatory electronically filings. However, the regulation designated some filings, such as Form 13F, as permitted but not mandated electronic filings.

The Commission has gained substantial experience with the EDGAR system and its implementing regulations since the first mandated filings were made in April 1993 and has decided to amend Regulation S–T to require Form 13F to be filed electronically. The public interest in having these reports, along with other filings, available electronically has increased, and the Commission believes that these reports should have the same degree of availability as other Commission filings.

A. General

Form 13F reports are filed by institutional investment managers to report certain equity securities holdings of accounts over which they exercise investment discretion.[7] During phase-in to mandatory electronic filing, filers were not required to file Form 13F reports electronically. Institutional investment managers could file Form 13F reports electronically on Form 13F–E, the electronic version of Form 13F, on a voluntary basis.[8] After filer phase-in was completed, the Commission proposed to make electronic filing of Form 13F mandatory.[9]

Unlike other EDGAR submissions, which are prepared and filed as ''free text'' documents, filers must prepare Form 13F–E reports as a structured file with a position-sensitive layout of data records.[10] To help ensure that filers use the specified structure, the Commission required filers to submit Form 13F–E reports by magnetic tape. Form 13F–E reports consisted of large numbers of similar data records, and magnetic tape filings provided an efficient means of standardizing the filing format and facilitating automated and accurate transfer and tabulation of the reported data.[11] The standardized format also was used by EDGAR, which performed some predissemination processing of the filings. Successful pre-dissemination processing [12] depended directly on the filer's compliance with the format requirements for the form.

Electronic filing of reports on Form 13F–E was optional because many filers did not have the ability to produce magnetic tape filings. Only about five percent of the approximately 2,000 filers of Form 13F chose to file the form electronically on Form 13F–E.

The Commission is aware of increasing interest in the electronic availability of reports on Form 13F.[13] For example, the Commission believes that investors would find the information contained in Form 13F filings useful in tracking institutional investor holdings in their investments and that issuers, too, would find detail as to institutional investor holdings useful because much of their

[1] 17 CFR 249.325.

[2] For a comprehensive discussion of the rules adopted by the Commission governing mandated electronic filing, *see* Release Nos. 33–6977 (Feb. 23, 1993) (58 FR 14628), IC–19284 (Feb. 23, 1993) (58 FR 14848), 35–25746 (Feb. 23, 1993) (58 FR 14999), and 33–6980 (Feb. 23, 1993) (58 FR 15009). *See* also Release No. 33–7072 (July 8, 1994 (59 FR 36258), relating to implementation of Financial Data Schedules; Release No. 33–7122 (Dec. 19, 1994) (59 FR 67752), making the EDGAR rules final and applicable to all domestic registrants and adopting minor amendments to the EDGAR rules; Release Nos. 33–7241 (Nov. 13, 1995) (60 FR 57682) and 33–7427 (July 1, 1997), adopting certain technical amendments to the EDGAR rules; and Release No. 33–7539 (May 19, 1998) (63 FR 29104) adopting an updated EDGAR Filer Manual, version 5.50 (the ''EDGAR Filer Manual'').

[3] 17 CFR 240.13f–1 and 240.13f–2.

[4] 15 U.S.C. 78m(f).

[5] 15 U.S.C. 78a *et seq.*

[6] 17 CFR 249.326.

[7] Section 13(f)(1) of the Exchange Act (15 U.S.C. 78m(f)(1)) requires any institutional investment manager exercising investment discretion over accounts holding at least $100 million in fair market value of certain equity securities to file reports on Form 13F with the Commission at the times set forth in rule 13f–1 (17 CFR 240.13f–1).

[8] In the EDGAR Pilot system and following the opening of the operational EDGAR system, institutional investment managers could file Form 13F reports on Form 13F–E, under temporary rule 13f–2(T) (17 CFR 240.13f–2(T)), proposed in Release No. 34–23694 (Oct. 8, 1986) (51 FR 37291), adopted in Release No. 34–24206 (Mar. 12, 1987) (52 FR 9151), amended to govern the filing of Form 13F on operational EDGAR in Release No. IC–18664 (Apr. 20, 1992) (57 FR 18223), and made permanent with minor amendments in Release No. IC–19284. *See* former Rule 101(b)(7) of Regulation S–T (17 CFR 232.101(b)(7)).

[9] *See* Release No. 34–38800 (July 1, 1997) (62 FR 36467) (the ''Proposing Release'').

[10] Instructions for filing Form 13F–E electronically appeared in the form and in the EDGAR Filer Manual.

[11] Section 13(f)(3) of the Exchange Act requires the Commission to tabulate the information reported under section 13(f)(1). Disclosure Inc., under contract with the Commission, tabulates the reported securities holdings both by the issuer of the securities being held (showing the portfolio manager whose clients hold the securities) and by reporting portfolio manager (showing the securities being held by each reporting portfolio manager). These tabulations are available in the Commission's public reference room in both hard copy and computerized (CD–ROM) form.

[12] Pre-dissemination processing of Form 13F–E included pagination, insertion of column headings on each page, and make-up of a cover page for the filing using data elements tagged by the filer.

[13] Only the Form 13F reports filed voluntarily through the EDGAR system on Form 13F–E were disseminated electronically and available on the Commission's internet web site, whereas other public disclosure filings, which filers must file electronically on EDGAR, are disseminated electronically and are available on the Commission's web site. The staff routinely receives telephone requests for information on how to find Form 13F reports on EDGAR.

shareholder list may reflect holdings in ''street name'' rather than beneficial ownership. Mandatory electronic dissemination of this data will help ensure timely and efficient dissemination of this important information. The Commission believes that these reports should have the same degree of availability as other filings with the Commission, and that electronic filing will speed their dissemination in accordance with the intent of Congress.[14] The legislative history of Section 13(f) states that

> Because rapid dissemination of the institutional disclosure information to the public is a fundamental purpose of the bill, and rapid dissemination would be materially enhanced by submission of the information to the SEC in a computer processable form, the bill is drawn broadly enough to enable the SEC to adopt rules * * * requiring submission of such information in computer processable form as well as in narrative form by all institutional disclosure respondents.[15]

Sixteen commenters submitted written comments on the rules proposals. Seven commenters were individuals; seven were institutional investment managers (or their counsel); one was an industry group representative; and one was an EDGAR service provider. Twelve of these commenters supported the proposals. The industry group representative did not object to the proposal but suggested that the Commission defer making mandatory the electronic filing of Form 13F reports until the anticipated modernization of EDGAR. The Commission believes, however, that the modernization of EDGAR is not likely to materially affect the electronic filing of Form 13F reports. Further, the Commission believes that the benefit to the public of the improved efficiency of dissemination that would accompany electronic filing would outweigh any benefit to filers from such a deferral of mandatory electronic filing.

One institutional manager commented that it believed the proposals would benefit persons other than those originally intended. The commenter interpreted the original intent of the reporting requirement to be Commission oversight in regulating the markets, rather than public availability of the information. The legislative history, however, makes clear that Congress intended the information to be public.[16]

The Commission believes that there is wide support for the proposals and that the resulting electronic availability of Form 13F reports would benefit the investing public.[17] Further, adoption of the proposals would result in more uniform treatment of public filings made with the Commission by reporting entities and third-party filers. The legislative history supports the view that the Commission should make publicly filed Form 13F reports readily and quickly available to the public. Therefore, the Commission is now adopting rule amendments, substantially as proposed, to make the electronic filing of Form 13F reports mandatory and providing for the filing of these reports by direct transmission and diskette as well as by magnetic tape. The Commission is not applying the detailed formatting requirements of Form 13F–E to the mandatory electronic submission of Form 13F reports, a requirement which no commenter supported and to which seven commenters objected. Instead, consistent with the proposals, the Commission is requiring that filers prepare reports on Form 13F as they do other submissions made electronically on the EDGAR system.

Three commenters expressed the need for additional time for ''phasing in'' to mandatory electronic filing of the Form 13F reports, with two commenters suggesting a twelve-month transition. While the Commission believes that some transition time is appropriate, the Commission also believes that the electronic filing of Form 13F reports will not be complicated, since the electronic submission does not require detailed formatting. Therefore, the Commission is allowing filers the option of filing either electronically or in paper under the form as amended, or electronically on Form 13F–E, for the first quarter following the effective date of the rule amendments with electronic filing becoming mandatory pursuant to Rules 14 and 101(a)(1)(iii) of Regulation S–T as of the next quarter.[18] This schedule will allow a sufficient transition period to mandatory electronic filing.

B. Changes to Rule 13f–1 and Form 13F

The Commission is amending rule 13f–1 to address the requirements for filing amendments to reports on Form 13F and is amending Form 13F, as described below.[19]

Institutional investment managers must continue to file in paper requests for confidential treatment[20] of Form 13F report information and the Form 13F report information for which confidential treatment is requested.[21] Upon denial of a confidential treatment request, or the expiration of confidential treatment previously granted, the filer is required to submit the Form 13F report electronically for public dissemination. Based on current estimates, each quarter, following the expiration of confidential treatment previously granted, approximately 50 managers would have to re-submit electronically the Form 13F report information that they previously submitted in paper in

[14] *See, e.g.,* Senate Report No. 94–75, accompanying S. 249. In connection with the addition of Section 13(f) of the Exchange Act, that report states that ''(o)ne of the important purposes of the bill would be dissemination of the institutional disclosure data to the public. Accordingly, except where confidential treatment is appropriate, the SEC would be required to tabulate the information in a manner which enhances its usefulness to other federal and state authorities *and the public* and to make the information contained therein conveniently available to the public for a reasonable fee.'' (Emphasis added.)

See also Joint Explanatory Statement of the Committee of Conference (''The Senate bill and the House amendment contained provisions requiring institutional investment managers which exercised investment discretion over accounts holding certain levels of specified securities to make periodic *public disclosures* of significant portfolio holdings and transactions.'' (Emphasis added.) and Release Nos. 34–13396 (Mar. 22, 1977) (42 FR 13396 (Mar. 30, 1977)) and 34–14852 (June 15, 1978) (43 FR 26700 (June 22, 1978)), proposing and adopting the filing and reporting requirements relating to institutional investment managers.

[15] Senate Report No. 94–75, accompanying S. 249. (Emphasis added.)

[16] *See supra* notes and 15.

[17] *See supra* note 13.

[18] 17 CFR 232.14 and 232.101(a)(1)(iii). Rule 14 provides that the Commission will not accept in paper format any filing required to be submitted electronically, unless the filing satisfies the requirements for a temporary or continuing hardship exemption. *See* Release No. 33–7472 (Oct. 24, 1997) (62 FR 58647) (effective date Jan. 1, 1998).

[19] The revisions to Form 13F are designed to accommodate more easily the preparation of the form as an electronic filing. The Commission also is removing Form 13F–E and rule 13f–2 (17 CFR 240.13f–2), which governed the filing of Form 13F–E on EDGAR.

[20] Requests for confidential treatment are filed for reasons set forth in section 13(f)(3) of the Exchange Act (15 U.S.C. 78m(f)(3)). Instruction D of previous Form 13F refers to that section and provides instructions for requesting confidential treatment for securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) and for securities subject to certain types of trading strategies. Instructions for Confidential Treatment Requests for revised Form 13F include the same provisions.

Confidential treatment requests can be granted only under certain limited circumstances. The staff recently specified procedures for requesting confidential treatment. See Letter to Section 13(f) Confidential Treatment Filers (pub. avail. June 17, 1998).

[21] This is consistent with the treatment of other requests for confidential treatment under the EDGAR system. *See* Rule 101(c)(1)(i) (17 CFR 232.101(c)(1)(i)).

A Manager filing confidential information should comply with the provisions of paragraph (b) of Exchange Act rule 24b–2 (17 CFR 240.24b–2) by including on the Summary Page of its public Form 13F report (after the Report Summary and prior to the List of Other Included Managers) a statement that confidential information has been omitted from the public Form 13F report and filed separately with the Commission. *See* Instructions for Confidential Treatment Requests for Form 13F. *See also infra* notes 25 and 26 and accompanying text.

connection with their requests for confidential treatment.

1. Rule 13f–1

The Commission is revising rule 13f–1 by adding, as proposed, a new subparagraph governing the filing of amendments to Form 13F.[22] As proposed, the new paragraph would require that each amendment to a Form 13F report either restate the form in its entirety, as amended, or designate the amendment as containing only additions to the previous filed report. The rule amendments also would provide for the sequential numbering of amendments.

The Commission received only one comment on this proposed revision: one institutional investment manager believed that the sequential numbering of amendments was beneficial but objected to the requirement to restate in its entirety an amendment that was not solely to provide additional information. That commenter believed that restatement would be burdensome to large filers and potentially confusing to the investing public. The Commission has considered possible alternatives and believes that those alternatives offer greater possibility for confusion than the Commission's proposal because of the additional complexity that the alternatives would introduce. Moreover, the Commission anticipates that most filers will automate their report processing, having them available electronically, rendering the requirement to resubmit in its entirety an amended report not overly burdensome. Therefore, the Commission is requiring each amendment to a Form 13F report to either restate the form in its entirety, as amended, or designate the amendment as containing only additions to the previous filed report.

2. Form 13F

The revised Form 13F is being adopted as proposed. The revised Form 13F as adopted is in a three-part format, consisting of a Form 13F Cover Page (the ''Cover Page''), a Form 13F Summary Page (the ''Summary Page''), and a Form 13F Information Table (the ''Information Table'').[23] The contents of each of these parts, as well as the content of certain form instructions, are summarized below. One institutional manager strongly supported the inclusion of the Cover Page (with its designation of report as holdings, notice or combination report) and the Summary Page, noting that these features were ''beneficial to the public'' and would ''enhance the access to and usefulness of information reported on Form 13F.''

- *Cover Page.* The Cover Page includes the information included in previous Form 13F, such as the period end date; the name and address of the institutional investment manager filing the report; the signature, name, title and phone number of the person signing the report; and, if applicable, a List of Other Managers Reporting for this Manager. The Cover Page also provides for identification of a filing that is an amendment; the inclusion of the Form 13F file number of the manager filing the report; and the designation of the report as one that names other reporting manager(s) reporting for the filer, reports holdings over which the reporting manager exercises discretion, or does both.[24]

- *Summary Page.* The Summary Page includes a List of Other Included Managers for which the filer is reporting[25] and a Report Summary. The Report Summary contains the Number of Other Included Managers, an Information Table Entry Total, and an Information Table Value Total.[26] These three items are designed to provide a useful and convenient summary of key information included elsewhere in the report and also provide a means for cross-checking to ensure that the report as accepted and disseminated is the complete report the institutional investment manager intended to file.

- *Information Table.* The Information Table calls for the same information as Items 1 through 8 of previous Form 13F.[27]

- *Certain Instructions.* General Instruction 3 for Form 13F states the requirement that the manager file copies of the form with the appropriate regulatory agency.[28] This instruction clarifies that the manager may satisfy its obligation to file with another regulatory agency by sending a printed copy of the EDGAR filing with the confidential EDGAR access codes (password and password modification access code) removed or blanked out.

General Instruction 4 retains a reference to the Official List of Section 13(f) Securities (the ''13F List'').[29] The 13F List published by the Commission lists the securities the holdings of which the manager is to report on Form 13F. Form 13F filers may rely on the current 13F List in determining whether they need to report any particular securities holding. Paper copies are available for a fee from the Securities and Exchange Commission, Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

Two commenters (the industry group representative and one institutional manager) suggested that the Commission make the 13F List available on its internet web site as well as in paper. The commenters suggested that web site availability of the 13F List would enable filers to facilitate the preparation of their Form 13F reports. The Commission is studying the feasibility of placing the 13F List on its web site.

Special Instruction 13 includes guidance on the preparation of Form 13F for electronic filing, addressing such topics as maximum line length, page tag requirements, and selection of EDGAR submission types. One commenter expressed concern that filers may encounter formatting problems in complying with the maximum line length requirement (*i.e.*, no line in the Information Table may exceed 132 characters in length). Because this requirement is standard for all electronic documents currently filed with the Commission via the EDGAR system, including reports on current Form 13F–E, the Commission believes that filers can resolve any formatting problems prior to the mandatory electronic filing compliance date.

C. Changes to Regulation S–T

Regulation S–T, which governs the preparation and submission of electronic filings to the Commission, is amended as described below in connection with the mandatory electronic submission of Form 13F:

- *Rule 101(a)(1)(iii) of Regulation S–T.* The Regulation S–T list of mandated electronic submissions is revised to remove the exclusion of Form 13F from the list of mandated electronic filings. Institutional investment managers must file Form 13F reports on and after the April 1, 1999, mandatory compliance date, in accordance with this rule and

[22] *See* paragraph (a)(2) of rule 13f–1 (17 CFR 240.13f–1(a)(1)).

[23] *See* Special Instruction 1 for Form 13F.

[24] *See* Special Instructions 3 through 6 for Form 13F.

[25] *See* Special Instruction 8 for Form 13F. The Commission is eliminating the previous requirement of Forms 13F and 13F–E that to list the other included managers alphabetically. The one institutional manager commenting supported this change.

[26] *See* Special Instruction 7 for Form 13F.

[27] *See* Special Instruction 12 for Form 13F. *See infra* footnote and accompanying text concerning a comment received on the contents of the Information Table.

[28] *See* General Instruction C for previous Form 13F.

[29] *See* General Instruction E for previous Form 13F and rule 13f–1(c) (17 CFR 240.13f–1(c)).

rule 14 of Regulation S–T governing mandatory electronic submissions.

• *Rule 101(b)(7) of Regulation S–T.* This paragraph is removed as of the Compliance Date, since Form 13F reports will fall within the provisions of rule 101(a)(1)(iii). After the Compliance Date, a manager may not submit reports on Form 13F–E.

D. Comments Received

The Commission requested comment generally on its proposal to make the electronic submission of reports on Form 13F mandatory. Additional comments received by the Commission are discussed below.

Six individual commenters believed that managers should submit Form 13F reports more frequently and on a more timely basis, *e.g.*, within five days of the end of each month. Section 13(f)(1), however, limits the Form 13F reporting period: ''in no event shall such reports be filed for periods longer than one year or shorter than one quarter.'' The industry group representative, noting that the Commission had not proposed any change to the required frequency or deadlines for filing Form 13F reports, stated that the current filing deadlines remain appropriate. It believed that, even with automated processing of the Form 13F reports, including electronic availability of the 13F List, filers would still need sufficient time to compile and file the reports with the Commission, a sentiment echoed by at least one other commenter. One institutional manager commenter objected to the manner of reporting investment discretion in the Information Table.[30]

The Commission did not propose to change Form 13F substantive reporting requirements in connection with making the electronic filing of this report mandatory. Therefore, the Commission is deferring consideration of the above comments until the substantive requirements of Form 13F become the subject of rulemaking.

II. Dates

The rule and form amendments are effective on February 18, 1999 (the ''Effective Date''). Only those Form 13F reports (including amendments to previously filed reports) filed on and after April 1, 1999 (the ''Compliance Date''), must comply with rules 14 and 101(a)(1)(iii) of Regulation S–T.[31] Beginning on the Effective Date and prior to the Compliance Date, institutional investment managers may submit Form 13F reports (including amendments to previously filed reports) either electronically (EDGAR submission type 13F–HR or 13F–NT, as appropriate), in paper on the form as amended, or electronically on Form 13F–E. As of the Compliance Date, institutional investment managers may no longer submit reports on Form 13F–E, since Form 13F–E is removed as of the Compliance Date.

III. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed changes contained in this release, commenters were requested to provide their views and data relating to any costs and benefits associated with these proposals. The Commission anticipated that these proposals would not affect significantly the costs and burdens associated with filing requirements generally, or specifically with respect to electronic filing.

The Commission received only two comments in response. One institutional manager commented that, while it recognized that the proposals would make Form 13F reports available more quickly, it believed that the costs outweighed the benefits, estimating that electronic filing would require a substantial investment of time and resources and that the benefits would be incremental and accrue only to select groups of investors who use the material. Another institutional manager also believed that the costs outweighed the benefits, in light of its expressed belief that the original intent of the reporting requirement was Commission oversight, not public availability of the information.[32]

Because, as of the end of the Proposing Release's notice and comment period, only two commenters had responded concerning the potential costs of the proposal, the Commission staff determined that it was appropriate to obtain additional cost-benefit information. Therefore, the staff contacted a limited number of other Form 13F report filers to obtain their input on the estimated costs to convert to filing Form 13F reports electronically as proposed.

The staff contacted a total of nine Form 13F report filers, some from each of the following three categories: (1) Filers who currently file Form 13F–E reports on EDGAR by magnetic tape; (2) filers who file Form 13F reports in paper but who make other EDGAR filings; and (3) filers who file Form 13F reports in paper and either (a) make no EDGAR filings or (b) make only Form 13D and/or Form 13G EDGAR filings. The staff asked filers for their estimated costs to file Form 13F reports electronically in accordance with the proposals and whether these costs would be greater than their current costs. If the costs were greater, the staff requested the respondent to distinguish between start-up costs and recurring costs. Finally, the staff asked whether filers envisioned any benefits from filing Form 13F reports electronically in accordance with the proposals.

Six filers provided information on compliance costs. Three filers responded that they would incur no additional cost. One said that its outside service provider would charge no additional fee for filing Form 13F reports on EDGAR when Form 13F reports became mandatory electronic filings. Two other filers expected to convert their existing programs to EDGAR format without additional costs because they could reassign personnel working on the paper filing to the electronic filing.

Two filers anticipated modest cost increases. These filers expected to incur costs of between $50 to $300 to convert to EDGAR filing as proposed. One filer estimated that a one-time additional cost would result from purchasing EDGAR software and manuals from the Commission. Another filer estimated a cost of approximately $265; this estimate included a one-time cost of $65 to upgrade current computer equipment for assembling the Form 13F report and an annual recurring cost of $800 to be paid to their outside service provider.

Finally, one filer expected to incur additional one-time costs of $18,000 to reprogram the filer's computer system to convert to electronic filing. The filer's ongoing cost for estimated additional personnel hours was approximately $16,000 per year based on four quarterly filings. This filer also envisioned a benefit because it believed that the proposed Form 13F report would be easier both to format and to file than the current form.

Among the benefits filers envisioned were less time needed to proofread the paper Form 13F report and the ability to file via a modem rather than having to send either a tape or a paper filing to the Commission.

The Commission recognizes that there are some costs associated with the transition to electronic filing. For example, the Commission estimates an additional per year cost of $10,800 for all filers in the aggregate due to the

[30] Neither this nor any other information to be presented in the Information Table differs from that previously required in Form 13F reports.

[31] As with its other rules, the Commission will use any appropriate means, including its authority to bring legal actions, to enforce the electronic filing rules. *See supra* note 18.

[32] *See supra* notes 14 and 15 and accompanying text.

additional requirement of a cover page and summary page containing certain *de minimis* additional reporting information[33] and an additional per year cost of $3,000 for all of 50 managers in the aggregate re-submitting information previously filed.[34] The Commission estimates that the aggregate one-time cost for upgrading computer equipment and software will range between $30 and $18,000 per filer.

Given the Commission's filing experience under the EDGAR system to date, including submissions made by third-party filers, the results of the staff's informal cost survey, and the Commissions additional cost estimates, the Commission believes that any associated costs are justified by the benefits to the investing public. The amendments should benefit the investing public by making Form 13F reports, in general, quickly available electronically and therefore increasing the public's knowledge of and timely access to the Form 13F report information.

In compliance with its responsibilities under section 23(a) of the Exchange Act,[35] the Commission requested comment on whether the proposals, if adopted, would have an adverse effect upon competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. The Commission encouraged commenters to provide empirical data or other facts to support their views. The Commission received no comments in response to the above request. The Commission has considered the amendments to rule 13f–1, Form 13F and related rules in light of the standards cited in section 23(a) and believes that the amendments and rules do not impose any burdens on competition not necessary or appropriate in furtherance of the Exchange Act. The Commission's belief is based on the benefits of the amendments described throughout this release, including, most particularly, enhanced public access to information reported on Form 13F.

IV. Certain Findings

In accordance with the requirements of section 13(f)(4) of the Exchange Act, the Commission has determined that the actions taken by the Commission herein are necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets.[36] After a filer's initial conversion to electronic filing, the cost of electronic filing should be negligible. Thus, the amendments should not result in a material change in capital raising or regulatory compliance costs. Since the information on Form 13F is useful to both investors and issuers and the amendments will increase the amount of such information available on a timely basis to issuers and the investing public, the amendments are appropriate in the public interest and for the protection of investors.

In compliance with its responsibilities under section 2(b) of the Securities Act[37] and section 3(f) of the Exchange Act,[38] the Commission requested comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation. The Commission encouraged commenters to provide empirical data or other facts to support their views. The Commission received no comments in response to the above request. In compliance with its responsibilities under the previously mentioned provisions, the Commission considered whether the amendments would promote efficiency, competition and capital formation.

V. Summary of Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendments in this release would not have a significant economic effect on a substantial number of small entities. Institutional investment managers are not required to submit reports on Form 13F unless equity holdings over which they exercise discretion are in aggregate at least $100,000,000. Therefore, few if any small entities within the definition contained in rule 0–10 under the Exchange Act are affected by the form, and few if any small entities are otherwise affected by the rule amendments. The certification documenting its factual basis was included as Appendix A to the Proposing Release.

VI. Paperwork Reduction Act

Certain provisions of the amendments to Form 13F contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (''PRA''). The Commission submitted the collection of information requirements contained in the rule amendments to the Office of Management and Budget (''OMB'') for review pursuant to 44 U.S.C. 3507(d) and 5 CFR 1320.11 and the collection of information is in accordance with the requirements of 44 U.S.C. 3507. The title for the collection of information is ''Form 13F, Report of Institutional Investment Managers pursuant to section 13(f) of the Securities Exchange Act of 1934.'' The OMB approved the PRA request and assigned a control number of 3235–0006 with an expiration date of October 31, 2000.[39] Unless a currently valid OMB control number is displayed, an agency may not sponsor or conduct, or require response to, an information collection.

Section 13(f) of the Exchange Act requires the Commission to adopt rules that would create a reporting and disclosure system to collect specific information and to disseminate the information to the public. Pursuant to this statutory mandate, the Commission adopted rule 13f–1 under the Exchange Act (17 CFR 240.13f–1), which requires institutional investment managers who exercise investment discretion over accounts of certain equity securities described in section 13(d)(1) of the Exchange Act[40] (generally, exchange traded or NASDAQ-quoted securities) having, in the aggregate, a fair market value of at least $100,000,000 to file quarterly reports with the Commission on Form 13F. Form 13F provides a reporting and disclosure system to collect specific information and to disseminate the information to the public about the holdings of those institutional investment managers subject to rule 13f–1.

At the time of the Proposing Release, the Commission estimated that approximately 1,800 institutional investment managers were subject to the rule.[41] These included such institutional investment managers as certain mutual funds, pension funds, trusts, hedge funds, and investment advisers. Each reporting manager files a Form 13F report quarterly. The Commission estimated that each quarter, following the expiration of grants of confidential treatment, approximately 50 managers will need to re-submit electronically for public dissemination information previously submitted in paper as confidential. The Commission estimated that compliance with the form's requirements will impose a total annual burden per manager of approximately 98.8 hours for each of the approximately

[33] *See infra* note 42.

[34] *See infra* Section VI.

[35] 15 U.S.C. 78w(a).

[36] 15 U.S.C. 78m(f)(4).

[37] 15 U.S.C. 77b(b).

[38] 15 U.S.C. 78c(f).

[39] The proposing release contained an arithmetic mistake in the statement of total average annual burden hours (177,894 as printed; 178,435.2 correct). The correct figure appeared in the PRA submission to OMB and appears in this release.

[40] 15 U.S.C. 78m(d)(1).

[41] The current estimate is higher, approximately 2,000.

1,800 managers submitting the report (an increase of .1 hours per quarter per manager due to the additional requirement of a cover page and summary page containing certain *de minimis* additional reporting information[42]) plus an additional annual burden of 4 hours (one additional burden hour per quarter) for each of the 50 managers re-submitting information previously filed. The Commission estimated the total annual burden for all managers at 178,435.2 hours. The estimate of average burden hours was made solely for the purposes of the PRA and was based on the Commission's experience with similar filings and discussions with a few registrants.

The Form 13F contains no separate retention period rule for recordkeeping requirements but is subject to the general recordkeeping requirements under Regulation S–T and the Exchange Act rules. Each institutional investment manager subject to the rule must file a Form 13F report. Section 13(f)(3) of the Exchange Act[43] authorizes the Commission, as it determines necessary or appropriate in the public interest or for the protection of investors, to delay or prevent public disclosure of any information filed under section 13(f) in accordance with the Freedom of Information Act.[44] It also prohibits the Commission from disclosing to the public any information that identifies securities held by the account of a natural person or any estate or trust (other than a business trust or investment company).

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicited comment to (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The Commission received comments concerning a means of minimizing the burden of reporting the collected information through the use of automated techniques. Two commenters suggested that the Commission make the official list of Form 13F Securities (''13F List'') available electronically through its World Wide Web internet site to facilitate the filers' preparation of their Form 13F reports. The Commission agrees that providing the list electronically in this way would reduce the burden of report preparation for some filers; this effect would be the same under both the previous filing requirements as well as under the requirements as proposed and adopted. The Commission is studying the feasibility of placement of the Official List on its web site.

[42] The additional requirements are not complex. The cover page adds the requirements of identification of an amendment filing; the inclusion of the Form 13F file number of the manager filing the report; and the designation of the report as one that names other reporting manager(s) reporting for the filer, reports holdings over which the reporting manager exercises discretion, or both. The summary page adds a Report Summary, containing the Number of Other Included Managers, an Information Table Entry Total, and an Information Table Value Total.

[43] 15 U.S.C. 78m(f)(3).

[44] 5 U.S.C. 552.

VII. Statutory Basis

The foregoing amendments are adopted pursuant to sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act.

List of Subjects in 17 CFR Parts 232, 240, and 249

Confidential business information, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

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

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

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

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

2. By amending § 232.101 by revising paragraph (a)(1)(iii) before the note and by removing paragraph (b)(7) and redesignating paragraph (b)(8) as (b)(7), to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) *Mandated electronic submissions.* (1) * * *

(iii) Statements, reports and schedules filed with the Commission pursuant to section 13, 14, or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n, and 78*o*(d)), and proxy materials required to be furnished for the information of the Commission in connection with annual reports on Form 10–K (§ 249.310 of this chapter) or Form 10–KSB (§ 249.310b of this chapter) filed pursuant to section 15(d) of the Exchange Act;

* * * * *

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

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

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

* * * * *

4. By amending § 240.13f–1 by redesignating paragraph (a) as paragraph (a)(1) and by adding paragraph (a)(2) to read as follows:

§ 240.13f–1 Reporting by institutional investment managers of information with respect to accounts over which they exercise investment discretion.

(a)(1) * * *

(2) An amendment to a Form 13F (§ 249.325 of this chapter) report, other than one reporting only holdings that were not previously reported in a public filing for the same period, must set forth the complete text of the Form 13F. Amendments must be numbered sequentially.

* * * * *

§ 240.13f–2 [Removed]

5. Section 240.13f–2 is removed.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

7. By revising Form 13F (referenced in § 249.325) to read as follows:

Note: The text of the following form does not and the amendments will not appear in the Code of Federal Regulations.

OMB APPROVAL

OMB Number: 3235–0006
Expires: October 31, 2000
Estimated average burden hours per response: 24.7

Form 13F—Information Required of Institutional Investment Managers Pursuant to Section 13(f) of the Securities Exchange Act of 1934 and Rules Thereunder

General Instructions

1. *Rule as to Use of Form 13F.* Institutional investment managers (''Managers'') must use Form 13F for reports to the Commission required by Section 13(f) of the Securities

Exchange Act of 1934 [15 U.S.C. 78m(f)] (''Exchange Act'') and rule 13f–1 [17 CFR 240.13f–1] thereunder. Rule 13f–1(a) provides that every Manager which exercises investment discretion with respect to accounts holding Section 13(f) securities, as defined in rule 13f–1(c), having an aggregate fair market value on the last trading day of any month of any calendar year of at least $100,000,000 shall file a report on Form 13F with the Commission within 45 days after the last day of such calendar year and within 45 days after the last day of each of the first three calendar quarters of the subsequent calendar year.

2. *Rules to Prevent Duplicative Reporting.* If two or more Managers, each of which is required by rule 13f–1 to file a report on Form 13F for the reporting period, exercise investment discretion with respect to the same securities, only one such Manager must include information regarding such securities in its reports on Form 13F.

A Manager having securities over which it exercises investment discretion that are reported by another Manager (or Managers) must identify the Manager(s) reporting on its behalf in the manner described in Special Instruction 6.

A Manager reporting holdings subject to shared investment discretion must identify the other Manager(s) with respect to which the filing is made in the manner described in Special Instruction 8.

3. *Filing of Form 13F.* A Manager must file a Form 13F report with the Commission within 45 days after the end of each calendar year and each of the first three calendar quarters of each calendar year. As required by Section 13(f)(4) of the Exchange Act, a Manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act, must file with the appropriate regulatory agency for the bank a copy of every Form 13F report filed with the Commission pursuant to this subsection by or with respect to such bank. Filers who file Form 13F electronically can satisfy their obligation to file with other regulatory agencies by sending (a) a paper copy of the EDGAR filing (provided the Manager removes or blanks out the confidential access codes); (b) the filing in electronic format, if the regulatory agency with which the filing is being made has made provisions to receive filings in electronic format; or (c) for filers filing in paper format under continuing hardship exemptions, a copy of the Form 13F paper filing.

4. *Official List of Section 13(f) Securities.* The official list of Section 13(f) Securities published by the Commission (the ''13F List'') lists the securities the holdings of which a Manager is to report on Form 13F. *See* rule 13f–1(c) [17 CFR 240.13f–1(c)]. Form 13F filers may rely on the current 13F List in determining whether they need to report any particular securities holding. Paper copies are available at a reasonable fee from the Securities and Exchange Commission, Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

Instructions for Confidential Treatment Requests

Pursuant to Section 13(f)(3) of the Exchange Act [15 U.S.C. 78m(f)(3)], the Commission (1) may prevent or delay public disclosure of information reported on this form in accordance with Section 552 of Title 5 of the United States Code, the Freedom of Information Act [5 U.S.C. 552], and (2) shall not disclose information reported on this form identifying securities held by the account of a natural person or an estate or trust (other than a business trust or investment company). A Manager must submit in accordance with the procedures for requesting confidential treatment any portion of a report which contains information identifying securities held by the account of a natural person or an estate or trust (other than a business trust or investment company).

A Manager should make requests for confidential treatment of information reported on this form in accordance with rule 24b–2 under the Exchange Act [17 CFR 240.24b–2]. Requests relating to the non-disclosure of information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) must so state but need not, in complying with paragraph (b)(2)(ii) of rule 24b–2, include an analysis of any applicable exemptions from disclosure under the Commission's rules and regulations adopted under the Freedom of Information Act [17 CFR 200.80].

Paragraph (b) of rule 24b–2 requires a Manager filing confidential information with the Commission to indicate at the appropriate place in the public filing that the confidential portion has been so omitted and filed separately with the Commission. A Manager should comply with this provision by including on the Summary Page, after the Report Summary and prior to the List of Other Included Managers, a statement that confidential information has been omitted from the public Form 13F report and filed separately with the Commission.

A Manager must file in paper, in accordance with rule 101(c)(1)(i) of Regulation S–T [17 CFR 232.101(c)(1)(i)], all requests for and information subject to the request for confidential treatment filed pursuant to Section 13(f)(3) of the Exchange Act. If a Manager requests confidential treatment with respect to information required to be reported on Form 13F, the Manager must file in paper with the Secretary of the Commission an original and four copies of the Form 13F reporting information for which the Manager requests confidential treatment.

A Manager requesting confidential treatment must provide enough factual support for its request to enable the Commission to make an informed judgment as to the merits of the request. The request should address all pertinent factors, including all of the following that are relevant:

1. If confidential treatment is requested as to more than one holding of securities, discuss each holding separately unless the Manager can identify a class or classes of holdings as to which the nature of the factual circumstances and the legal analysis are substantially the same.

2. If a request for confidential treatment is based upon a claim that the subject information is confidential, commercial or financial information, provide the information required by paragraphs 2.a through 2.e of this Instruction except that, if the subject information concerns security holdings that represent open risk arbitrage positions and no previous requests for confidential treatment of those holdings have been made, the Manager need provide only the information required in paragraph 2.f.

a. Describe the investment strategy being followed with respect to the relevant securities holdings, including the extent of any program of acquisition and disposition (note that the term ''investment strategy,'' as used in this instruction, also includes activities such as block positioning).

b. Explain why public disclosure of the securities would, in fact, be likely to reveal the investment strategy; consider this matter in light of the specific reporting requirements of Form 13F (e.g., securities holdings are reported only quarterly and may be aggregated in many cases).

c. Demonstrate that such revelation of an investment strategy would be premature; indicate whether the Manager was engaged in a program of acquisition or disposition of the security both at the end of the quarter and at the time of the filing; and address whether the existence of such a program may otherwise be known to the public.

d. Demonstrate that failure to grant the request for confidential treatment would be likely to cause substantial harm to the Manager's competitive position; show what use competitors could make of the information and how harm to the Manager could ensue.

e. State the period of time for which confidential treatment of the securities holdings is requested. The time period specified may not exceed one (1) year from the date that the Manager is required to file the Form 13F report with the Commission.

f. For securities holdings that represent open risk arbitrage positions, the request must include good faith representations that:

i. The securities holding represents a risk arbitrage position open on the last day of the period for which the Form 13F report is filed; and

ii. The reporting Manager has a reasonable belief as of the period end that it may not close the entire position on or before the date that the Manager is required to file the Form 13F report with the Commission.

If the Manager makes these representations in writing at the time that the Form 13F is filed, the Commission will automatically accord the subject securities holdings confidential treatment for a period of up to one (1) year from the date that the Manager is required to file the Form 13F report with the Commission.

g. At the expiration of the period for which confidential treatment has been granted pursuant to paragraph 2.3 or 2.f of this Instruction (the ''Expiration Date''), the Commission, without additional notice to the reporting manager, will make such security holdings public unless a *de novo* request for confidential treatment of the information that meets the requirements of paragraphs 2.a through 2.e of this Instruction is filed with the Commission at least fourteen (14) days in advance of the Expiration Date.

3. If the Commission grants a request for confidential treatment, it may delete details which would identify the Manager and use the information in tabulations required by Section 13(f)(3) absent a separate showing that such use of information could be harmful.

4. Upon the denial by the Commission of a request for confidential treatment, or upon the expiration of the confidential treatment previously granted for a filing, unless a hardship exemption is available, the Manager must submit electronically, within six (6) business days of the expiration or notification of the denial, as applicable, a Form 13F report, or an amendment to its publicly filed Form 13F report, if applicable, listing those holdings as to which the Commission denied confidential treatment or for which confidential treatment has expired. If a Manager files an amendment, the amendment must not be a restatement; the Manager must designate it as an amendment which adds new holdings entries. The Manager must include at the top of the Form 13F Cover Page the following legend to correctly designate the type of filing being made:

THIS FILING LISTS SECURITIES HOLDINGS REPORTED ON THE Form 13F FILED ON (DATE) PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FOR WHICH (THAT REQUEST WAS DENIED/CONFIDENTIAL TREATMENT EXPIRED) ON (DATE).

Special Instructions

1. This form consists of three parts: the Form 13F Cover Page (the ''Cover Page''), the Form 13F Summary Page (the ''Summary Page''), and the Form 13F Information Table (the ''Information Table'').

2. When preparing the report, omit all bracketed text. Include brackets used to form check boxes.

The Cover Page

3. The period end date used in the report (and in the EDGAR submission header) is the last day of the calendar year or quarter, as appropriate, even though that date may not be the same as the date used for valuation in accordance with Special Instruction 9.

4. Amendments to a Form 13F report must either restate the Form 13F report in its entirety or include only holdings entries that are being reported in addition to those already reported in a current public Form 13F report for the same period. If the Manager is filing the Form 13F report as an amendment, then, the Manager must check the amendment box on the Cover Page; enter the amendment number; and check the appropriate box to indicate whether the amendment (a) is a restatement or (b) adds new holdings entries. Each amendment must include a complete Cover Page and, if applicable, a Summary Page and Information Table. *See* rule 13f–1(a)(2) [17 CFR 240.13f–1(a)(2)].

5. Present the Cover Page and the Summary Page information in the format and order provided in the form. The Cover Page may include information in addition to the required information, so long as the additional information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. Place all additional information after the signature of the person signing the report (immediately preceding the Report Type section). Do not include any additional information on the Summary Page or in the Information Table.

6. Designate the Report Type for the Form 13F report by checking the appropriate box in the Report Type section of the Cover Page, and include, where applicable, the List of Other Managers Reporting for this Manager (on the Cover Page), the Summary Page and the Information Table, as follows:

a. If all of the securities with respect to which a Manager has investment discretion are reported by another Manager (or Managers), check the box for Report Type ''13F NOTICE,'' include (on the Cover Page) the List of Other Managers Reporting for this Manager, and omit both the Summary Page and the Information Table.

b. If all of the securities with respect to which a Manager has investment discretion are reported in this report, check the box for Report Type ''13F HOLDINGS REPORT,'' omit from the Cover Page the List of Other Managers Reporting for this Manager, and include both the Summary Page and the Information Table.

c. If only part of the securities with respect to which a Manager has investment discretion is reported by another Manager (or Managers), check the box for Report Type ''13F COMBINATION REPORT,'' include (on the Cover Page) the List of Other Managers Reporting for this Manager, and include both the Summary Page and the Information Table.

Summary Page

7. Include on the Summary Page the Report Summary, containing the Number of Other Included Managers, the Information Table Entry Total and the Information Table Value Total.

a. Enter as the Number of Other Included Managers the total number of other Managers listed in the List of Other Included Managers on the Summary Page, not counting the Manager filing this report.. *See* Special Instruction 8. If none, enter the number zero (''0'')

b. Enter as the Information Table Entry Total the total number of line entries providing holdings information included in the Information Table.

c. Enter as the Information Table Value Total the aggregate fair market value of all holdings reported in this report, *i.e.*, the total for Column 4 (Fair Market Value) of all line entries in the Information Table. The Manager must express this total as a rounded figure, corresponding to the individual Column 4 entries in the Information Table. *See* Special Instruction 9.

8. Include on the Summary Page the List of Other Included Managers. Use the title, column headings and format provided.

a. If this Form 13F report does not report the holdings of any Manager other than the Manager filing this report, enter the word ''NONE'' under the title and omit the column headings and list entries.

b. If this Form 13F report reports the holdings of one or more Managers other than the Manager filing this report, enter in the List of Other Included Managers all such Managers together with their respective Form 13F file numbers, if known. (The Form 13F file numbers are assigned to Managers when they file their first Form 13F.) Assign a number to each Manager in the List of Other Included Managers, and present the list in sequential order. The numbers need not be consecutive. The List of Other Managers must include all other Managers identified in Column 7 of the Information Table. Do not include the Manager filing this report.

Information Table

9. In determining fair market value, use the value at the close of trading on the last trading day of the calendar year or quarter, as appropriate. Enter values rounded to the nearest one thousand dollars (with ''000'' omitted).

10. A Manager may omit holdings otherwise reportable if the Manager holds, on the period end date, fewer than 10,000 shares (or less than $200,000 principal amount in the case of convertible debt securities) and less than $200,000 aggregate fair market value (and option holdings to purchase only such amounts).

11. A Manager must report holdings of options only if the options themselves are Section 13(f) securities. For purposes of the $100,000,000 reporting threshold, the Manager should consider only the value of such options, not the value of the underlying shares. The Manager must give the entries in Columns 1 through 5 and in Columns 7 and 8 of the Information Table, however, in terms of the securities underlying the options, not the options themselves. The Manager must answer Column 6 in terms of the discretion to exercise the option. The Manager must make a separate segregation in respect of securities underlying options for entries for each of the columns, coupled with a designation ''PUT'' or ''CALL'' following such segregated entries in Column 5, referring to securities subject respectively to put and call options. A Manager is not required to provide an entry in Column 8 for securities subject to reported call options.

12. Furnish the Information Table using the table title, column headings and format provided. Provide column headings once at the beginning of the Information Table; repetition of column headings on subsequent pages is not required. Present the table in accordance with the column instructions provided in Special Instructions 12.b.i through 12.b.viii. Do not include any additional information in the Information Table. Begin the Information Table on a new page; do not include any portion of the Information Table on either the Cover Page or the Summary Page.

a. In entering information in Columns 4 through 8 of the Information Table, list securities of the same issuer and class with respect to which the Manager exercises sole investment discretion separately from those with respect to which investment discretion is shared. Special Instruction 12.b.vi for Column 6 describes in detail how to report shared investment discretion.

b. Instructions for each column in the Information Table:

i. *Column 1. Name of Issuer.* Enter in Column 1 the name of the issuer for each class of security reported as it appears in the current official list of Section 13(f) Securities published by the Commission in accordance with rule 13f–1(c) (the ''13F List''). Reasonable abbreviations are permitted.

ii. *Column 2. Title of Class.* Enter in Column 2 the title of the class of the security reported as it appears in the 13F List. Reasonable abbreviations are permitted.

iii. *Column 3. CUSIP Number.* Enter in Column 3 the nine (9) digit CUSIP number of the security.

iv. *Column 4. Market Value.* Enter in Column 4 the market value of the holding of the particular class of security as prescribed by Special Instruction 9.

v. *Column 5. Amount and Type of Security.* Enter in Column 5 the total number of shares of the class of security or the principal amount of such class. Use the abbreviation ''SH'' to designate shares and ''PRN'' to designate principal amount. If the holdings being reported are put or call options, enter the designation ''PUT'' or ''CALL,'' as appropriate.

vi. *Column 6. Investment Discretion.* Segregate the holdings of securities of a class according to the nature of the investment discretion held by the Manager. Designate investment discretion as ''sole'' (SOLE); ''shared-defined'' (DEFINED); or ''shared-other'' (OTHER), as described below:

(A) *Sole.* Designate as ''sole'' securities over which the Manager exercised sole investment discretion. Report ''sole'' securities on one line. Enter the word SOLE in Column 6.

(B) *Shared-Defined.* If investment discretion is shared with controlling and controlled companies (such as bank holding companies and their subsidiaries); investment advisers and investment companies advised by those advisers; or insurance companies and their separate accounts, then designate investment discretion as ''shared-defined'' (DEFINED).

For each holding of DEFINED securities, segregate the securities into two categories: those securities over which investment discretion is shared with another Manager or Managers on whose behalf this Form 13F report is being filed, and those securities over which investment discretion is shared with any other person, other than a Manager on whose behalf this Form 13F report is being filed.

Enter each of the two segregations of DEFINED securities holdings on a separate line, and enter the designation DEFINED in Column 6. *See* Special Instruction for Column 7.

(C) *Shared-Other.* Designate as ''shared-Other'' securities (OTHER) those over which investment discretion is shared in a manner other than that described in Special Instruction above.

For each holding of OTHER securities, segregate the securities into two categories: those securities over which investment discretion is shared with another Manager or Managers on whose behalf this Form 13F report is being filed, and those securities over which investment discretion is shared with any other person, other than a Manager on whose behalf this Form 13F report is being filed.

Enter each segregation of OTHER securities holdings on a separate line, and enter the designation ''OTHER'' in Column 6. *See* Special Instruction for Column 7.

Note: A Manager is deemed to share discretion with respect to all accounts over which any person under its control exercises discretion. A Manager of an institutional account, such as a pension fund or investment company, is not deemed to share discretion with the institution unless the institution actually participated in the investment decision-making.

vii. *Column 7. Other Managers.* Identify each other Manager on whose behalf this Form 13F report is being filed with whom investment discretion is shared as to any reported holding by entering in this column the number assigned to the Manager in the List of Other Included Managers.

Enter this number in Column 7 opposite the segregated entries in Columns 4, 5 and 8 (and the relevant indication of shared discretion set forth in Column 6) as required by the preceding special instruction. Enter no other names or numbers in Column 7.

A Manager must report the conditions of sharing discretion with other Managers consistently for all holdings reported on a single line.

viii. *Column 8. Voting Authority.* Enter the number of shares for which the Manager exercises sole, shared, or no voting authority (none) in this column, as appropriate.

The Commission deems a Manager exercising sole voting authority over specified ''routine'' matters, and no authority to vote in ''non-routine'' matters, for purposes of this Form 13F report to have no voting authority. ''Non-routine'' matters include a contested election of directors, a merger, a sale of substantially all the assets, a change in the articles of incorporation affecting the rights of shareholders, and a change in fundamental investment policy; ''routine'' matters include selection of an accountant, uncontested election of directors, and approval of an annual report.

If voting authority is shared only in a manner similar to a sharing of investment discretion which would call for a response of ''shared-defined'' (DEFINED) under Column 6, a Manager should report voting authority as sole under subdivision (a) of Column 8, even though the Manager may be deemed to share investment discretion with that person under Special Instruction 12.b.vi.

13. Preparation of the electronic filing:

a. No line on the Cover Page or the Summary Page may exceed 80 characters in length. *See* rule 305 of Regulation S–T [17 CFR 232.305].

b. No line in the Form 13F Information Table may exceed 132 characters in length. *See* rule 305 of Regulation S–T [17 CFR 232.305].

c. If the Form 13F Report Type is ''13F HOLDINGS REPORT'' or ''13F COMBINATION REPORT,'' then place one EDGAR <PAGE> tag at the end of the Cover Page and one <PAGE> tag at the end of the Summary Page. Additional EDGAR <PAGE> tags are not required. Those electing to include additional <PAGE> tags should, for each page containing a <PAGE> tag, include no more than sixty (60) lines per page, including the line on which the <PAGE> tag is placed.

d. In preparing the Form 13F report for electronic filing, a Manager may omit underscoring used in the form to indicate the placement of information that the Manager is to furnish.

e. Use the following EDGAR submission types for the following Form 13F Report Types:

Form 13F report type	EDGAR submission type
13F HOLDINGS REPORT	
Initial Filing	13F–HR
Amendments	13F–HR/A
13F NOTICE	
Initial Filing	13F–NT
Amendments	13F–NT/A
13F COMBINATION REPORT	
Initial Filing	13F–HR
Amendments	13F–HR/A

Paperwork Reduction Act Information

Persons who are to respond to the collection of information contained in this form are not required to respond to the collection of information unless the form displays a currently valid OMB control number.

Section 13(f) of the Exchange Act requires the Commission to adopt rules creating a reporting and disclosure system to collect specific information and to disseminate such information to the public. Rule 13f–1 under the Exchange Act (17 CFR 240.13f–1) requires institutional investment managers who exercise investment discretion over certain accounts of equity securities described in Section 13(d)(1) of the Exchange Act [15 U.S.C. 78m(d)(1)] (generally, exchange traded or NASDAQ-quoted securities) having, in the aggregate, a fair market value of at least $100,000,000 to file quarterly reports with the Commission on Form 13F with respect to the value of those securities over which they have investment discretion.

The purpose of Form 13F is to provide a reporting and disclosure system to collect specific information and to disseminate such information to the public about the holdings of institutional investment managers who exercise investment discretion over certain accounts of equity securities described in Section 13(d)(1) of the Exchange Act [15 U.S.C. 78m(d)(1)] (generally, exchange traded or NASDAQ-quoted securities) having, in the aggregate, a fair market value of at least $100,000,000. We believe that investors will find Form 13F report information useful in tracking institutional investor holdings in their investments and that issuers, too, will find detail as to institutional investor holdings useful because much of their

shareholder list may reflect holdings in ''street name'' rather than beneficial ownership. We believe that mandatory electronic dissemination of this data will help ensure timely and efficient dissemination of this important information. We believe that these reports should have the same degree of availability as other filings with the Commission, and that electronic filing will speed their dissemination in accordance with the intent of Congress.

We estimate that each filer spends an average of 24.7 hours preparing each quarterly report. In addition, we estimate that, each quarter, approximately 50 managers will resubmit information previously filed in paper pursuant to a grant of confidential treatment and that each such manager will spend an additional hour on the resubmission.

Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

Responses to the collection of information are mandatory. *See* Section 13(f) of the Exchange Act [15 U.S.C. 78m(f)] and rule 13f–1 [17 CFR 240.13f–1] thereunder.

Section 13(f)(3) of the Exchange Act [15 U.S.C. 78m(f)(3)] authorizes the Commission, as it determines necessary or appropriate in the public interest or for the protection of investors, to delay or prevent public disclosure of any information filed under Section 13(f) upon request. It also prohibits the Commission from disclosing to the public information identifying securities held by the account of a natural person or any estate or trust (other than a business trust or investment company).

This collection of information has been reviewed by OMB in accordance with the clearance requirements of 44 U.S.C. Section 3507.

Form 13F Cover Page

Report for the Calendar Year or Quarter Ended: _____

Check here if Amendment [ ]; Amendment Number: ____

This Amendment (Check only one.):

☐ is a restatement.

☐ adds new holdings entries.

Institutional Investment Manager Filing this Report:

Name: _____

Address: _____

_____

_____

Form 13F File Number: 28-_____

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Person Signing this Report on Behalf of Reporting Manager:

Name: _____

Title: _____

Phone: _____

Signature, Place, and Date of Signing:

_____

[Signature]

_____

[City, State]

_____

[Date]

Report Type (Check only one.):

☐ 13F HOLDINGS REPORT. (Check here if all holdings of this reporting manager are reported in this report.)

☐ 13F NOTICE. (Check here if no holdings reported are in this report, and all holdings are reported by other reporting manager(s).)

☐ 13F COMBINATION REPORT. (Check here if a portion of the holdings for this reporting manager are reported in this report and a portion are reported by other reporting manager(s).)

List of Other Managers Reporting for this Manager: [If there are no entries in this list, omit this section.]

Form 13F File Number 28– _____

Name _____

[Repeat as necessary.]

Form 13F Summary Page

Report Summary:

Number of Other Included Managers:

_____

Form 13F Information Table Entry Total:

_____

Form 13F Information Table Value Total: $_____ (thousands)

List of Other Included Managers:

Provide a numbered list of the name(s) and Form 13F file number(s) of all institutional investment managers with respect to which this report is filed, other than the manager filing this report. [If there are no entries in this list, state ''NONE'' and omit the column headings and list entries.]

No. _____

Form 13F File Number 28– _____

Name _____

[Repeat as necessary.]

§ 249.326 Including Form 13F–E [Removed]

8. Section 249.326 including Form 13F–E is removed.

By the Commission.

Dated: January 12, 1999.

Margaret H. McFarland,

Deputy Secretary.

FORM 13F INFORMATION TABLE

Name of issuer	Title of class	CUSIP	Value (x$1000)	Shrs or prn amt	SH/PRN	Put/Call	Investment discretion	Other managers	Voting authority		
									Sole	Shared	None
Column 1	Column 2	Column 3	Column 4	Column 5			Column 6	Column 7	Column 8		

[Repeat as necessary]

[FR Doc. 99–1043 Filed 1–15–99; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 97F–0421]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of di-*tert*-butyl-*m*-cresyl phosphonite condensation product with biphenyl for use as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food. This action responds to a petition filed by Yoshitomi Fine Chemicals, Ltd.

DATES: The regulation is effective January 19, 1999. Submit written objections and requests for a hearing by February 18, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 17, 1997 (62 FR 54117), FDA announced that a food additive petition (FAP 7B4557) had been filed by Yoshitomi Fine Chemicals, Ltd., 6–9 Hiranomachi 2-chome, Chuo-ku, Osaka 541, Japan. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of di-*tert*-butylcresyl phosphonite condensation product with biphenyl, produced by the condensation of 2,4-di-*tert*-butylcresol with the Friedel-Crafts addition product of phosphorus trichloride and biphenyl, for use as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food.

The agency notes that the petitioner later requested that the term meta (*m*) be placed between butyl and cresyl in the name of the subject additive and between butyl and cresol in the name of one of the starting materials in order to provide more accurate and descriptive names. FDA agrees that this nomenclature provides a more accurate description of the additive and its starting materials. Therefore, FDA uses this nomenclature in the final rule.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this rule as announced in the notice of filing for the petition. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before February 18, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * * * *	
Di-*tert*-butyl-*m*-cresyl phosphonite condensation product with biphenyl (CAS Reg. No. 178358–58–2) produced by the condensation of 2,4-di-*tert*-butyl-*m*-cresol with the Friedel-Crafts addition product (phosphorus trichloride and biphenyl) so that the food additive has a minimum phosphorus content of 5.0 percent.	For use only: 1. At levels not to exceed 0.1 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 2.1, 2.2, 3.1(a), 3.1(b), 3.2(a), or 3.2(b).
* * * * * * *	

Dated: January 6, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–1032 Filed 1–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, A Division of Eli Lilly and Co. The supplemental NADA provides for use of monensin and tylosin Type A medicated articles for making Type B and C cattle feeds, the Type C cattle feed to be fed at a range of 60 to 90 milligrams of tylosin per head per day (mg/hd/day) rather than the currently approved 90 mg/hd/day.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed supplemental NADA 104–646 that provides for combining Rumensin® (80 grams per pound (g/lb) monensin sodium) and Tylan® (40 or 100 g/lb tylosin phosphate) Type A medicated articles to make Type B and C medicated cattle feeds. The Type C medicated cattle feeds are to be fed to cattle fed in confinement for slaughter at 50 to 360 mg/hd/day monensin and 60 to 90 mg/hd/day tylosin for improved feed efficiency and reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces pyogenes*. The tylosin feeding level is the same as currently approved under 21 CFR 558.625(f)(1)(i)(*c*) for use of tylosin Type C cattle feeds. The supplemental NADA is approved as of November 19, 1998, and the regulations are amended in 21 CFR 558.355(f)(3)(ii)(*b*) to reflect the approval.

A summary of data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended in paragraph (f)(3)(ii)(*b*) by removing ''90'' and adding in its place ''60 to 90.''

Dated: December 17, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–1037 Filed 1–15–99; 8:45 am]

BILLING CODE 4160–01–F

POSTAL SERVICE

39 CFR Part 20

Global Direct—Canada Admail Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service published an interim rule and request for comment on a new service, Global Direct—Canada Admail, in the **Federal Register** on August 21, 1998, (63 FR 44789). The Postal Service hereby gives notice that it is adopting the interim rule.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 314–7256.

SUPPLEMENTARY INFORMATION: In cooperation with Canada Post Corporation (CPC), the Postal Service introduced, on an interim basis, Global Direct—Canada Admail. This international mail service is primarily intended for major printing firms, direct marketers, mail order companies, and other high-volume mailers seeking easier access to the Canadian domestic postal system. It is intended to provide mail delivery in an average of 5 to 10 business days in major urban areas throughout Canada. Ancillary services for local business reply and the return of undeliverable mail are also introduced for use with Global Direct—Canada Admail.

On August 21, 1998, the Postal Service published in the **Federal Register** (63 FR 44789) an interim rule and request for comment on this new service, Global Direct—Canada Admail. Comments were requested on or before September 21, 1998.

The Postal Service did not receive any written comments on the interim rule

concerning Global Direct—Canada Admail. Accordingly, the Postal Service adopts, without change, the interim rule.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 6 of the International Mail Manual is amended by changing the title of 610, renumbering old 610 as 611, and adding new part 612 to read as follows:

CHAPTER 6—SPECIAL PROGRAMS

610 Global Direct Service

611 Global Direct—Mexico Direct

* * * * *

612 Global Direct—Canada Admail

612.1 Description

Global Direct—Canada Admail is an international mail service that is available on the basis of a service agreement between the Postal Service and a qualifying mailer. Under this service a mailer must enter identical printed matter items that meet the applicable eligibility, makeup, and preparation requirements for Canadian Post domestic Addressed Admail service. The Postal Service transports the items to Canada for entry into that country's domestic mail system. The mailer is responsible for ensuring that the items meet Canada Post Corporation's makeup and preparation requirements.

612.2 Qualifying Mailers and Mailing Locations

612.21 Qualifying Mailers

Qualifying mailers must agree to mail a minimum of 25,000 Admail items for delivery to Canadian addressees per mailing. All tendered mailpieces must conform to the applicable makeup and preparation requirements for Canadian domestic mail, as specified by Canada Post Corporation (CPC). CPC-certified sortation and address accuracy software is required.

612.22 Mailing Locations

Mailings may be deposited only at the following offices as specified in the service agreement:

JOHN F KENNEDY AIRPORT MAIL CENTER, JOHN F KENNEDY INTERNATIONAL AIRPORT BUILDING 250, JAMAICA NY 11430–9998.

NEW JERSEY INTERNATIONAL BULK MAIL CENTER, US POSTAL SERVICE, 80 COUNTY RD, JERSEY CITY NJ 07097–9998.

BUFFALO AUXILIARY SERVICE FACILITY, BUFFALO PROCESSING AND DISTRIBUTION CENTER, 1200 WILLIAM ST, BUFFALO NY 14240–9998.

DETROIT PROCESSING AND DISTRIBUTION CENTER, US POSTAL SERVICE, 1401 W FORT, DETROIT MI 48233–9997.

AMC O'HARE INTERNATIONAL ANNEX, US POSTAL SERVICE, 3333 MOUNT PROSPECT RD, FRANKLIN PARK IL 60131–1347.

SEATTLE PROCESSING AND DISTRIBUTION CENTER, US POSTAL SERVICE, 2454 OCCIDENTAL AVE S, SEATTLE WA 98134–9997.

612.3 Postage

612.31 Rate

The rate of postage is determined by the size, weight, and level of sortation of the items being mailed as specified below:

Weight not over 1.76 ounces	Letter Carrier Presort (LCP)		National Distribution Guide (NDG)	
	Standard	Large	Standard	Large
Letter Carrier Direct	$0.216	$0.234	N/A	N/A
Station	0.223	0.245	$0.245	$0.269
Direct Rural	0.245	0.269	0.245	0.269
City	0.248	0.273	0.259	0.287
Distribution Center Facility	0.255	0.277	0.269	0.291
Forward Consolidation Point	0.269	0.291	0.277	0.312
Residue	0.284	0.312	0.298	0.337
Each additional pound over 1.76 ounce	0.544	0.626	0.544	0.626

Note: A extra charge of 3.5 cents may be charged for the number of items not meeting address accuracy requirements.

612.32 CPC Size Definitions

Every item must meet size and weight requirements for its type. The size standards are as follows:

WEIGHT AND SIZE LIMITS

	Length	Width	Thickness
Cards/Envelopes			
Standard (Short/Long) Items:			
Minimum	5 ½ in. (140 mm)	3 9/16 in. (90 mm)	.007 in. (0.18 mm.)
Maximum	9 5/8 in. (245 mm)	5 7/8 in. (150 mm)	3/16 in. (5 mm)
Large (Oversized) Items:	14 7/8 in. (380 mm)	10 9/16 in. (270 mm)	13/16 in. (20 mm)

WEIGHT AND SIZE LIMITS—Continued

	Length	Width	Thickness
Other Items *			
Standard (Short/Long) Items:			
Minimum	3 15/16 in. (100 mm)	2 3/4 in. (70 mm)	.007 in. (0.18 mm)
Maximum	9 5/8 in. (245 mm)	5 7/8 in. (150 mm)	3/16 in. (5 mm)
Large (Oversized) Items:	14 7/8 in. (380 mm)	10 9/16 in. (270 mm)	13/16 in. (20 mm)
Maximum Weight	17.6 oz. (500 grams)		

* Other items are defined as items other than cards and envelopes.

612.33 Postage Payment Method

Postage must be paid through an advance deposit account. Qualifying mailers have the option of placing a CPC permit imprint on their mailpieces in combination with a Canadian return address or a customer specific USPS permit imprint in combination with a domestic U.S. return address.

612.34 Postage Statement

Mailers must compute the total postage on PS Form 3656, Postage Statement—Global Direct Canada Admail, furnished by the Postal Service. A separate postage statement must be prepared for each individual mailing.

612.4 Preparation Requirements

Mailers are responsible for ensuring that items tendered under the Global Direct—Canada Admail service comply with CPC's domestic mail preparation requirements.

612.5 Ancillary Services

612.51 Business Reply Service

This service provides for the return of Canadian business reply mail through the Postal Service to a specified address in Canada. Detailed specifications for this service are contained in Publication 524, Global Direct—Canada Admail Service Guide. The rates for this service are $0.45 for items not weighing over 1.06 ounces (30 grams) and $0.65 for items weighing over 1.06 ounces (30 grams) but not over 1.76 ounces (50 grams).

612.52 Return of Undeliverable Mail

Mailers using a Canadian identity (Canadian indicia and return address) may have undeliverable items returned to the U.S. through a Canadian return address. The sender must endorse items ''Return Postage Guaranteed'' and use the return address specified by the Postal Service. The rates are:

Weight (not over)	Rate
3.52 oz. (100 grams)	$0.80
7.04 oz. (200 grams)	1.32
17.60 oz.(500 grams)	2.09

Note: If a U.S. permit is used, returned items are subject to the applicable surface printed matter postage that would have been paid from the United States to Canada.

612.6 Advance Notification

Mailers who are interested in using the Global Direct—Canada Admail service must furnish the following information to the Postal Service at least 10 business days prior to their first planned mailing date:

a. Customer's name and address.

b. Proposed initial mailing date and frequency.

c. Mailing location.

d. The type of items, including size and weight, that will be mailing.

e. Number of items in the proposed mailing.

f. Mail sort option used.

g. The mailing equipment that the customer intends to use to prepare items.

h. Ancillary services used.

All correspondence pertaining to Global Direct—Canada Admail service should be directed to:

MARKET SEGMENT MANAGER
PUBLISHING, INTERNATIONAL BUSINESS UNIT, US POSTAL SERVICE 475 L'ENFANT PLZ SW 370 IBU, WASHINGTON DC 20260–6500.

612.7 Service Agreement

Based on the mailer's input, the Postal Service prepares a service agreement to cover the projected mailing(s). This agreement stipulates the conditions of mailing. Concurrent with the preparation of the service agreement, instructions are issued to the designated post office of entry regarding the acceptance and verification of the prospective customer's mailpieces.

* * * * *

A transmittal letter changing the relevant pages in the International Mail Manual will be published and automatically transmitted to all subscribers. Notice of issuance of the transmittal will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–1042 Filed 1–15–99; 8:45 am]

BILLING CODE 7710–12–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–11

RIN 3090–AG02

Relocation of FIRMR Provisions Relating to GSA's Role in the Records Management Program

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Interim rule; extension of effective date.

SUMMARY: The General Services Administration (GSA) is extending Federal Property Management Regulations provisions regarding records management.

DATES: The extension is effective December 31, 1998. The interim rule published August 7, 1996 was effective from August 8, 1996 through December 31, 1997. A supplement published on October 31, 1998 extended the period of effectiveness through December 31, 1998. The period of effectiveness is further extended through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr., Office of Governmentwide Policy, telephone 202–501–4469.

SUPPLEMENTARY INFORMATION: FPMR interim rule B–1 was published in the **Federal Register** on August 7, 1996, 61 FR 41001. The expiration of the interim rule was December 31, 1997. A supplement published in the **Federal Register** on October 31, 1997, 62 FR

58922, extended the expiration date through December 31, 1998. This supplement further extends the expiration date through December 31, 1999.

List of Subjects in 41 CFR Part 101–11

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

Therefore the effective date for interim rule B–1 published at 61 CFR 41001, August 7, 1996, and extended until December 31, 1998 at 62 FR 58922, October 31, 1997, is further extended until December 31, 1999.

Dated: January 12, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–1107 Filed 1–15–99; 8:45 am]

BILLING CODE 6820–34–p

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–126, RM–8671]

Radio Broadcasting Services; Paris, TX, and Madill, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 270C2 for Channel 282C2 at Paris, Texas, and modifies the license of Station KBUS, Paris, to specify operation on Channel 270C2. This document also substitutes Channel 272A for Channel 273A at Madill, Oklahoma, and modifies the license of station KMAD, Madill, to specify operation on Channel 272A. These actions return both of these stations to their former operating channels. *See* 62 FR 39781, July 24, 1997. The reference coordinates for the Channel 270C2 allotment at Paris, Texas, are 53–45–04 and 95–24–51. The reference coordinates for the Channel 272A allotment at Madill, Oklahoma, are 34–06–24 and 96–46–30. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 23, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* adopted December 30, 1998, and released January 8, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 282C2 and adding Channel 270C2 at Paris.

3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 273A and adding Channel 272A at Madill.

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–904 Filed 1–15–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 555 and 581

[Docket No. NHTSA–99–4993]

RIN 2127–AH51

Temporary Exemption From Motor Vehicle Safety Standards; Bumper Standard

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

ACTION: Final rule; technical amendments.

SUMMARY: This document amends NHTSA's temporary exemption regulation (49 CFR part 555) and bumper standard (49 CFR part 581) to reflect recent statutory amendments that allow us to grant temporary exemptions from Federal bumper standards on the same bases as we grant temporary exemptions from the Federal motor vehicle safety standards. Before now, we had authority to grant a bumper standard exemption only if the vehicle exempted was manufactured for a special use, and if compliance with the bumper standard would interfere unreasonably with the special use of the vehicle.

Low-volume manufacturers may now present hardship arguments in asking for an exemption of up to 3 years. All manufacturers may ask for exemptions of up to 2 years for a limited number of vehicles if the exemption would make easier the introduction of innovative impact protection devices or the use of low-emission vehicles, or if it would allow the sale of a vehicle whose overall level of impact protection is at least equal to that of nonexempted vehicles.

Because part 581 does not reflect our authority to provide special-use exemptions, we are taking this opportunity to establish a procedure for exemptions from the bumper standard on this basis similar to those of part 555, including providing an opportunity for public comment. However, these special-use exemptions would be permanent, given the likelihood that the vehicle is intended for its special use throughout its production life.

We are also making minor amendments to conform to the terminology and section numbers adopted in the 1994 recodification of our statutes.

Because these are technical amendments, they are effective upon their publication.

DATES: Effective date: The final rule is effective on January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (telephone: 202–366–5263; FAX: 202–366–3820; e-mail: Tvinson@nhtsa.dot.gov).

SUPPLEMENTARY INFORMATION:

Background

For many years, manufacturers of motor vehicles have been able to apply to us for a temporary exemption from one or more of the Federal motor vehicles safety standards, on one or more of the four bases stated in 49 U.S.C. 30113 (enacted by Pub. L. 92–548, October 25, 1972, as Section 123 of the National Traffic and Motor Vehicle Safety Act, and implemented with 49 CFR part 555). We provide exemptions from a standard of up to three years if we find that compliance would cause substantial economic hardship to a manufacturer (whose annual production is 10,000 units or less) that has tried to meet the standard in good faith. We provide exemptions of up to two years, covering 2500 vehicles a year, to any

manufacturer, if the exemption would promote innovative safety devices or low-emission vehicles, consistent with the safety of the vehicle, or if compliance prevents the applicant from selling a vehicle whose overall level of safety is at least equal to a complying vehicle.

In October 1972, Congress also enacted the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513, October 20, 1972), Title I of which (now 49 U.S.C. Chapter 325) required us to issue bumper standards directed towards reducing the economic loss resulting from motor vehicle crashes at low speeds. We complied by promulgating 49 CFR part 581 *Bumper Standard*. This standard superseded an earlier bumper standard based on safety considerations, Federal Motor Vehicle Safety Standard No. 215 *Exterior Protection*. Standard No. 215 went into effect on September 1, 1972, and we had granted several exemptions from it under our exemption authority provided by Pub. L. 92–548. On the the effective date of part 581, September 1, 1978, Standard No. 215 was removed, and the exemptions then in effect terminated. The remainder of the term of these safety standard exemptions could not be transferred to excuse compliance with Part 581, because the Bumper Standard was not a safety standard, and, in any event, contained somewhat different requirements.

Although both Acts were virtually contemporaneous, Pub. L. 92–513 contained no exemption authority comparable to that provided by Pub. L. 92–548. We were authorized only to exempt from any part of a bumper standard a ''multipurpose passenger vehicle'' as defined by 49 U.S.C. 32101(9), or ''a make, model, or class of a passenger motor vehicle manufactured for a special use, if the standard would interfere unreasonably with the special use of the vehicle'' (49 U.S.C. 32502(c)). We exercised this limited authority by excluding multipurpose passenger vehicles from Part 581, but we never excused any vehicle from compliance on the basis of ''special use.''

With the enactment in October 1998 of Pub. L. 105–277, the Omnibus Consolidated Appropriations Act of 1999, Congress has now given us authority to provide the same kinds of exemptions from the bumper standard as from the safety standards.

The 1998 amendments to 49 U.S.C. 30113 and 49 U.S.C. Chapter 325

These are the amendments made to Title 49 by Pub. L. 105–277. The first sentence of section 30113(b)(1) now reads as follows: ''The (NHTSA Administrator) may exempt, on a temporary basis, motor vehicles from a motor vehicle safety standard prescribed under this chapter or passenger motor vehicles from a bumper standard prescribed under chapter 325 of this title on terms the (Administrator) considers appropriate.'' The Administrator may provide an exemption on finding that ''an exemption is consistent with the public interest and this chapter or chapter 325 of this title (as applicable),'' section 30113(b)(1)(3)(A), as amended. If the application is made on a hardship basis, the manufacturer must describe its ''good faith effort to comply with each motor vehicle safety standard prescribed under this chapter or a bumper standard prescribed under chapter 325 of this title,'' section 30113(c)(1). Under section 30113(d), as amended in part, ''A manufacturer is eligible for an exemption under subsection (b)(3)(B)(1) of this section (including an exemption under subsection (b)(3)(B)(1) relating to a bumper standard referred to in subsection (b)(1)).'' Finally, the exemption label ''shall either name or describe each motor vehicle safety standard prescribed under this chapter or bumper standard prescribed under chapter 325 of this title from which the vehicle is exempt,'' section 30113(h) as amended.

Pub. L. 105–277 made conforming amendments to 49 U.S.C. section 32502(c), which now reads:

> (c) EXEMPTIONS.—For good cause, the (Administrator) may exempt from all or any part of a standard—
>
> (1) A multipurpose passenger vehicle;
>
> (2) A make, model, or class of a passenger motor vehicle manufactured for a special use, if the standard would interfere unreasonably with the special use of the vehicle; or
>
> (3) A passenger motor vehicle for which an application for an exemption under section 30113(b) of this title has been filed in accordance with the requirements of that section.

Finally, section 32506(a) GENERAL—has been amended to exclude from the violations set forth in sections 32506(a)(1) through (a)(4) the exceptions ''provided in this section and section 32502 of this title.''

Conforming Amendments We Are Making to 49 Parts 555 and 581

Part 555

In recognition of the expanded exemption authority, we are changing the title of part 555 to ''Temporary Exemption from Motor Vehicle Safety and Bumper Standards.'' We are also adding bumper standards to § 555.1 *Scope*, and § 555.2 *Purpose*. We are also changing the statutory references in §§ 555.1, 555.6(a)(2)(iv), and 555.6(c)(1) to reflect the recodification in 1994 under which the exemption authority of section 123 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1410) became 49 U.S.C. 30113.

Under section 30113 as now amended, we may exempt ''motor vehicles'' from a safety standard, and ''passenger motor vehicles'' from a bumper standard. A ''passenger motor vehicle'' is defined as ''a motor vehicle with motive power designed to carry not more than 12 individuals, but does not include (A) a motorcycle; or (B) a truck not designed primarily to carry its operator or passengers,'' 49 U.S.C. 32101(10). Part 581's bumper standard currently applies to ''passenger motor vehicles other than multipurpose passenger vehicles,'' § 581.3, which, in effect, means ''passenger cars'' as defined by 49 CFR 571.3(b) for purposes of compliance with the Federal motor vehicle safety standards. Nevertheless, because section 30113 has been amended to include the phrase ''passenger motor vehicles,'' we are amending §§ 555.3 and 555.5(a) to apply to manufacturers of passenger motor vehicles as well as manufacturers of motor vehicles, to avoid questions of interpretation. We are also amending § 555.4 *Definitions* to define ''passenger motor vehicles'' as the term is defined in section 32101(10).

The 1994 recodification uses the term ''apply'' rather then ''petition,'' and we are also amending part 555 where appropriate to replace the noun and verb ''petition'' with ''application'' and ''apply.''

There are two findings that we must make to grant an exemption. The first finding is that ''an exemption is consistent with the public interest and (chapter 301) or chapter 325 of this title (as applicable).'' Section 30113(b(3)(A), as amended. We are changing the corresponding requirement under section 555.5(b)(7) to include chapter 325.

The second finding confirms the applicant's arguments under section 30113(b)(3)(B) that an exemption would serve a purpose listed in subsections (B)(i)–(iv): Relieve a substantial economic hardship, make easier the introduction of a new motor vehicle safety feature, or the introduction of a low-emission motor vehicle without unreasonably lowering its safety level, or allow the sale of a motor vehicle whose overall level of safety is at least that of a nonexempted vehicle. However, Pub. L. 105–277 made no corresponding amendments to sections. 30113(b)(3)(B)(i)–(iv) to allow arguments for impact protection in lieu

of safety arguments (None appears needed for section 30113(b)(3)(B)(i) whose references to ''the standard'' can now be read to include bumper standards).

Thus, a literal reading of the amended statute would require us to find that a bumper standard exemption would make easier the introduction of a new safety feature, or contribute to low-emission vehicle development without an adverse effect on safety, or allow the sale of a vehicle certified to meet all applicable Federal motor vehicle safety standards which cannot be sold because it does not meet the bumper standard.

We have reviewed this matter carefully, and have concluded that Pub. L. 105–277 did not intend that we make safety findings in order to grant exemptions from the bumper standard. Safety and bumper standards are issued under different authorities for different purposes. One purpose is not subservient to the other. In the regulatory sense, the bumper standards are the co-equals of the safety standards. The new amendments give us specific authority to exempt a manufacturer from bumper standards by making the first finding that the exemption is consistent with chapter 325. It follows from the first finding, that the second finding should complement the first. We have concluded, therefore, that § 555.6 should allow arguments that an exemption would make easier the introduction of a new impact protection feature that is at least equivalent to a conforming vehicle and, for the same reason, might facilitate the introduction of a low-emission vehicle. The section should also allow a finding that the applicant is otherwise unable to sell a vehicle with an overall level of impact protection at least equal to that of a nonexempted vehicle. However, we would reserve the right to balance safety considerations against considerations of property protection as part of our first finding that an exemption would be in the public interest. Thus, we would not preclude an applicant from making safety arguments in its application, but we would neither require it nor expect it.

Part 581

Under part 581 as amended, the Administrator may provide the three types of exemptions from the bumper standard that we discussed earlier. We have already exercised the authority to exempt multipurpose passenger vehicles under section 32502(c)(1), since the bumper standard does not apply to this class of vehicle, but we have never exercised our authority to exempt vehicles on the basis of special use under section 32502(c)(2). Therefore, we are adding a new section, § 581.8 *Exemptions*, to establish an application/decision procedure, not only for applications that may be filed under section 30113 and part 555, but also for special-use exemptions.

Under the new exemption procedure, a manufacturer of a passenger motor vehicle to which a bumper standard issued under part 581 applies may apply to us for rulemaking to exempt a class of passenger motor vehicles from all or any part of a bumper standard on the basis that the class of vehicles has been manufactured for a special use and that compliance with the standard would unreasonably interfere with the special use of the class of vehicle. A manufacturer may also ask us to exempt a make or model of passenger motor vehicle on this special-use basis or in accordance with part 555.

An application filed for exemption on the basis of special use should contain the preliminary information specified in Sec. 555.5 for other exemption applications, and data, views, and arguments in support that the vehicle has been manufactured for a special use and that compliance with the bumper standard would interfere unreasonably with the special use of the vehicle. An application filed for exemption on the bases specified in Part 555 should be filed in accordance with the requirements of that part. We will process all bumper exemption applications the same way as we do those for safety exemptions, in accordance with § 555.7, publishing a notice in the **Federal Register** that affords the public an opportunity to comment. The statute is silent on the length of a special-use exemption, and we will provide no term for it. However, it will expire when the make and model covered is no longer produced, or when it has been so modified from its original design that it can no longer be considered manufactured for the special use upon which the exemption was based. We may terminate a bumper standard exemption in the manner set forth for termination of safety standard exemptions in §§ 555.8(c) and 555.8(f), and for the reasons set forth in § 555.8(d). A vehicle exempted from the bumper standard shall be labeled in accordance with § 555.9. We will make available to the public information relating to an application in the manner specified in § 555.10.

We are also revising § 581.4 *Definitions* to update the statutory citation of the Motor Vehicle Information and Cost Savings Act.

Effective Date

Because these amendments are technical in nature, implement statutory amendments, and relieve a restriction upon passenger motor vehicle manufacturers, it is hereby found that notice and comment are not necessary, and that the agency may issue a final rule, incorporating these technical amendments, that is effective upon the date of publication. The amendments are therefore effective upon publication in the **Federal Register**.

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12886. Further, NHTSA has determined that the action is not significant under Department of Transportation regulatory policies and procedures. The amendments implement statutory amendments extending the right to manufacturers of motor vehicles to apply for exemptions from the bumper standards. NHTSA concludes that the costs of the final rule are so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There is no substantial effect upon State and local governments. There is no substantial impact upon a major transportation safety program. The amendments may benefit primarily small manufacturers who require additional time and resources to comply with the full range of Federal motor vehicle safety and bumper standards, or manufacturers of any size who may wish to produce a passenger motor vehicle for a special use and cannot do so because compliance with the bumper standard interferes unreasonably with that special use.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this action will not have a substantial economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule would primarily affect motor vehicle manufacturers who cannot comply with 49 CFR part 581 and are thereby prohibited from selling motor vehicles that do not meet the Federal bumper standards. These manufacturers are small businesses within the meaning of the Regulatory Flexibility Act, and

the final rule affords a means by which they may achieve temporary relief while they achieve compliance with all applicable Federal bumper and motor vehicle safety standards.

Governmental jurisdictions will not be affected at all since they are not purchasers of nonconforming motor vehicles.

C. Executive Order 12612 (Federalism)

The agency has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 ''Federalism'' and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles manufactured pursuant to exemption from a bumper standard will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice

This rule will not have any retroactive effect. Under 49 U.S.C. 32511(a), whenever a Federal passenger motor vehicle bumper standard is in effect, a state may prescribe or enforce a bumper standard only if the standard is identical to a standard prescribed under 49 U.S.C. 32502. Section 32503 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal passenger motor vehicle bumper standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule will not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR parts 555 and 581

Imports, Motor vehicle safety, Motor vehicles.

PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

In consideration of the foregoing, 49 CFR part 555 is amended as follows:

1. The authority citation for part 555 is revised to read as follows:

Authority: 49 U.S.C. 30113, 32502, Pub. L. 105–277; delegation of authority at 49 CFR 1.50.

2. The heading of Part 555 is revised to read as set forth above.

3. Section 555.1 *Scope* is revised to read as follows:

§ 555.1 Scope.

This part establishes requirements for the temporary exemption by the National Highway Traffic Safety Administration (NHTSA) of certain motor vehicles from compliance with one or more Federal motor vehicle safety standards in accordance with 49 U.S.C. 30113, and of certain passenger motor vehicles from compliance with all or part of a Federal bumper standard in accordance with 49 U.S.C. 32502.

4. Section 555.2 *Purpose* is amended by designating the current text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 555.2 Purpose.

* * * * *

(b) The purpose of this part is also to provide a means by which manufacturers of passenger motor vehicles may obtain a temporary exemption from compliance with all or part of a Federal bumper standard issued under part 581 of this chapter on a basis similar to that provided for exemptions from the Federal motor vehicle safety standards.

5. Section 555.3 *Application* is revised to read:

§ 555.3 Application.

This part applies to manufacturers of motor vehicles and passenger motor vehicles.

6. Section 555.4 *Definitions* is amended by adding a definition of *Passenger Motor Vehicle* in alphabetical order, between the definition of *Administrator* and the definition of *United States,* to read as follows:

§ 555.4 Definitions.

* * * * *

Passenger motor vehicle means a motor vehicle with motive power designed to carry not more than 12 individuals, but does not include a truck not designed primarily to carry its operator or passengers, or a motorcycle.

* * * * *

6a. The heading to §§ 555.5 and 555.6, and §§ 555.5(b) introductory text, 555.5(b)(5), 555.6(a)(1)(v), 555.7(d) introductory text, and 555.7(e) are amended by removing ''petition'' and adding in its place ''application.''

7. Sections 555.5(a) and (b)(7) are revised to read as follows:

§ 555.5 Application for exemption.

(a) A manufacturer of motor vehicles or passenger motor vehicles may apply to NHTSA for a temporary exemption from any Federal motor vehicle safety or bumper standard or for a renewal of any exemption on the bases of substantial economic hardship, making easier the development or field evaluation of new motor vehicle safety or impact protection, or low-emission vehicle features, or that compliance with a standard would prevent it from selling a vehicle with an overall level of safety or impact protection at least equal to that of nonexempted vehicles.

(b) * * *

(7) Set forth the reasons why the granting of the exemption would be in the public interest, and, as applicable, consistent with the objectives of 49 U.S.C. Chapter 301 or Chapter 325.

* * * * *

§ 555.6 [Amended]

8. Sections 555.6(b)(5), 555.6(c)(5), 555.6(d)(4), 555.7(b), 555.7(c), 555.8(e), and 555.8(f)(1) are amended by removing ''a petition'' and adding in its place ''an application.''

9. Sections 555.6(a)(2)(iv) last sentence in parenthesis, 555.6(b) introductory text, 555.6(b)(1), 555.6(b)(2) introductory text, 555.6(b)(2)(i), 555.6(b)(2)(iii), 555.6(b)(4), 555.6(c)(1), 555.6(c)(2) introductory text, 555.6(c)(2)(iv), 555.6(d) introductory text, 555.6(d)(1) introductory text, 555.6(d)(1)(ii), 555.6(d)(1)(iv), and 555.6(d)(1)(v) are revised to read as follows:

§ 555.6 Basis for application.

(a) If the basis of the application is that compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith, the applicant shall provide the following information:

* * * * *

(2) * * *

(iv) * * * (49 U.S.C. 30113(d) limits eligibility for exemption on the basis of economic hardship to manufacturers whose total motor vehicle production in the year preceding the filing of their applications does not exceed 10,000.)

(b) If the basis of the application is that the exemption would make easier the development or field evaluation of a new motor vehicle safety or impact

protection features providing a safety or impact protection level at least equal to that of the standard, the applicant shall provide the following information:

(1) A description of the safety or impact protection features, and research, development, and testing documentation establishing the innovational nature of such features.

(2) An analysis establishing that the level of safety or impact protection of the feature is equivalent to or exceeds the level of safety or impact protection established in the standard from which exemption is sought, including—

(i) A detailed description of how a vehicle equipped with the safety or impact protection feature differs from one that complies with the standard;

* * * * *

(iii) The results of tests conducted on the safety or impact protection features that demonstrates performance which meets or exceeds the requirements of the standard.

* * * * *

(4) A statement whether, at the end of the exemption period, the manufacturer intends to conform to the standard, apply for a further exemption, or petition for rulemaking to amend the standard to incorporate the safety or impact protection features.

* * * * *

(c) If the basis of the application is that the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably lower the safety or impact protection level of that vehicle, the applicant shall provide—

(1) Substantiation that the vehicle is a low-emission vehicle as defined by 49 U.S.C. 30113(a).

(2) Research, development, and testing documentation establishing that a temporary exemption would not unreasonably degrade the safety or impact protection of the vehicle, including—

* * * * *

(iv) Reasons why the failure to meet the standard does not unreasonably degrade the safety or impact protection of the vehicle.

* * * * *

(d) If the basis of the application is that the applicant is otherwise unable to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle, the applicant shall provide—

(1) A detailed analysis of how the vehicle provides the overall level of safety or impact protection at least equal to that of nonexempted vehicles, including—

* * * * *

(ii) A detailed description of any safety or impact protection features that the vehicle offers as standard equipment that are not required by the Federal motor vehicle safety or bumper standards;

* * * * *

(iv) The results of any tests conducted on the vehicle demonstrating that its overall level of safety or impact protection exceeds that which is achieved by conformity to the standards.

(v) Other arguments that the overall level of safety or impact protection of the vehicle is at least equal to that of nonexempted vehicles.

* * * * *

10. The heading of § 555.7, and § 555.7(a) are revised to read as follows:

§ 555.7 Processing of applications.

(a) The NHTSA publishes in the **Federal Register**, affording opportunity for comment, a notice of each application containing the information required by this part. However, if the NHTSA finds that an application does not contain the information required by this part, it so informs the applicant, pointing out the areas of insufficiency and stating that the application will not receive further consideration until the required information is submitted.

* * * * *

11. In section 555.10, the first sentence of paragraph (a) is revised to read as follows:

§ 555.10 Availability for public inspection.

(a) Information relevant to an application under this part, including the application and supporting data, memoranda of informal meetings with the applicant or any other interested person, and the grant or denial of the application, is available for public inspection, except as specified in paragraph (b) of this section, in Room PL–401 (Docket Management), 400 Seventh Street, SW., Washington, DC 20590. * * *

PART 581—[AMENDED]

In consideration of the foregoing, 49 CFR part 581 is amended as follows:

1. The authority citation for part 581 is revised to read as follows:

Authority: 49 U.S.C. 30113, 32502, Pub. L. 105–277; delegation of authority at 49 CFR 1.50.

2. The first sentence in § 581.4 *Definitions* is revised to read as follows: *§ 581.4 Definitions.*

All terms defined in 49 U.S.C. 32101 are used as defined therein.

* * * * *

3. New § 581.8 *Exemptions* is added to read:

§ 581.8 Exemptions.

A manufacturer of a passenger motor vehicle to which a bumper standard issued under this part applies may apply to the Administrator:

(a) For rulemaking as provided in part 552 of this chapter to exempt a class of passenger motor vehicles from all or any part of a bumper standard issued under this part on the basis that the class of vehicles has been manufactured for a special use and that compliance with the standard would unreasonably interfere with the special use of the class of vehicle; or

(b) To exempt a make or model of passenger motor vehicle on the basis set forth in paragraph (a) of this section or part 555 of this chapter.

(c) An application filed for exemption on the basis of paragraph (a) of this section shall contain the information specified in § 555.5 of this chapter, and set forth data, views, and arguments in support that the vehicle has been manufactured for a special use and that compliance with the bumper standard would interfere unreasonably with the special use of the vehicle.

(d) An application filed for exemption under part 555 of this chapter shall be filed in accordance with the requirements of that part.

(e) The NHTSA shall process exemption applications in accordance with § 555.7 of this chapter. An exemption granted a manufacturer on the basis of paragraph (a) of this section is indefinite in length but expires when the manufacturer ceases production of the exempted vehicle, or when the exempted vehicle as produced has been so modified from its original design that the Administrator decides that it is no longer manufactured for the special use upon which the application for its exemption was based. The Administrator may terminate an exemption in the manner set forth in §§ 555.8(c) and 555.8(f) of this chapter, and for the reasons set forth in § 555.8(d) of this chapter. An exempted vehicle shall be labeled in accordance with § 555.9 of this chapter. Information relating to an application shall be available to the public in the manner specified in § 555.10 of this chapter.

Issued on January 11, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–933 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 64, No. 11
Tuesday, January 19, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–82–AD]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Avions Pierre Robin Model R2160 airplanes. The proposed AD would require repetitively inspecting the vertical stabilizer spar in the area of the lower fitting of the rudder for cracks, loose rivets, or spar web distortion; and modifying the vertical stabilizer spar either immediately or at a certain time period depending on whether discrepancies are found during the inspections. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to detect defects (cracks, loose rivets, or spar web distortion) in the vertical stabilizer spar, which could result in structural failure of the vertical stabilizer with possible reduced or loss of control of the airplane.

DATES: Comments must be received on or before February 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–82–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 80 44 20 50; facsimile: 80 35 60 80. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–82–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–82–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist or could develop on all Avions Pierre Robin Model R2160 airplanes. The DGAC reports cracks found on the vertical stabilizer in the area of the lower fitting of the rudder.

This condition, if not corrected, could result in structural failure of the vertical stabilizer with possible reduced or loss of control of the airplane.

Relevant Service Information

Avions Pierre Robin has issued Service Bulletin No. 120, dated September 27, 1990, which specifies procedures for inspecting the vertical stabilizer spar for cracks, loose rivets, or spar web distortion. This service bulletin also specifies modifying the vertical stabilizer spar if a discrepancy is found by incorporating Avions Pierre Robin Kit No. 97.40.03.

The DGAC classified this service bulletin as mandatory and issued French AD 90–224(A), dated December 12, 1990, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

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

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Avions Pierre Robin Model R2160 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively

inspecting the vertical stabilizer spar in the area of the lower fitting of the rudder for cracks, loose rivets, or spar web distortion; and modifying the vertical stabilizer spar either immediately or at a certain time period depending on whether discrepancies are found during the inspections.

Accomplishment of the proposed inspections would be required in accordance with Avions Pierre Robin Service Bulletin No. 120, dated September 27, 1990. The modification will be required in accordance with the instructions included with Avions Pierre Robin Kit No. 97.40.03, as specified in Avions Pierre Robin Service Bulletin No. 120, dated September 27, 1990.

Cost Impact

The FAA estimates that 10 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 20 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $13,000, or $1,300 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Avions Pierre Robin: Docket No. 98–CE–82–AD.

Applicability: Model R2160 airplanes, all serial numbers, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect defects (cracks, loose rivets, or spar web distortion) in the vertical stabilizer spar, which could result in structural failure of the vertical stabilizer with possible reduced or loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (b) of this AD is incorporated, inspect the vertical stabilizer spar in the area of the lower fitting of the rudder for cracks, loose rivets, or spar web distortion. Accomplish this inspection in accordance with the instructions in Avions Pierre Robin Service Bulletin No. 120, dated September 27, 1990.

(b) At whichever of the compliance times in paragraphs (b)(1) and (b)(2) of this AD that occurs first, modify the vertical stabilizer spar by incorporating Avions Pierre Robin Kit No. 97.40.03 in accordance with the instructions to this kit, as specified in Avions Pierre Robin Service Bulletin No. 120, dated September 27, 1990.

(1) Prior to further flight if cracks, loose rivets, or spar web distortion are/is found during any inspection required by paragraph (a) of this AD; or

(2) Within the next 12 calendar months after the effective date of this AD.

(c) Modifying the vertical stabilizer spar as specified in paragraph (b) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(d) As of the effective date of this AD, no person may install, on any affected airplane, a vertical stabilizer spar that has not been modified as specified in paragraph (b) of this AD.

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

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

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

(g) Questions or technical information related to the service information referenced in this AD should be directed to Avions Pierre Robin, 1 route de Troyes 21121 Darois, France; telephone: 03.80.44.20.50; facsimile: 03.80.35.60.80. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in French AD 90–224(A), dated December 12, 1990.

Issued in Kansas City, Missouri, on January 12, 1999.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1067 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–78]

Proposed Modification of Class E Airspace; Yankton, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Yankton, SD. This action would amend the effective hours of the Class E surface area from one (1) hour per day to twenty-four (24)

hours per day to accommodate regular air carrier operations that occur outside the current times of operation of the surface area. The purpose of this action is to afford an increased level of safety during instrument flight operations for the commercial air carrier operations at the Chan Gurney Municipal Airport.

DATES: Comments must be received on or before March 3, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–78, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–78.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Yankton, SD, by amending the effective hours of the surface area from one (1) hour per day to twenty-four (24) hours per day. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

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

* * * * *

AGL SD E2 Yankton, SD [Revised]

Yankton, Chan Gurney Municipal Airport, SD
(Lat. 42° 55′ 00″N., long. 97° 23′ 09″W.)
Yankton VOR/DME
(Lat. 42° 55′ 06″N., long. 97° 23′ 06″W.)

Within a 4.1-mile radius of the Chan Gurney Municipal Airport, and within 2.4 miles each side of the Yankton VOR/DME 319° radial extending from the 4.1-mile radius to 7.4 miles northwest of the VOR/DME and within 2.4 miles southwest of the Yankton VOR/DME 145° radial and 2.8 miles northeast of the Yankton VOR/DME 145° radial extending from the 4.1-mile radius to 7.4 miles southeast of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on December 31, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1102 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–77]

Proposed Modification of Class E Airspace; Grand Rapids, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Grand Rapids, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 065° helicopter point in space approach, has been developed for Spectrum Medical Center/Downtown Campus Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Grand Rapids, MI, in order to include the point in space approach serving Spectrum Medical Center/Downtown Campus Heliport.

DATES: Comments must be received on or before March 3, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–77, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–77.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Grand Rapids, MI, to accommodate aircraft executing the proposed GPS SIAP 065° helicopter point in space approach for Spectrum Medical Center/Downtown Campus Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AGL MI E5 Grand Rapids, MI [Revised]

Grand Rapids, Kent County International Airport, MI

(Lat. 42°52′ 51″N., long. 85°31′ 22″W)

Spectrum Medical Center/Downtown Campus, MI Point in Space Coordinates (Lat. 42°57′ 09″N., long. 85°39′ 48″W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Kent County International Airport, and within a 6.0-mile radius of the Point in Space serving Spectrum Medical Center/Downtown Campus, excluding that airspace within the Sparta, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on December 31, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1101 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Proposed Revocation of Amendments; Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed Revocation of Amendments.

SUMMARY: As directed by the fiscal year 1999 appropriations legislation for the Departments of Veterans Affairs and Housing and Urban Development, and several independent agencies, including the Consumer Product Safety Commission, the Commission proposes to revoke certain amendments to the standards for the flammability of children's sleepwear, sizes 0 through 6X and sizes 7 through 14.

DATES: Written comments concerning this proposed revocation are due not later than March 22, 1999.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–0800 or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments should be submitted in five copies and captioned ''Sleepwear Revocation.'' Comments may also be filed by telefacsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Margaret L. Neily, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0508, extension 1293.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Commission enforces two flammability standards for children's sleepwear. The flammability standard for children's sleepwear in sizes 0 through 6X is codified at 16 CFR Part 1615. The flammability standard for children's sleepwear in sizes 7 through 14 is codified at 16 CFR Part 1616.

On September 9, 1996, the Commission issued a final rule amending the flammability standards for children's sleepwear to exclude from the definition of ''children's sleepwear,'' codified at 16 CFR 1615.1(a) and 1616.2(a), (1) garments sized for infants nine months of age or younger and (2) tight-fitting garments for children older than nine months. 61 FR 47634. In addition, on January 12, 1999, the Commission voted to issue technical changes to the September 9, 1996 amendments. At the same time, the Commission amended the policy statements at 16 CFR 1615.64(d) and 1616.65(d) so that infant garments and tight-fitting garments can be marketed and promoted with other sleepwear.

B. Legislation

The bill providing fiscal year 1999 appropriations for the Commission and other agencies was enacted on October 21, 1998. Public Law 105–276. Section 429 of that law requires the Commission to propose, for comment, to revoke the 1996 amendments to the sleepwear standards, along with any subsequent amendments, not later than 90 days after October 21, 1998. The law also requires the General Accounting Office (''GAO'') to review burn incident data from the ignition of children's sleepwear from small open-flame sources for the period July 1, 1997 through January 1, 1999. The review must be completed by April 1, 1999 and be submitted to the Congress and the Commission.

Based on the GAO findings and other available information, the Commission is required to issue a final rule by July 1, 1999. The final rule must (1) revoke, (2) maintain, or (3) modify the 1996 and other later amendments of the flammability standards for children's sleepwear. The rulemaking conducted with respect to this matter is not subject to (1) the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, (2) the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, (3) the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (4) the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (5) the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, or (6) any other statute or Executive order.

Based on the foregoing, the Commission proposes to revoke the September 9, 1996 amendments, and subsequent amendments, including the technical amendments and the amendment to the policy statements. The following amendments would reinstate the substance of flammability standards for children's sleepwear as they existed before the 1996 and later amendments.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer protection, Flammable materials, Infants and children, Labeling, Records, Sleepwear, Textiles, Warranties.

Conclusion

Pursuant to Public Law 105–276, the Commission proposes to amend 16 CFR parts 1615 and 1616 as follows:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X

1. The authority citation for part 1615 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–70; 15 U.S.C. 1193.

2. Paragraph 1615.1 is amended by removing paragraph (c).

3. Paragraphs 1615.1(d) through (n) are redesignated paragraphs 1615.1(c) through (m), respectively.

4. Section 1615.1 is amended by removing paragraph (o) and revising paragraph (a), to read as follows:

§ 1615.1 Definitions.

* * * * *

(a) Children's Sleepwear means any product of wearing apparel up to and including size 6X, such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping. Diapers and underwear are excluded from this definition.

* * * * *

5. Section 1615.64 is amended by revising paragraph (d) introductory text to read as follows:

§ 1615.64 Policy to clarify scope of the standard.

* * * * *

(d) Retailers, distributors, and wholesalers, as well as manufacturers, importers, and other persons (such as converters) introducing a fabric or garment into commerce which does not meet the requirements of the

flammability standards for children's sleepwear, have an obligation not to promote or sell such fabric or garment for use as an item of children's sleepwear. Also, retailers, distributors, and wholesalers are advised not to advertise, promote, or sell as an item of children's sleepwear any item which a manufacturer, importer, or other person (such as a converter) introducing the item into commerce has indicated by label, invoice, or otherwise, does not meet the requirements of the children's sleepwear flammability standards and is not intended or suitable for use as sleepwear. Additionally, retailers are advised:

* * * * *

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14

1. The authority for part 1616 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1616.2 is amended by removing paragraph (m) and revising paragraph (a) to read as follows:

§ 1616.2 Definitions.

* * * * *

(a) Children's sleepwear means any product of wearing apparel size 7 through 14, such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping. Underwear and diapers are excluded from this definition.

* * * * *

3. Section 1616.65 is amended by revising paragraph (d) introductory text to read as follows:

§ 1616.65 Policy scope of the standard.

* * * * *

(d) Retailers, distributors, and wholesalers, as well as manufacturers, importers, and other persons (such as converters) introducing a fabric or garment into commerce which does not meet the requirements of the flammability standards for children's sleepwear, have an obligation not to promote or sell such fabric or garment for use as an item of children's sleepwear. Also, retailers, distributors, and wholesalers are advised not to advertise, promote, or sell as an item of children's sleepwear any item which a manufacturer, importer, or other person (such as a converter) introducing the item into commerce has indicated by label, invoice, or, otherwise, does not meet the requirements of the children's sleepwear flammability standards and is not intended or suitable for use as sleepwear. Additionally, retailers are advised:

* * * * *

Dated: January 13, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–1140 Filed 1–15–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 1 Through 124

[USCG–1999–4975]

Regulatory Flexibility Act Section 610 Review

AGENCY: Coast Guard, DOT.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The Coast Guard requests comments on the economic impact of our regulation on small entities. As required by the Regulatory Flexibility Act and as published in the Department of Transportation's (DOT) Semi-Annual Regulatory Agenda, we are analyzing our first group of regulations during fiscal year 1999 to identify rules which may have a significant economic impact on a substantial number of small entities. At the end of this year of analysis, we will publish a list of those regulations that may have a significant economic impact on a substantial number of small entities and seek public comment on how we can reduce the burden on small entities.

DATES: Comments must reach the Docket Management Facility on or before April 19, 1999.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG–1999–4975), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket at the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this document, contact Ms. Christena Green, Office of Regulations and Administrative Law (G–LRA), U.S. Coast Guard Headquarters, Room 3406, telephone 202–267–0133. For questions or viewing or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in our review of regulations by submitting written data, views, or arguments. If you submit comments, you should include your name and address, identify this notice (USCG–1999–4975) and the specific rule to which your comments apply, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES.** If you want acknowledgment of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

Although the Coast Guard has not scheduled a public meeting concerning this request for comments, you may request a public meeting by submitting a request to the address under **ADDRESSES.** The request should include the reasons why a meeting would be beneficial. If we determine that a public meeting should be held, we will hold the meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In 1980, Congress passed the Regulatory Flexibility Act (RFA), Public Law 96–354, requiring periodic review of those regulations that have a significant economic impact on a substantial number of small entities. The Department of Transportation (DOT) published its Semiannual Regulatory Agenda on November 9, 1998, listing in Appendix D (63 FR 62857) those regulations each modal agency will review under Section 610 of the RFA during the next 12 months to see if the agency can minimize their burden on small entities.

Appendix D also contains DOT's 10-year review plan for all of its existing

regulations (63 FR 62030). We have divided all Coast Guard rules into 10 groups by Code of Federal Regulations (CFR) volumes (group). Each group will be reviewed once every 10 years, undergoing a two-stage process—an Analysis Year and a Section 610 Review Year. At the end of the Analysis year, we will publish a list of those regulations subject to review under Section 610 during the following year (the Section Review Year).

1. Analysis Year

During this year, we will conduct a preliminary assessment of the rules in Group 1 to determine whether they are subject to a Section 610 review the next year. All rules in the group will undergo analysis during this year. Those rules that are identified as having a significant impact on a substantial number of small entities will undergo a Section 610 review in the next year. We will publish a notice in the **Federal Register** announcing our Section 610 review and identifying the regulations under review.

2. Section 610 Review Year

At the end of the Analysis Year, we would publish the results of our preliminary assessment. For those rules with no significant impact on a substantial number of small entities, we would identify and briefly explain why each rule has such a finding. For those rules with a significant impact on a substantial number of small entities, we would indicate that a formal § 610 review would be conducted to determine whether we could lessen the impact. If no changes were warranted, we would provide a short explanation for the finding. If we intended to change a rule, we would provide an explanation for the proposed changes.

We are currently in the Analysis Year, conducting a preliminary assessment for Group 1: Volume 1 of Title 33 Code of Federal Regulations (CFR), parts 1 through 124. During this year we will analyze the economic impact of Group 1 to determine if any rules are subject to a Section 610 review in fiscal year 2000. We will publish our findings in a future notice in the **Federal Register**.

The analysis for Group 1 will take place from fall 1998 to fall 1999. Group 1 contains the following Parts:

SUBCHAPTER A—GENERAL

1 General provisions
2 Jurisdiction
3 Coast Guard areas,districts, marine inspection zones, and captain of the port zones
4 OMB control numbers assigned pursuant to the Paperwork Reduction Act
5 Coast Guard Auxiliary
6 Protection and security of vessels, harbors, and waterfront facilities
8 United States Coast Guard Reserve
13 Decorations, medals, ribbons and similar devices
17 United States Coast Guard general gift fund
19 Waivers of navigation and vessel inspection laws and regulations
20 Class II Civil Penalties
23 Distincitive markings for Coast Guard vessels and aircraft
25 Claims
26 Vessel bridge-to-bridge radiotelephone regulations
27 Adjustment of civil monetary penalties for inflation

SUBCHAPTER B—MILITARY PERSONNEL

40 Cadets of the Coast Guard
45 Enlistment of personnel
49 Payment of amounts due mentally incompetent Coast Guards personnel
50 Coast Guard Retiring Review Board
51 Coast Guard Discharge Review Board
52 Board for Collection of Military Records of the Coast Guard
53 Coast Guard whistleblower protection
54 Allotments from active duty pay for certain support obligations

SUBCHAPTER C—AIDS TO NAVIGATION

60 [Reserved]
62 United States aids to navigation system
64 Marking of structures, sunken vessels and other obstructions
66 Private aids to navigation
67 Aids to navigation on artificial islands and fixed structures
70 Interference with or damage to aids to navigation
72 Marine Information
74 Charges for Coast Guard aids to navigation work
76 Sale and transfer of aids to navigation equipment

SUBCHAPTER D—INTERNATIONAL NAVIGATION RULES

Note: Application of the 72 COLREGS to territories and possessions.

80 COLGREGS demarcation lines
81 72 COLREGS: Implementing Rules
82 72 COLREGS: Interpretative Rules

SUBCHAPTER E—INLAND NAVIGATION RULES

84 Annex I: Positioning and technical details of lights and shapes
85 Annex II: Additional signals for fishing vessels fishing in close proximity
86 Annex III: Technical details of sound signal appliances
87 Annex IV: Distress signals
88 Annex V: Pilot rules
89 Inland navigation rules: implementing rules
90 Inland rules; Interpretative rules

SUBCHAPTER F—VESSEL OPERATING REGULATIONS

95 Operating a vessel while intoxicated

SUBCHAPTER G—REGATTAS AND MARINE PARADES

100 Marine events

SUBCHAPTER H—[RESERVED]

SUBCHAPTER I—ANCHORAGES

109 General
110 Anchorage regulations

SUBCHAPTER J—BRIDGES

114 General
115 Bridge locations and clearances; administrative procedures
116 Alteration of unreasonably obstructive bridges
117 Drawbridge operation regulations
118 Bridge lighting and other signals.

SUBCHAPTER K—SECURITY OF VESSELS

120 Security of passenger vessels.

We are seeking public comment on whether any rules in these parts have a significant impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. If you think that your business or organization qualifies as a small entity and that any rules in these parts have a significant economic impact on your business or organization, please submit a comment to the Docket Management Facility at the address under **ADDRESSES** explaining why you think it qualifies and in what way and to what degree these rules economically affect you.

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding any rules in parts 1 through 124 so that they can better evaluate the effects on them and participate in this review process. If your small business or organization is affected by any of these rules and you have questions concerning its provisions or options for compliance, please contact Ms. Christena Green, Office of Regulations and Administrative Law (G–LRA), 202–267–0133.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Dated: January 12, 1999.

J.E. Shkor,

RADM, United States Coast Guard, Chief Counsel.

[FR Doc. 99–998 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–15–M

PRESIDIO TRUST

36 CFR Parts 1001, 1002, 1003, 1004, 1005 and 1006

RIN 3212–AA01

Management of the Presidio

AGENCY: The Presidio Trust.

ACTION: Partial abeyance of proposed rule; proposed rule.

SUMMARY: This action holds in abeyance until further notice a portion of the proposed rule published in the **Federal Register** on September 18, 1998 (63 FR 50024–50055) concerning management of the area under the administrative jurisdiction of the Presidio Trust (proposed 36 CFR Parts 1001, 1002, 1003, 1004 and 1006). The period for public comment on a portion of this proposed rule (proposed 36 CFR Parts 1007, 1008 and 1009) closed on November 17, 1998, and the period for public comment on the remaining portion of this proposed rule (proposed 36 CFR Parts 1001, 1002, 1003, 1004 1005 and 1006) closed on January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

SUPPLEMENTARY INFORMATION: By publication in the **Federal Register** on November 18, 1998 (63 FR 64023), the Presidio Trust extended until January 8, 1999, the comment period on a portion of the proposed rule which had been published on September 18, 1998 (63 FR 50024–50055) concerning management of the area under administrative jurisdiction of the Presidio Trust (proposed 36 CFR Parts 1001, 1002, 1003, 1004, 1005 and 1006). The Presidio Trust hereby gives notice that proposed regulations 36 CFR Parts 1001, 1002, 1003, 1004 and 1006, will be held in abeyance until further notice. Any further action on these proposed regulations will be noticed in the **Federal Register** and subject to additional public comment. In the meantime, the Presidio Trust's final interim regulations at 36 CFR Parts 1001, 1002, 1003 and 1004, which were adopted by the Presidio Trust and published in the **Federal Register** on June 30, 1998 (63 FR 35694), will remain in effect.

The comment period on Part 1005 of the proposed regulations closed on January 8, 1999, and the Presidio Trust expects to issue final regulations on this topic following consideration of comments received.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

Dated: January 11, 1999.

Karen A. Cook,

General Counsel.

[FR Doc. 99–1073 Filed 1–15–99; 8:45 am]

BILLING CODE 4310–R–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 428

RIN 1006–AA38

Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Bureau of Reclamation is extending for 30 days the public comment period on our proposed rule titled ''Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land.''

DATES: We must receive your comments on the proposed rule by February 18, 1999. We will not necessarily consider comments received after the above date during our review of the proposed rule.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Administrative Record, Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240. You may also comment via the Internet to epetacchi@usbr.gov (see Public Comment Procedures under **SUPPLEMENTARY INFORMATION** in the November 18, 1998, notice at 63 FR 64154). In addition, you may hand-deliver comments to Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Erica Petacchi, (202) 208–3368, or Richard Rizzi, (303) 445–2900.

SUPPLEMENTARY INFORMATION: We published the proposed rule on November 18, 1998, at 63 FR 64154–65165. We asked for public comments until January 19, 1999. Because several people have requested that we extend that deadline, we will now accept comments through February 18, 1999.

Dated: January 13, 1999.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

[FR Doc. 99–1135 Filed 1–15–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990112009–9009–01; I.D. 010899A]

RIN 0648–AM18

Fisheries of the Exclusive Economic Zone Off Alaska; Fishing Participation in 1999

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS announces that anyone participating in any non-salmon fishery under the authority of the North Pacific Fishery Management Council (Council) during the calendar year 1999, will not be assured of receiving participation credit for future access to that fishery pursuant to section 211 of the American Fisheries Act (AFA) or under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) if a management regime that limits the number of participants is developed and implemented under those authorities. This document is necessary to publish the stated intent of the Council that participation credit would not be granted for fishing in a non-salmon fishery in 1999. This document is intended to promote public awareness that potential eligibility criteria for future access to the affected fisheries may be developed and to discourage new entrants into those fisheries based on economic speculation while the Council considers further controls on access to those fisheries.

DATES: Comments must be received by February 18, 1999.

ADDRESSES: Comments should be addressed to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Sustainable Fisheries

Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228

SUPPLEMENTARY INFORMATION: The AFA, Pub. L. 105–277, was signed into law on October 21, 1998. The stated objectives of the AFA are (1) to give U.S. interests a priority in the harvest of U.S. fishery resources and (2) to significantly reduce fishing capacity in the Bering Sea pollock fishery. The AFA provides the ability to eligible participants in the Bering Sea pollock fishery to form fishery cooperatives to optimize harvesting and processing opportunities. Enhanced efficiencies in the Bering Sea pollock fishery resulting from fishery cooperatives could lead to increases in participation and/or capital investments in other fisheries. The U.S. Congress recognized and provided for this potential result. Section 211 of the AFA directs the Council to recommend for approval by the Secretary of Commerce such conservation and management measures as it determines are necessary to protect other fisheries under its authority and the participants in those fisheries, including processors, from adverse impacts caused by the AFA or fishery cooperatives in the directed pollock fishery.

During the Council's December 1998 meeting, various sectors of the fishing industry voiced their concern about the potential for speculative entry into fisheries in 1999. The primary cause of this concern was that fishing operations eligible to participate in the Bering Sea directed pollock fishery under fishery cooperatives allowed under the AFA could have greater flexibility to enter other fisheries in an effort to establish ''traditional harvest levels'' for future access to those fisheries. In an effort to address this concern, the Council stated its intent that it would not use participation in a fishery in 1999, as an indicator of a fishing operation's ''traditional harvest'' in that fishery. Further, the Council recommended that NMFS publish a notice in the **Federal Register** that participation in 1999 would not be taken into account by the Council in determining catch histories for any future limited access programs under the AFA and/or the Magnuson-Stevens Act.

The Council intends to address whether and how to further limit access to the non-salmon fisheries under its authority. Further, section 211(c)(1) of the AFA requires the Council to recommend to NMFS, by July 1, 1999, conservation and management measures to prevent Bering Sea pollock fishing operations from exceeding in the aggregate the traditional harvest levels of those fishing operations in other fisheries under the authority of the Council as a result of fishing cooperatives. This document is intended to discourage speculative entry into the non-salmon fisheries while potential management regimes to further control access into those fisheries are discussed and possibly developed by the Council. In developing future limited access programs, the Council may choose different and variably weighted methods to qualify participants based on the type and length of participation in the subject fisheries or other methods of determining dependence on those fisheries. The potential eligibility criteria may be based on historical participation. Therefore, current participants in non-salmon fisheries under the authority of the Council should locate and preserve records that substantiate and verify participation in those fisheries. These fisheries include, but are not limited to, the groundfish fishery of the Bering Sea and Aleutian Islands Management Area, the groundfish of the Gulf of Alaska, the scallop fishery off Alaska, and the commercial king and Tanner crab fishery in the Bering Sea and Aleutian Islands Area.

This notification establishes January 13, 1999 for potential use as a basis for determining historical or traditional participation in any non-salmon fishery in 1999. This action does not commit the Council to develop or adopt any particular management regime or to use any specific criteria for determining entry into any of those fisheries. Any further action by the Council on this issue will be taken pursuant to the requirements of the AFA and/or the Magnuson-Stevens Act.

Authority: 16 U.S.C. 1801 *et seq.*, and Pub. L. 105–277.

Dated: January 12, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1105 Filed 1–13–99; 4:04 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 11

Tuesday, January 19, 1999

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 Safety and Inspection Service

[Docket No. 98–004N]

Ground Beef Processing Guidance Material

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of its revised guidance document intended to assist processors of ground beef, especially small processors, in developing procedures to minimize the risk of *Escherichia coli* O157:H7 (*E. coli* O157:H7) and other pathogens in ground beef products produced in their establishments. This is an updated version of the guide that FSIS made available to the public in March 1998 and presented in a public meeting on April 22, 1998.

ADDRESSES: Single copies of the guidance document are available from the FSIS Docket Clerk in Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700 from 8:30 a.m. to 4:30 p.m., Monday through Friday. An electronic version of the revised guidance document is available on line through the FSIS web page located at *http://www.fsis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Hudnall, Assistant Deputy Administrator, Office of Policy, Program Development, and Evaluation, at (202) 205–0495.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 20, 1998 (63 FR 13618), FSIS announced that, as a result of recent product recalls involving *E. coli* O157:H7, the Agency had prepared guidance material to help beef grinding operators minimize the risk of, and potential effects associated with, *E. coli* O157:H7 and other microbial pathogens in raw ground beef. FSIS also intended that this guidance help grinding operators, especially small and very small establishments prepare for the development and implementation of Hazard Analysis and Critical Control Point (HACCP) systems. The guidance included recommendations for development of purchase specifications to ensure receipt of safe and wholesome raw materials; storage, handling, and transport of raw products; the grinding process, including rework and risk-based product separation; packaging, cooling, and storage; shipping, handling, and distribution; recordkeeping, product coding systems, and recall plans; and food safety education.

Comments

FSIS received several comments on the guidance in response to the March 20, 1998 **Federal Register** Notice. Overall, the comments were in support of the recommendations in the guidance. Comments and suggestions were directed at microbial sampling, purchase requirements, rework, distribution, traceback and recordkeeping, and education.

1. Several comments were directed at the recommendation to test for *E. coli* O157:H7. One commenter stated that testing for *E. coli* O157:H7 provides an indication to grinders that HAACP systems do not provide the most effective method of minimizing the risk in commercial circumstances from microbiological hazards of gastrointestinal origin.

HACCP is designed to prevent, eliminate, or reduce to an acceptable level, the presence of hazards in food. However, implementation of HACCP will not eliminate all risks. *E. coli* O157:H7 has been linked to or found in ground beef that caused foodborne illness. Thus, the guidance recommends that grinding operators test for *E. coli* O157:H7 as one means of minimizing the risk of illness from the consumption of ground beef. If grinders find a positive sample, they can divert the product to further processing that will make it safe.

2. A commenter questioned the need to test for *E. coli* O157:H7 because testing only provides limited assurance that the pathogen is present, and a negative result will not guarantee that the pathogen is absent.

We agree that the pathogen is often present at low levels, and that the number of samples taken may not be adequate to find it. However, regular testing at an appropriate frequency will enhance chances of detection if the pathogen is present.

The use of process interventions capable of reducing the number of *E. coli* O157:H7 is recommended. Incorporating these process interventions, and microbial testing at an appropriate frequency, as part of the establishment's HACCP system will provide an increased level of public health protection.

3. One commenter questioned why testing for *E. coli* O157:H7 was not instituted as part of the HACCP rule.

One objective of the Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) rule was pathogen reduction. FSIS selected *Salmonella* as the target pathogen to be tested for in meat and poultry products to attain this objective. *Salmonella* is an appropriate target pathogen for measuring success in achieving this objective, because (1) it is prevalent in raw beef, pork, and poultry; (2) at the time of the PR–HAACP final rule, it was the most common bacterial cause of foodborne disease in humans; (3) enumeration procedures for this pathogen are reliable and affordable; and (4) intervention strategies aimed at reducing fecal contamination and other sources of *Salmonella* on raw product should be effective against other pathogens, including *E. coli* O157:H7.

Testing for *E. coli* O157:H7 has a much narrower purpose—to help ensure that ground beef in the market place is safe. FSIS started the Microbiological Testing Program for *Escherichia coli* O157:H7 in Raw Ground Beef in 1994 and issued a directive on the testing program in 1998 (Directive # 10,010.1).

4. A commenter stated that any imposition by U.S. grinders of an *E. coli* O157:H7 testing regime on overseas suppliers of frozen, boneless boxed manufacturing meat would pose additional logistic difficulties for exporting country packers. According to the commenter, these difficulties arise partly because the ultimate fate of the product (i.e. for grinding or for manufacturing purposes involving validated lethality steps) is not necessarily known at the time of packing or shipping.

U.S. grinders may impose an *E. coli* O157:H7 testing regime on overseas suppliers of frozen, boneless boxed manufacturing meat through purchase specifications. Use of such specifications would be consistent with the establishment's obligation to control its source materials. On the other hand, some purchasers may only require documentation from the supplier that its

raw material was produced under a HACCP-based system, or that intervention methods were used, and that the raw material does not pose a risk.

5. One commenter suggested that FSIS consider *E. coli* O157:H7 found on *any* meat as an adulterant.

No changes are being made to the guidance document as a result of this comment. However, FSIS regularly assesses the public health implications of this pathogen for products other than ground beef and will take this comment into consideration in connection with this process. To date, FSIS has only stated that *E. coli* O157:H7 is an adulterant in ground beef. The Agency is publishing in this issue of the **Federal Register** its policy on this matter.

6. A commenter stated that guidelines do not have the force of law, are not binding, and are only recommendations.

The Agency agrees. The guidance for beef grinders is intended to illustrate how grinders can avail themselves of opportunities to minimize food safety hazards associated with their products. The guidance may be used in conjunction with the Agency's draft generic HACCP model for raw ground meat and poultry products. The HACCP system of process control is mandatory now for large plants and will become mandatory in small and very small plants in January 1999 and January 2000, respectively.

7. A commenter suggested that lots or batches be limited to raw materials from a single slaughterhouse.

Limiting lots or batches of raw materials to a single slaughterhouse represents one means of controlling the quality and safety of the raw materials. However, demand will dictate whether a grinding plant can secure all the raw materials that it needs from a single slaughterhouse. The guidance recommends control of source materials by establishing purchase requirements and demanding appropriate records from the suppliers. It is up to individual plants to decide whether they want to get their source materials from one or several slaughterhouses.

8. One commenter suggested that FSIS should require identification of the farm of origin, slaughterhouse, and subsequent processors on the consumer package.

The guidance recommends that grinding plants require suppliers to maintain records that facilitate traceback to the farm or animal source. Furthermore, the guidance recommends that grinding plants develop and institute codes on retail-ready packages of ground beef to facilitate traceback and trace-forward. However, at this time, FSIS is not proposing to adopt these recommendations as requirements. FSIS believes that the guidance is adequate to assist processors of ground beef to minimize the risk of *E. coli* O157:H7.

9. A commenter stated that there is a higher probability of handling mistakes, such as temperature abuse, when there are numerous intermediate distributors compared to just one.

The Agency agrees with the point made in the comment; however, the current food production and distribution system is complex, often involving lengthy distances, multiple distribution points, and numerous handlers. For this reason, the guidance recommends that intermediate distributors, in addition to the ultimate retailer, be included in the recordkeeping to facilitate trace-forward in case there is a need to do so. The guidance also recommends the use of tamper-proof time-temperature indicators on boxes of finished products to disclose temperature abuse.

10. One commenter asked what FSIS can do, aside from education, to achieve the recommendation that grinders structure their operations to take into account the handling and preparation of meat by consumers after it leaves the store.

In addition to educating consumers by training and educational programs, FSIS requires that important consumer information be included on labels of meat and poultry products. Food labels inform consumers about whether the product is ready-to-eat or needs to be cooked, and about how to store the product. Non-ready-to-eat meat and poultry products are required to include safe handling instructions, which instruct consumers about handling, storing, and cooking the product. In addition, cooking instructions may be included on labels of non-ready-to-eat products.

11. A commenter stated that the guidance did not stress food handler education.

The Agency disagrees with this comment. The guidance recommends training and education of employees, *food handlers*, distributors, and consumers on the risks of foodborne illness associated with ground beef and suggests measures to prevent foodborne illness. In addition, the plant's Sanitation Standard Operating Procedures may include training and education of employees and food handlers. The Agency does agree, however, with the suggestion from the commenter that training food handlers in their native language will make the training more effective and meaningful. In response to this comment, FSIS revised the education section of the guidance by recommending that establishments provide training to food handlers and other employees in their native language, if necessary.

12. There was a suggestion from a commenter to spell out sanitation of the carrier in the subsection on transport of raw materials.

In the original guidance document, the subsection on transport of raw materials included examination of conditions of transport, such as temperature inside transport vehicles, and of meat itself, as well as duration of transport. In response to this comment, FSIS expanded the subsection on transport of raw materials to add sanitation of the carrier and details on the different conditions of transport, such as presence of cracks, debris, foreign material or off-odors, condition of the insulation and of the door seals.

Revised Guidance Document

In addition to the changes noted above in response to the comments and suggestions, the Agency has incorporated details on rework and product recall plans that were derived from the guidance material provided by the National Meat Association and the American Meat Institute. As a result, the section on the grinding process has been expanded, especially the subsection on lotting, rework, unprocessed raw material and outside trimmings. The shipping, handling and distribution section has also been expanded to include more details on transport, secondary distributors, inventory control and in-house recall plans.

FSIS intends to update the guidance regularly and to make it available through the FSIS web page. Recommendations for improving this guidance material are welcome at any time.

Done in Washington, DC on December 21, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 99–359 Filed 1–15–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Supplement to the Final Environmental Impact Statement for the Mt. Ashland Ski Area, Rogue River National Forest, Jackson County, Oregon

ACTION: Notice of intent to supplement a final environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare a supplement to the final environmental impact statement (SEIS) for the Mt. Ashland Ski Area (MASA) on the Rogue River National Forest. The final EIS and Record of Decision (ROD) for the MASA were released in July 1991. This decision established a programmatic Master Plan for future ski area expansion. In March, 1998, the Mt. Ashland Association (MAA) submitted a proposal to the Forest Service (based, on the Master Plan) to implement a variety of ski area facility improvements within the MASA. The Association leases the operation from the City of Ashland, holder of a Forest Service Special Use Permit for the MASA. As identified in

the 1991 final EIS and ROD, the primary purpose for implementing the proposed improvements is to enhance the economic viability of the MASA. The primary need is for additional intermediate and low intermediate skiing terrain, with an overall goal to provide a high quality recreation experience.

The Forest Service gives notice of the full supplemental analysis and decision-making process so that interested and affected peoples are made aware as to how they may participate and contribute to this supplemental analysis and decision.

DATES: Comments concerning the scope of this supplemental analysis should be received by February 19, 1999.

ADDRESSES: Submit written comment sot Linda Duffy, District Ranger, Ashland Ranger District, Rogue River National Forest, 645 Washington Street, Ashland, Oregon, 97520.

FOR FURTHER INFORMATION CONTACT: Linda Duffy or Steve Johnson, Ashland Ranger District, Rogue River National Forest, 645 Washington Street, Ashland, Oregon, 97520, Telephone (541) 482–3333; FAX (541) 858–2402; email address is sjohnson/r6pnw__rogueriver@fs.fed.us.

SUPPLEMENTARY INFORMATION: Scoping for these proposed improvements was initiated on March 18, 1998. The intent at that time was to process a site-specific project proposal, tiering to the programmatic Master Plan, with an environmental assessment (EA) and Decision Notice. Preparation of an EA would have fulfilled the direction within this ROD to complete site-specific environmental analysis prior to project implementation approved conceptually in the final EIS and ROD. Since last March, numerous letters from groups and individuals were received. Four public field trips to the project area and two public meetings were held in regards to the ski area proposal. There were also numerous discussions with Forest Service interdisciplinary resource specialists. This dialogue, both internal and external, has led the Responsible Official to decide to prepare a Supplement to the final EIS. The decision to now proceed with an SEIS will include analysis and disclosure of several proposed actions: consideration of new information or changed circumstances associated with the programmatic decision on the ''Master Plan'' made in 1991; a Forest Plan Amendment to adjust the management allocation boundary from the 1990 Rogue River National Forest Land and Resource Management Plan to that associated with the 1991 Record of Decision for the MASA; as well as a site specific project analysis based on a current proposal to develop a portion of the Master Plan. The Supplement to the 1991 FEIS will focus on those aspects that are now changed or different or are in need of an update or correction, in relation to the selected alternative as documented in the 1991 ROD.

The MAA site-specific proposal includes: construction for a new chairlift and associated ski runs within the western portion of the Special Use Permit area; an additional skier service building; a surface lift providing novice skier access to the proposed runs; additional parking areas; maintenance access via primitive roads; and necessary supporting infrastructure items such as sewer, water and power lines. All proposed projects are within the existing Special Use Permit area boundary. The legal location description for all actions is T.40 S., R. 1 E., in sections 15, 16, 17, 20, 21, and 22, W.M., Jackson County, Oregon.

The Supplement will not re-open the decision for expansion based on the Master Plan that has already been made. The significant issues and alternatives associated with this analysis process are expected to primarily be associated with the current site-specific project proposal to expand and develop a portion of this Master Plan. Preliminary issues include: water quality within a domestic supply watershed; maintenance of habitat for an anadromous fishery; protection of wetland habitats and rare plant and animal species; aesthetics and social considerations; and the economic feasibility associated with the operation and expansion of a commercial ski area. Preliminary alternatives include options to avoid or reduce impacts to wetland areas and alternative locations for parking and other proposed ski area facilities.

The supplement will be prepared and circulated in the same manner as the draft and final EIS (40 CFR 1502.9). Comments received on the draft supplemental EIS will be considered in the preparation of the final supplement. The draft SEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by may 1999. The comment period on the draft SEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft SEIS stage but that are not raised until after completion of the final SEIS may be waived or dismissed by the courts. City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final SEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft SEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

At the end of the comment period on the draft SEIS, comments will be analyzed and considered by the Forest Service in preparing the final SEIS. The final supplement is scheduled to be completed by August 1999.

The Responsible Official will consider the comments, responses, environmental consequences discussed in the final SEIS, and applicable laws, regulations, and policies. The Responsible Official will document the decision in a Record of Decision. The Forest Service decision will be subject to Forest Service appeal regulations at 36 CFR part 215.

Dated: January 8, 1999.

James T. Gladen,

Forest Supervisor.

[FR Doc. 99–1071 Filed 1–15–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plentybob Ecosystem Restoration Projects, Umatilla National Forest, Umatilla County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposed action to implement ecosystem restoration projects, designed to promote healthy watershed conditions within the Upper Umatilla River watershed. The project area is located on the Walla Walla Ranger District approximately 30 air miles southeast of Walla Walla, Washington.

Proposed project activities consist of hardwood planting in Riparian Habitat Conservation Areas, hydrologic stability projects (road obliteration, road re-alignment and/or reconstruction), noxious weed treatments, wildlife enhancement projects, landscape prescribed fire and restoration of forest stand structure and composition using a variety of silvicultural treatments including commercial timber harvest. The proposed action is designed to reduce risk to ecosystem sustainability, prevent further degradation of forest health, reduce risks of catastrophic wildfire and provide some economic return to local economies.

The EIS will tier to the 1990 Land and Resource Management Plan FEIS for the Umatilla National Forest, which provides overall guidance for forest management of the area.

DATES: Written comments concerning the scope of the analysis should be received on or before February 26, 1999.

ADDRESSES: Send written comments and suggestions to the Responsible Official, Thomas K. Reilly, District Ranger, Walla Walla Ranger District, 1415 West Rose Street, Walla Walla, Washington, 99362.

FOR FURTHER INFORMATION CONTACT: Dennis Sedam, Project Team Leader, Walla Walla Ranger District, Phone: (509) 522–6050.

SUPPLEMENTARY INFORMATION: The decision area contains approximately 73,156 acres within the Umatilla National Forest in Umatilla County, Oregon. It is within the Meacham Creek and South Fork Umatilla River watersheds. Approximately 53,250 acres of the planning area is located in the Hellhole Roadless Area. The legal description of the decision area if as follows: All or part of Sections 1–3 Township 1 South, Range 37 East; Section 6 Township 1 South, Range 38 East; Sections 1–5, 8–12, 22–27 Township 1 North, Range 36 East; Sections 1–27, 30 and 34–36 Township 1 North, Range 37 East; Sections 1–5, 8–18, 19–36 Township 2 North, Range 36 East; Sections 4–10, 15–22, 26–35 Township 2 North, Range 37 East; Sections 22–28 and 32–36 Township 3 North, Range 36 East and Sections 16–22 and 28–33 Township 3 North, Range 37 East, W.M. surveyed.

Water quality improvement projects include stabilization of stream banks with planting of hardwoods on 192 acres. Proposed hydrologic stability projects include approximately 44.5 miles of road obliteration, 23.6 miles or road reconstruction and revegetation of cut and fill slopes. Road construction would include bank stabilization, surfacing and construction of drainage structures. 14,473 acres of prescribed burning for elk habitat are proposed to enhance wildlife habitat. A variety of silvicultural methods would treat approximately 4,103 acres within the area. This proposal also includes prescribed burning of approximately 3,000 acres within harvest units and approximately 15,500 acres outside of harvest units to reduce the potential for future wildfires, prepare sites for regeneration, enhance wildlife habitat, modify stand structure and composition and maintain forest health by bring fuel levels closer to their historic levels.

An estimated 38.0 million board feet of green and 10.0 million broad feet of dead timber would be commercially harvested in four timber sales over a period of three to five years. Proposed silvicultural treatments would include shelterwood, group selection and salvage harvest. None of the proposed timber harvest would take place within the Hellhole Roadless Area.

For all treatments, existing snags and large down wood would be left on site. Ponderosa pine and western larch would be the preferred species for leave trees. All trees greater than 21 inches DBH would be left in the ponderosa pine and subalphine fir biophysical groups (both are below their historic range of variability).

Several streams within the analysis area are not Oregon's 303(d) List of Water Quality Limited Waterbodies. The proposed action will include Best Management Practices and include components of a Water Quality Management Plan.

The proposed action will tier to the FEIS and Umatilla Forest Plans, as amended, which provides goals, objectives, standards and guidelines for activities and land allocations on the Forest. There are six designated Management Areas (MAs) found within the analysis area: A4 Viewshed 2, A9 Special Interest Area, C1 Dedicated Old Growth, C4 Wildlife Habitat, C5 Riparian (Fish and Wildlife) and C8 Grass-Tree Mosaic.

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Preliminary Issues: Tentatively, the preliminary issues identified are briefly described below:

1. Wildlife Habitat—What effects would timber harvest and prescribed burning have on big game and non-game habitat?
2. Ecosystem Sustatinability—How would the proposed activities affect ecosystem sustainability and forest health?
3. Air Quality—What effects would landscape prescribed burning have on air quality?
4. Water Quality/Riparian Habitat—How would water quality, flow, temperature, timing and riparian habitat conditions be affected by the proposed activities?
5. Threatened, Endangered and Sensitive (TES) Species—What effect would the proposed activities have on TES species and what opportunities exist to improve habitat?
6. Noxious Weeds—What effects would the proposed activities have on noxious weed populations?

This list will be verified, expanded or modified based on public scoping and interdisciplinary review of this proposal.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). Initial scoping began with the project listing in the 1998 Winter Edition of the Umatilla national Forest's Schedule of Proposed Actions. This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. The public is encouraged to take part of the process and is encouraged to visit the Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by the proposal. This input will be used in

preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Considering additional alternatives based on themes which will be derived from issues recognized during scoping activities.
4. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect and cumulative effects and connected actions).

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available to the public for review by April 1999. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** It is important that those interested in the management of the Umatilla National Forest participate at that time.

The Final EIS is scheduled to be completed by June, 1999. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations and policies considered in making a decision regarding the proposal.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc,* v. *Harris,* 490 F. Supp. 1335, 1338 (E.D. Wis. 1980). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns or the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS. Comments may also address the adequacy of the Draft EIS or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service is the lead agency. Thomas Reilly, District Ranger, is the Responsible Official. As the Responsible Official, he will decide which, if any, of the proposed projects will be implemented. He will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: December 30, 1998.

Thomas K. Reilly,

District Ranger.

[FR Doc. 99–1072 Filed 1–15–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on January 27 and 28, 1999, at the Six Rivers National Forest Supervisor's Office in Eureka, CA. The meeting will be held from 8:30 a.m. to 5 p.m. each day. The Forest Supervisor's Office is located at 1330 Bayshore Way in Eureka. Agenda items to be covered include: (1) Regional Ecosystem Office (REO) update; (2) Presentation on Survey and Manage requirements; (3) Presentation on the Blands Timber Sale on the Mendocino National Forest; (3) Subcommittee roles and direction; (4) Presentation on U.S. Army Corps of Engineers Russian River watershed project planning; (5) Subcommittee reports and recommendations (Coho, PAC/SCERT); (6) Presentation on lawsuit of 13 plaintiffs vs. the U.S. Forest Service and Bureau of Land Management concerning the implementation of the Northwest Forest Plan; (7) Joint 3 PAC meeting follow-up on priority action items identified at the May 28–29, 1998, PAC meeting; (8) Presentation on the Federal Energy Regulatory Commission (FERC) license issued to the Pacific Gas and Electric Company (PG&E) for the operation of the Potter Valley hydroelectric project; (9) Presentation and recommended comments to the REO Draft exemption criteria for certain salvage projects conducted with the Late Successional Reserves; (10) Selection of dates and locations for 1999 meetings; and (11) Open public comment. All California Coast Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316.

Dated: January 8, 1999.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 99–1041 Filed 1–15–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold their first meeting on January 28, 1999, in South Lake Tahoe, California. This Committee, established by the Secretary of Agriculture on December 15, 1998, is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 28, 1999, beginning at 9 a.m. and ending at 3 p.m.

ADDRESSES: The meeting will be held at the Super 8 Motel, 3600 Lake Tahoe Boulevard, South Lake Tahoe, California.

FOR FURTHER INFORMATION CONTACT: Juan Palma or Sherry Hazelhurst, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture established the Lake Tahoe Basin Advisory Committee to advise the Secretary and other partners of the Federal Interagency

Partnership on implementation of the partnership. The Committee will meet on a quarterly basis, conducting public meetings to discuss management strategies, gather information and review Federal agency accomplishments, and prepare a progress report every 6 months for submission to regional Federal executives.

The 19 committee members represent a broad range of local, regional, state, and national interests concerned with the environmental and economic health of the Lake Tahoe Basin. The following members, in alphabetical order, were appointed by the Secretary of Agriculture: James Baetge, Executive Director of the Tahoe Regional Planning Agency; John Bohn, Executive Officer of the Incline Village Board of Realtors; Lori Gaskin, Dean of Instruction at Lake Tahoe Community College; Stanley Hansen, Vice President of Real Estate and Governmental Affairs for Heavenly Ski Resort; Kathryn Kelly, President of Delta Toxicology, Inc.; Ronald McIntyre, Director of the Tahoe-Tuckee Sanitation District and board member of the Tahoe City Public Utilities District; Robert McKinney, Executive Director of the North Tahoe Resort Association; Dennis Machida, Executive Director of the California Tahoe Conservancy; Kerry Miller, City Manager for the City of South Lake Tahoe; Jennifer Merchant, Executive Director of the Truckee-North Tahoe Transportation Management Association; Rochelle Nason, Executive Director of the League to Save Lake Tahoe; Merlyn Payne, land use and transportation consultant; Leo Popoff, atmospheric physicist; Donald Starbard, Director for Tahoe-Truckee Airport District; Steve Teshara, Executive Director of the Lake Tahoe Gaming Alliance; Brian Wallace, Chair of the Washoe Tribe of California and Nevada; Duane Wallace, Executive Director of the South Lake Tahoe Chamber of Commerce; Pamela Wilcox, Administrator for the Nevada Division of State Lands; and Jaime Ziegler, civil engineer.

The Lake Tahoe Basin Federal Advisory Committee will meet jointly with the Lake Tahoe Basin Executive Committee at the January 28 meeting in South Lake Tahoe. The meeting is open to the public; however, participation is limited to scheduled presenters, Committee members, and Lake Tahoe Basin Executives. Persons who wish to bring issues to the attention of the Lake Tahoe Basin Federal Advisory Committee may file written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: January 4, 1999.

Roberta A. Moltzen,

Deputy Regional Forester, Pacific Southwest Region.

[FR Doc. 99–1063 Filed 1–15–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program; Correction

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Correction.

SUMMARY: The Rural Housing Service (RHS) corrects a notice published November 16, 1998 (63 FR 63667). This action is taken to correct the amount of funds available for section 515 new construction purposes. Accordingly, the notice published November 16, 1998 (63 FR 63667), is corrected as follows:

On page 63668 in the third column, Item B, ''Distribution Methodology,'' the first paragraph should read ''The total amount available for FY 1999 for section 515 is $114,321,240. Of that amount, $79,321,240 is available for new construction as follows'':

Set-Aside for Nonprofits	$7,138,912
Set-Aside for Underserved Counties and Colonias	3,966,062
Less set-aside for EZ or EC	7,253,886
Less general reserve	5,740,000
Less State Rental Assistance (RA) Designated Reserve	1,500,000
Regular Section 515 Funds	53,301,292

On page 63669 in the third column, Item B, the text ''7.56 million'' should read ''$7,138,912;'' Item C, the text ''4.2 million'' should read ''$3,966,062''; and Item D, the text ''7.25 million'' should read ''$7,253,886''.

Dated: January 6, 1999.

Eilen Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–1132 Filed 1–15–99; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–802]

Termination of Suspension Agreement, Resumption of Antidumping Investigation, and Termination of Administrative Review on Uranium From Kazakhstan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Government of Kazakhstan has provided notice of its intent to terminate the agreement between the United States Department of Commerce (''Department'') and the Republic of Kazakhstan suspending the antidumping investigation on uranium from Kazakhstan. Therefore, the Department is resuming the underlying antidumping investigation.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: James C. Doyle, Karla Whalen, or Juanita H. Chen, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–3793.

Applicable Statute: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective in 1992. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 353 (1992).

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1991, the Department initiated an antidumping investigation concerning uranium from the Union of Soviet Socialist Republics (''Soviet

Union''). *Initiation of Antidumping Duty Investigation: Uranium from the Union of Soviet Socialist Republics,* 56 FR 63711 (December 5, 1991). On December 25, 1991, the Soviet Union dissolved and the United States subsequently recognized the twelve newly independent states (''NIS'') which emerged, one of which was the Republic of Kazakhstan (''Kazakhstan''). On January 16, 1992, the Department presented an antidumping duty questionnaire to the Embassy of the Russian Federation, the only newly independent state which had a diplomatic facility in the United States at that time, for service on Kazakhstan. On January 30, 1992, the Department sent questionnaires to the United States Embassy in Moscow, which served copies of the questionnaire on the permanent representative to the Russian Federation of each NIS. The questionnaires were served on February 10 and 11, 1992. On March 25, 1992, the Department gave notice that it intended to continue its antidumping duty investigation with respect to the newly independent states of the former Soviet Union. *Postponement of Preliminary Antidumping Duty Determination: Uranium from the Former Union of Soviet Socialist Republics (USSR),* 57 FR 11064 (April 1, 1992).

On June 3, 1992, the Department issued its preliminary determination, in its antidumping duty investigation on uranium from Kazakhstan (''Investigation''), that imports of uranium from Kazakhstan were being, or were likely to be, sold in the United States at less than fair value, as provided for in the Act. *Preliminary Determinations of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan,* 57 FR 23380 (June 3, 1992). On October 16, 1992, the Department amended the preliminary determination to include highly enriched uranium (''HEU'') in the scope of the investigations. *Antidumping; Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations,* 57 FR 49221 (October 30, 1992), Also on October 16, 1992, the Department suspended the antidumping duty investigation involving uranium from Kazakhstan. *Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan,* 57 FR 49222 (October 30, 1992) (''Suspension Agreement''). The basis for the Suspension Agreement was an agreement by Kazakhstan to restrict exports of uranium to the United States. On February 7, 1995, the Department and Kazakhstan signed an amendment to the Suspension Agreement to permit entry of highly enriched uranium (''HEU'') within the terms of the Suspension Agreement. *Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan,* 60 FR 13699 (March 14, 1995). On March 27, 1995, the Department and Kazakhstan signed an amendment to the Suspension Agreement to modify the original price-tied quota mechanism by lowering the threshold price from $13.00 to $12.00, and re-defined Kazakhstan-origin uranium to include uranium mined in Kazakhstan and enriched in a third country. *Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan,* 60 FR 25692 (May 12, 1995). On September 29, 1998, the Department and Kazakhstan signed an amendment to the Suspension Agreement permitting entry of certain shipments of uranium from Kazakhstan into the United States pursuant to ongoing consultations. *Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan,* 63 FR 67858 (December 9, 1998).

On October 21, 1998, USEC Inc. and its subsidiary, United States Enrichment Corporation (hereinafter collectively referred to as ''USEC''), requested that the Department conduct a hearing related to the issues raised in the administration of the Suspension Agreement for the period October 1, 1997 to September 29, 1998. On October 27, 1998 and October 29, 1998, the Ad Hoc Committee of Domestic Uranium Producers, and the Oil Chemical and Atomic Workers International Union, AFL–CIO (hereinafter collectively referred to as ''Petitioners''), joined in USEC's request for a hearing. On October 30, 1998, Kazakhstan expressed its interest in participating in the hearing. On October 30, 1998, the Ad Hoc Committee of Domestic Uranium Producers requested an administrative review of the Suspension Agreement for the period October 1, 1997 to September 30, 1998, pursuant to the Department's notice of opportunity to request an administrative review. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 63 FR 54440 (October 9, 1998).

On November 10, 1998, the Department received notice from Kazakhstan of its intent to terminate the Suspension Agreement. Section XII of the Suspension Agreement provides that Kazakhstan may terminate the Suspension Agreement at any time upon notice to the Department; termination would be effective 60 days after such notice. On December 23, 1998, the Department initiated an administrative review of the Suspension Agreement for the period October 1, 1997 to September 30, 1998. *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 63 FR 71091 (December 23, 1998). As the 60 day period provided for in the Suspension Agreement has passed, the Department is terminating the Suspension Agreement and resuming the original Investigation effective January 11, 1999. Moreover, as a result of resumption of the Investigation, the Department is also terminating the administrative review of the Suspension Agreement.

Scope of the Investigation

The merchandise covered constitutes one class or kind of merchandise. HEU is included in the scope of the investigation. The merchandise covered includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U^{235} or compounds or uranium enriched in U^{235}. The uranium subject to these investigations is provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.55, 2844.10.50.00, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50, of the Harmonized Tariff Schedule (''HTS''). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (''POI'') is June 1 through November 30, 1991.

Resumption of Investigation

Because Kazakhstan terminated the Suspension Agreement, there no longer exists a Suspension Agreement under section 734(l) of the Act which ''prevent(s) the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.'' Therefore, in

accordance with section 734(l)(2) of the Act, the Department must resort to section 734(i)(1)(B), which directs us to resume the Investigation as if our preliminary determination had been issued on January 11, 1999. In accordance with section 735(a) of the Act, the Department will issue a final determination within 75 days of January 11, 1999, unless Kazakhstan requests an extension of time under 19 CFR 353.20(b).

Since Kazakhstan may not have had a full opportunity to respond to the original antidumping duty questionnaire, in making its final determination in the Investigation, the Department shall issue a supplemental questionnaire for the original POI.

International Trade Commission

In accordance with section 733(f) of the Act, the Department has notified the International Trade Commission (''ITC'') of the termination of the Suspension Agreement and resumption of the Investigation. If the Department's final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the United States uranium industry. The ITC shall make this determination before the latter of: (1) 120 days after the effective date of this notice; or, (2) 45 days after publication of the Department's final determination.

Termination of Administrative Review

On October 30, 1998, the Ad Hoc Committee of Domestic Uranium Producers, one of the Petitioners, requested that the Department conduct an administrative review of the Suspension Agreement for the period October 1, 1997 to September 30, 1998. On December 23, 1998, the Department initiated an administrative review of the Suspension Agreement for the requested period. *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 63 FR 71091 (December 23, 1998). Because the underlying Suspension Agreement is terminated, the administrative review is being terminated as well.

Denial of Request for Hearing

On October 21, 1998, USEC, an interested party to the proceeding, requested that the Department conduct a hearing related to the issues raised in the administration of the Suspension Agreement for the period October 1, 1997 to September 29, 1998. USEC was joined in its request by Petitioners. Kazakhstan also expressed its interest in participating if a hearing was held on said issues. Because the underlying Suspension Agreement is terminated, the Department will not hold the requested hearing.

Verification

As provided for in section 776(b) of the Act, the Department will verify all the non-BIA (best information available) material used in reaching its final determination.

Suspension of Liquidation

In accordance with § 734(i)(1)(A) of the Act, the Department is not aware of any sale within the last 90 days that was in violation of the Suspension Agreement or did not meet the requirements of the Suspension Agreement. Therefore, the Department is instructing the United States Customs Service (''U.S. Customs'') to suspend liquidation of all unliquidated entries of uranium, as defined in the Scope of the Investigation section of this notice, that are entered or withdrawn from warehouse for consumption on or after the effective date of the termination of the Suspension Agreement, which is January 11, 1999. U.S. Customs shall require a cash deposit or bond equal to 115.82 percent *ad valorem* (the original preliminary determination duty rate), the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price, for all manufacturers, producers, and exporters of uranium from Kazakhstan. These suspension of liquidation instructions will remain in effect until further notice.

APO Access

Any party wishing to access business proprietary information in the resumed Investigation must apply for APO access, regardless of whether such APO access was previously granted in the original Investigation or Suspension Agreement.

Public Comment

In accordance with 19 CFR 353.38, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on the preliminary determination on March 12, 1999, at 10 a.m. at the United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit such a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, United States Department of Commerce, Room 1870, 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.

Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than March 1, 1999. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than March 8, 1999. An interested party may make an affirmative presentation only on arguments raised in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with § 353.38 of the Department's regulations and will be considered if received within the time limits specified above.

This determination is issued and published in accordance with section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: January 11, 1999.

Robert S. LaRussa,

Assistant Secretary Import Administration.

[FR Doc. 99–1117 Filed 1–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–605]

Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results and Partial Recission of Countervailing Duty Administrative Review.

SUMMARY: On September 9, 1998, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on industrial phosphoric acid (IPA) from Israel for the period January 1, 1996 through December 31, 1996 (63 FR 48193). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the Final Results of Review section of this notice. We will

instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Eric Greynolds, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3692 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Rotem-Amfert Negev Ltd. (Rotem). Haifa Chemicals Ltd. (Haifa) did not export the subject merchandise during the period of review (POR). Therefore, in accordance with section 351.213(d)(3) of the Department of Commerce's (the Department) regulations, we rescinded the review with respect to Haifa. The review also covers nine programs.

Since the publication of the preliminary results on September 9, 1998 (63 FR 48193), the following events have occurred. We invited interested parties to comment on the preliminary results. On October 9, 1998, a case brief was submitted by counsel for FMC Corporation and Albright & Wilson Americas Inc. (petitioners). On October 13, 1998, a case brief was submitted by the Government of Israel (GOI) and Rotem, producer/exporter of IPA to the United States during the review period (respondents). On October 14, 1998, rebuttal briefs were submitted by respondents and petitioners.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351 (1998), unless otherwise indicated.

Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description of the scope remains dispositive.

Subsidies Valuation Information

Period of Review

The period for which we are measuring subsidies is calendar year 1996.

Allocation Period

In *British Steel plc.* v. United States, 879 F.Supp. 1254 (February 9, 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, as it was articulated in the *General Issues Appendix* appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37225 (July 9, 1993) (*GIA*). In accordance with the Court's decision on remand, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (AUL). This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F.Supp 426, 439 (CIT 1996). Accordingly, the Department has applied this method to those non-recurring subsidies that have not yet been countervailed.

Rotem submitted an AUL calculation based on depreciation expenses and asset values of productive assets reported in its financial statements. Rotem's AUL was derived by adding the sum of average gross book value of depreciable fixed assets for ten years and dividing these assets by the total depreciation charges for the related periods. We found this calculation to be reasonable and consistent with our company-specific AUL objective. Rotem's calculation resulted in an average useful life of 23 years, which we have used as the allocation period for non-recurring subsidies received during the POR.

For non-recurring subsidies received prior to the POR and already countervailed based on an allocation period established in an earlier segment of the proceeding, it is not reasonable or practicable to reallocate those subsidies over a different period of time. Since the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and resulted in a certain benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Such a practice may lead to an increase or decrease in the total amount countervailed and, thus, would result in the possibility of over-or under-countervailing the actual benefit. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each non-recurring subsidy received prior to the POR. *See, e.g., Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549 (April 7, 1997). For further discussion, see the Department's position on Comment 3 (*Allocation of Grants Over AUL*), below.

Privatization

The Department has previously determined that the partial privatizations of Israel Chemicals Limited (ICL), Rotem's parent company, represents a partial privatization of Rotem. Further, the Department found that a portion of the price paid by a private party for all or part of a government-owned company represents partial repayment of prior subsidies. *See GIA,* 58 FR at 37262, and *Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel,* 63 FR 13627 (March 20, 1998) (*1995 Final*).

In prior reviews, to calculate the portion of the purchase price representing repayment of prior subsidies through partial privatizations in 1992, 1993 and 1995, the Department converted the net worth figures for Rotem from new Israeli shekels (NIS) to U.S. dollars, based on exchange rate information on the record. In this review, Rotem submitted U.S. dollar denominated audited financial statements for 1983 through 1989. The notes to the financial statements indicate that the company maintains its accounts in NIS and in U.S. dollars. Amounts originating from transactions denominated in, or linked to, the dollar are stated at their original amounts. Amounts not originating from such transactions are determined on the basis of the exchange rate prevailing at the time of the transaction. As a result, we have recalculated the portion of the purchase price paid for ICL's shares that is attributable to repayment of prior subsidies using the U.S. dollar denominated net worth figures provided in Rotem's financial statements.

Analysis of Programs

Based upon the responses to our questionnaires and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. *Encouragement of Capital Investments Law (ECIL).* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to modify our findings from the preliminary results for this program. Accordingly, the net subsidy for this program remains unchanged from the preliminary results and is as follows:

Manufacturer/explorer	Rate (percent)
Rotem Amfert Negev	5.58

2. *Encouragement of Industrial Research and Development Grants (EIRD).* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to modify our calculations for this program from the preliminary results. Accordingly, the net subsidy for this program remains unchanged from the preliminary results and is as follows:

Manufacturer/explorer	Rate (percent)
Rotem Amfert Negev	0.02

B. New Programs Determined to Confer Subsidies

1. *Environmental Grant Program.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to modify our calculations for this program from the preliminary results. Accordingly, the net subsidy for this program remains unchanged from the preliminary results and is as follows:

Manufacturer/explorer	Rate (percent)
Rotem Amfert Negev	0.11

2. *Infrastructure Grant Program.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program remains unchanged from the preliminary results and is as follows:

Manufacturer/explorer	Rate (percent)
Rotem Amfert Negev	0.18

II. Programs Found to be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Reduced Tax Rates under ECIL
2. ECIL Section 24 Loans
3. Dividends and Interest Tax Benefits under Section 46 of the ECIL
4. ECIL Preferential Accelerated Depreciation
5. Exchange Rate Risk Insurance Scheme
6. Labor Training Grants
7. Long-Term Industrial Development Loans

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Denominator for ECIL Grants

Rotem argues that the Department incorrectly calculated the denominator for ''grants allocable to all sales other than direct sales of phosphate rock,'' because the sales figure from the ''others'' category, as reported in respondents December 15, 1997, questionnaire response, was excluded.

Petitioners counter that because the product listing provided by respondents did not provide a breakdown of products in the ''others'' category, the Department could not assume that these other products benefitted from ECIL grants, and therefore, was correct to exclude these sales from its subsidy calculations.

Department's Position

We attribute ECIL grants to a particular facility to the sales of the products produced by that facility plus sales of all products into which that product may be incorporated. To do so, it is necessary that all products to which the grants are being attributed are identified. Respondents did not indicate what products are included in the ''others'' category or any indication that the ECIL grants should appropriately be attributed to those ''other'' sales. Therefore, it would have been improper to attribute ECIL grants to those unidentified products.

Comment 2: IPA as an Input to Fertilizers

Petitioners argue that the Department expanded the attribution of certain ECIL grants to include sales of fertilizers, based on respondents' claim, unsupported by documentation, that IPA may be and has been an input into fertilizers other than MKP. In this regard, petitioners cite to the Department's 1995 verification report, which does not indicate that IPA was found to be an input to any fertilizer product other than MKP. Thus, petitioners assert that the Department erroneously included sales of all fertilizers in its denominator. Petitioners further argue that unless Rotem demonstrates that IPA is an input to a specific fertilizer product, the Department should not include that fertilizer product in the attribution denominator.

Respondents agree with petitioners that only those products that use IPA as an input should be included in the attribution denominator. However, respondents argue that the Department has rejected this approach and includes a product in its attribution calculation if the product can be used as an input into IPA, irrespective of whether it has actually been used. Further, respondents argue that if petitioners want the Department to include only products actually receiving IPA inputs in a given review in the attribution calculation, then the Department must also exclude those products that are not used in a given review.

Department's Position

In the 1995 administrative review of this case, we attributed ECIL grants tied to a particular unit to the sales of the product produced by that unit plus the sales of all products into which that product may be incorporated. Accordingly, in that review, we attributed ECIL grants to the IPA facility to sales of IPA and sales of MKP, a

downstream fertilizer. In this administrative review, respondents have stated that IPA can also ''be and has been used by Rotem as an input into other fertilizers,'' that is other than MKP. Therefore, consistent with our approach in the 1995 proceeding, we included the sales of fertilizers in the denominator for ECIL grants to the IPA facility.

Petitioners' argument that the Department must ''limit attribution to specific products that actually are inputs'' is incorrect. In fact, if this were the case, the Department would not have altered its original attribution approach followed through the 1993 administrative review, a change supported by petitioners. In the 1995 review, we stated that the attribution of ECIL grants to the sales of the units that received the grants and sales of all downstream products is ''consistent with the Department's attribution principles concerning subsidies to inputs where the same corporate entity produces the inputs and the subject merchandise, as well as other downstream products.'' 63 FR at 13629. Of further note is that this approach has been codified in the Department's final countervailing duty regulations at 19 CFR § 351.525(b)(5)(ii). Therefore, for these final results, in calculating the benefit from ECIL grants to Rotem's IPA facility, we have included the sales of fertilizers in the denominator.

Comment 3: Allocation of Grants Over AUL

Respondents agree that the Department used the appropriate AUL during the POR, but disagree with the Department's application of the company-specific AUL only to grants that were not previously allocated over ten years. They state that for the initial determination in 1987 and all subsequent reviews, the Department used a ten-year AUL, which does not reflect the company's actual situation. According to respondents, the Department's failure to apply the actual AUL to all grants is contrary to the Court of International Trade's ruling in *British Steel*, because the Court invalidated the use of the Internal Revenue Service (IRS) tables and instructed the Department to use ''a method of allocating the benefits on non-recurring subsidies that reasonably reflect the commercial and competitive advantages enjoyed by the firms receiving'' the subsidies. Respondents note that the Department chose the company-specific AUL to allocate non-recurring subsidies and the Court has endorsed it. Therefore, they argue that the Department's allocation of some of Rotem's grants according to the company's actual AUL, while allocating others according to an invalidated IRS proxy, which has no relevance to Rotem's actual situation, is clearly contrary to *British Steel*, and overstates the non-recurring subsidies.

Respondents also argue that the Department's rationale for not changing its AUL methodology is flawed. Respondents claim that reallocation is a very simple exercise, which can be accomplished by the Department taking the remaining balance during the POR and allocating that amount over the number of years left in the 23-year AUL benefit stream that begins in the year the grant was received. Respondents also argue that this approach takes into account the fact that countervailable subsidies have been fully paid for in all prior years up to the POR, and such an approach would not result in over- or under-countervailing the actual benefit since the entire actual benefit will be fully countervailed over the 23-year period.

Petitioners counter that while the Court in *British Steel* instructed the Department to use an allocation method that reasonably reflects the commercial and competitive advantages created by a subsidy, it does not require the Department to use the AUL method. Petitioners also counter that the Department chose not to recalculate the AUL because such a change could result in an allocation that distorts the allocation of the actual benefits Rotem received from the non-recurring subsidies, and this decision is fair and in keeping with the mandate of *British Steel.*

Department's Position

The arguments presented by respondents are for the most part identical to those made in the 1995 administrative review of this case. The Department fully addressed those arguments in that review (*see* 63 FR at 13632), and nothing argued by respondents in this review would lead us to change our prior determination with respect to this issue. It is our continued view that not disturbing allocation periods established in prior proceedings is reasonable and is not in conflict with the CIT's decision in *British Steel*, which does not require the Department to allocate non-recurring subsidies over a company's AUL.

However, we would like to further address additional implications of the approach advocated by respondents which would pose significant additional burdens on the Department. First, it is the Department's practice to calculate a benefit for all countervailable subsidies that are allocable through the POR. In the original investigation of this case, the Department determined, based on the IRS tables, that the appropriate allocation period is ten years. The period of investigation was 1987. Accordingly, the Department countervailed all non-recurring subsidies still benefitting the company in 1987, *i.e.*, subsidies received by Rotem from 1978 through 1987. While we determined in the 1995 review that Rotem's company-specific AUL was 24 years, we did not countervail non-recurring subsidies received by Rotem for the entire 24 year period. Rather, because the ten year allocation period had been previously established, we did not disturb the allocation period for those prior subsidies and also did not reach back to countervail non-recurring subsidies not previously examined. Thus, we applied the company-specific AUL only to those new subsidies received during 1995. However, were the Department to reallocate previously allocated subsidies, it would also be appropriate, at that time, to investigate all subsidies received by the company during the entire company-specific allocation period, including those not previously examined by the Department. This approach would be consistent with respondents' argument that the company-specific AUL is representative of Rotem's actual experience.

Respondents have also stated that since the Department has found that the 23 years company-specific period is the appropriate period, the ten-year period is invalidated, and both periods cannot at the same time be representative of Rotem's actual experience. If this were the case, then the 24 year period calculated by the Department in the 1995 review is also invalidated. Respondents have not contended, however, that the Department should now also recalculate the benefit stream for the 1995 non-recurring subsidies. It becomes clear, therefore, that respondents' proposed approach would require the Department to reallocate a company's subsidies each time the company-specific AUL has changed. This may occur, as is the case here, from one administrative review to the next. While such an approach may not seem to be overly burdensome in one case, in the context of all countervailing duty cases that burden is clearly significant.

As noted above, respondents have not provided any new information that would warrant a reconsideration of the Department's AUL methodology. For this reason, and for the additional concerns outlined above, we have not altered the allocation period for

previously allocated non-recurring subsidies, including those that were allocated using a company-specific AUL.

Comment 4: Rotem's AUL Calculation

Petitioners state that the Department, consistent with its normal practice, has accepted Rotem's audited financial statements at face value. However, they argue that there is no consistency between Rotem's AUL calculated for countervailing duty purposes and the actual useful life of assets as reflected in the firm's depreciation schedule used in its financial statements. Therefore, according to petitioners, the Department should either reject Rotem's AUL for inconsistency with its audited financial statements or make the appropriate adjustment in the gamma ratio, which is itself a function of a company's total assets, that would subsequently reduce the past subsidies previously calculated as having been extinguished by partial privatizations. Petitioners argue that if the Department continues to use the AUL as calculated by Rotem, then the productive assets that Rotem excluded from its AUL calculation (*i.e.*, furniture, vehicles and office equipment) should be included, and assets that are no longer in service should be excluded.

Respondents counter that there is no conflict between the calculated AUL and Rotem's depreciation schedules. The AUL was calculated in conformity with the Department's instructions and was taken directly from Rotem's audited financial statements. Respondents further argue that the length of Rotem's AUL stems from the merger between Rotem and Negev Phosphates Ltd., the latter of which had a longer AUL therefore increasing the overall AUL of the newly formed company, Rotem Amfert Negev Ltd. Respondents state that petitioners, in fact, recognize that the AUL is correct because they argue that if the Department accepts the AUL, then the gamma ratio must be adjusted to increase Rotem's net worth. According to respondents, there is no basis for making such an adjustment because the gamma denominator, which represents the net worth of the company, is taken directly from the audited annual reports and that figure was relied upon by the purchasers of ICL when the privatizations took place.

Respondents also counter that the assets that petitioners argue should be included in the AUL calculation are not productive assets. Moreover, the grants at issue are not given for such assets; they are given only for production facilities. Therefore, it was correct not to include these assets in the AUL calculation.

Department's Position

We disagree with petitioners' contention that the Department should reject Rotem's AUL information because it is inconsistent with the company's audited financial statements. Rotem complied with the Department's request and submitted information from its audited financial statements for use in the Department's company-specific AUL calculations. In the same submission, Rotem noted that the surge in asset values between 1990 and 1991 was due to the merger of Rotem and Negev Phosphate Ltd. We note that the verification reports from the previous proceeding, which were submitted on the record of the current review, discuss the issue of the Rotem/Negev merger and its effect on the newly formed company's AUL components. The information discussed in these reports is consistent with the information that Rotem submitted during the current review. Therefore, because respondent submitted its AUL information in the manner that the Department requested and because Rotem sufficiently explained the changes that occurred in its depreciable productive assets and regular depreciation expenses during the ten-year period examined by the Department, we find no reason to change the calculation of Rotem's AUL for the final results. For the same reasons, we also reject petitioners' contention that the Department should adjust Rotem's gamma ratio in order to account for the alleged inconsistencies between the company's AUL calculations and its audited financial statements.

In addition, we reject petitioners' contention that the Department should ''satisfy itself'' that all of Rotem's reported productive assets are actually in service. The Department's questionnaire specifically asks that companies exclude any fully depreciated productive assets which are no longer in use. We also note that Rotem's financial statements are audited and that the Department conducted a verification of Rotem's questionnaire responses during the 1995 administrative period of review. Given that Rotem's financial statements are audited and inspected annually and that they have been verified previously, we find no reason to doubt the integrity of the company's financial statements.

Petitioners' contention that the Department erroneously omitted some of Rotem's assets (furniture, office equipment, etc.) in calculating the company-specific AUL may warrant further consideration. However, we do not have the information on the record for these assets in prior years to recalculate the AUL. Therefore, we will review this issue in the next administrative review.

Comment 5: The Privatization Calculation

Respondents argue that the numerator of the ''gamma'' calculation does not include the face value of all subsidies received by Rotem over the years. They claim that the face value does not include subsidies given for projects 12 and 13, which were fully countervailed prior to this review. They also claim that the grants to project 8 were not included; presumably, because these grants did not benefit IPA. Respondents argue that to obtain a true picture of the relationship of the subsidies to the net worth, all subsidies must be included in the numerator, regardless of whether or not they benefit the subject merchandise.

Respondents also argue that because Rotem's net worth, the denominator of the gamma calculation, is an accumulated figure, the subsidies received, the numerator, should also be calculated based on an accumulated figure. According to respondents, the Department's position in the *1995 Final*, that the value of subsidies erodes over time, ignores the fact that the net worth also erodes over time. While a subsidy received in 1986 does not have the same relative value as a subsidy received in 1994, it still has some value; otherwise, they argue that the Department would not allocate non-recurring subsidies over time.

Respondents claim that the Department rejected the Coopers & Lybrand analysis in the 1995 review because the Department did not understand the analysis. They argue that the Department's current gamma methodology incorrectly assumes that the grants disappear at the end of the year because the gamma numerator does not recognize the cumulative effect of the subsidies. Instead, Rotem received grants, which do not disappear at the end of the year of receipt, but continue as part of equity, and the company's net worth is a direct result of these grants. In addition, they argue that the Department's privatization calculation methodology is internally inconsistent because the Department does not accumulate the subsidies to calculate the gamma, but does so to calculate the percent of subsidies repaid.

Petitioners counter that respondents have attempted to rehabilitate a fundamentally flawed argument that the Department previously rejected. Therefore, the Department should dismiss respondents' effort to reargue

matters that have already been decided. Petitioners also counter that respondents' argument that the Department should include grants to project 8 would require the Department to investigate all subsidies, whether or not countervailable, in order to make an appropriate privatization calculation, which is absurd. According to petitioners, respondents' argument, regarding projects 12 and 13, is flawed because these grants were countervailed prior to the current review.

Department's Position

Respondents' argument that the Department should include subsidies that have been fully countervailed and subsidies that do not benefit the subject merchandise is without merit. As a preliminary matter, the Department does not determine the benefit from subsidies for programs that are determined not to benefit the subject merchandise. Further, the Department's methodology determines the portion of the purchase price that goes towards the repayment of the subsidies which were found to be countervailable. That portion of the purchase price is deducted from the net present value of the remaining benefit stream of all non-recurring subsidies that are being countervailed. This performs the appropriate calculation: deducting from the net present value of all countervailable subsidies in the year of privatization the portion of the purchase price representing repayment of those countervailable subsidies.

We also reject respondents' argument that because Rotem's net worth, the denominator of the gamma calculation, is an accumulated figure, the subsidies received, the numerator, should also be calculated based on an accumulated figure. Because the grants were received at different time periods and the benefit streams are different, we cannot accumulate the grants as respondents have suggested. The privatization methodology attempts to estimate that portion of the purchase price that is attributable to remaining subsidies from the time of bestowal until the date of the privatization by calculating the gamma. The gamma calculation serves as a reasonable historic surrogate for the percentage of subsidies that constitute the overall value (i.e., net worth of the company) at a given point in time. *See, GIA*, 58 FR at 37263, and *1995 Final*, 63 FR at 13635, 13636; *see also Inland Steel Bar Co.*, v. *United Engineering Steels, Ltd.*, 155 F.3d 1370, 1374–75 (Fed. Cir. 1998) (the Court affirmed the Department's methodology for determining the amount of a subsidy that is repaid). Thus, the relative value of an earlier subsidy is not ''totally ignored'' in the Department's calculation, as argued by respondents. The value of that subsidy is appropriately being compared to the net worth of the firm in the year that it was received. This comparison thus fully captures the weight of that subsidy in the gamma calculation.

Respondents' claim that the Department's position in the 1995 review, that the ''depreciation of assets offsets any of the erosion of subsidies,'' is also flawed. We do not dispute that the company's net worth increased, in part, as a result of subsidies. However, respondents' comparison of the value of the company's accumulated subsidies in the year before privatization to the company's net worth in that year is misplaced, because it assumes that the company's net worth increased in direct proportion to the value of the subsidies received by the firm. It is simply not reasonable to assume that there is a direct relationship between additional capital infusion by the government and increases in the equity of the firm. Accordingly, it is equally unreasonable to assume that the accumulated face value of all of Rotem's subsidies received in each year can be appropriately compared to the company's net worth in the year prior to privatization. Such a comparison overstates the value of the subsidies in relationship to the company's net worth because it assumes that a company's net worth increases in direct proportion to the value of the subsidies received by that firm. However, this is not the case, as those values are depreciating from year to year.

Comment 6: Program Denominator for Grants Allocable to IPA, MKP, and Fertilizers

Respondents argue that although IPA is an input into downstream products, such as phosphate salts and food additives, the Department did not include the sales values of these products in the denominator of the countervailing duty calculations, nor did the Department provide an explanation. Respondents claim that although the Department's preliminary results state that the ECIL grants were attributed to a particular facility over the sales of the product produced by that facility plus sales of all products into which that product may be incorporated, this statement is not entirely correct. They argue that since the products produced by Rotem were also incorporated into the phosphate salts and food additives produced by Rotem's subsidiary, the Department should have attributed the ECIL grants to these products as well.

Respondents also argue that because Rotem sells IPA as an end product and as an input into downstream products that are produced in another country by its subsidiary, these sales should be included in the denominator of the calculation for grants that are allocable to IPA, MKP, and fertilizers. In support of its argument, respondents point to the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 62 FR 8818, 8856 *(1997 Proposed Rules)*, which states that where a firm has ''production facilities in two or more countries,'' the Department will generally attribute the subsidy to products produced by the firm within the jurisdiction of the government that granted the subsidy.

Petitioners counter that respondents' argument ignores the fact that IPA is the class or kind of merchandise, and while the inputs into the production of IPA may be relevant for subsidy calculations purposes, what happens to IPA after it is produced is irrelevant. There is no precedent or support for the Department to go beyond a finding that grants have been provided for the production of IPA and make the further determination that such grants also benefitted the subsequent production of non-subject merchandise. Petitioners also counter that for the Department to apply respondents' methodology would be adoption of the so-called competitive-benefits-conferred interpretation of a countervailable subsidy which has been rejected by the Department and the Court of Appeals for the Federal Circuit in the privatization context.

Furthermore, petitioners counter that the downstream products are not produced in Israel. The Department's policy in circumstances where the firm that received a subsidy has production facilities in two or more countries is to attribute the subsidy to products produced by the firm within the jurisdiction of the government that granted the subsidy. Since the ECIL grants are designed to promote economic development in Israel, it is appropriate to countervail the benefits in that country. Therefore, petitioners argue that the respondents' arguments should be rejected.

Department's Position

We reject respondents' contention that the Department should add to the denominator of the countervailing duty calculations for grants allocable to IPA, MKP, and fertilizer the sales of downstream products produced from IPA. We reject respondents' argument on this matter on the basis that the

downstream products referred to by respondents are not manufactured in Israel. Rather, they are produced by a subsidiary of Rotem in Germany. It has been the Department's position that domestic subsidies benefit domestic production. This practice has been well-established since the *Certain Steel* investigations and has been upheld by the CIT. *See GIA*, 58 FR at 37231; *see also British Steel plc* v. *United States*, 929 F. Supp. 426, 453–55 (CIT 1996), *appeal pending sub nom. Inland Steel Industries, Inc.* v. *United States*, Nos. 98–1230, 1259 (Fed. Cir.).

Comment 7: The Environmental Grants

Respondents argue that the Department incorrectly focused solely on the ''general availability'' issue without first addressing whether the subsidy even benefitted IPA. According to respondents, whether the environmental grants are specific or general is irrelevant because they are not tied to IPA, and, hence did not benefit IPA. Respondents claim that the grants were given for the purpose of reducing dust pollution at the Ashdod port and because IPA, which is a liquid and does not produce dust, could not have benefitted from these grants.

Respondents also argue that it is inappropriate for the Department to use adverse ''facts available'' when a party indicates that information requested is not available, and in such an instance, the Department must use other information on the record. Respondents claim that this other information was provided by the Ministry of Environment, which clearly indicates that the grants are available to all industries regardless of the region.

Petitioners counter that the environmental grants benefitted the entire company, and whether IPA itself was the cause of any pollution at the port is of no consequence. The countervailing duty law is not concerned with causation, but rather with benefit. Thus, the issue is whether IPA and other Rotem products benefitted from the improved conditions at the port made possible by the grants. Petitioners also counter that respondents' argument regarding use of other information on the record to determine specificity is not persuasive because the ''other information'' did not address the issue of *de facto* specificity.

Department's Position

We disagree with respondents. According to the December 15, 1997, questionnaire response at II–16, financial assistance is provided to industrial plants for the adaptation of the facility to meet new environmental requirements, which include other hazards besides dust. The provision of these grants by the GOI relieves the company of an obligation that it otherwise would have incurred. Although IPA may not produce dust, as stated by respondents, the company did utilize the Ashdod port for IPA shipments. Therefore, the environmental grants are untied benefits that are bestowed to the entire company.

We also disagree with respondents' argument regarding the Department's use of adverse facts available for this program. On two occasions, the Department requested information from the GOI to enable us to conduct a *de facto* specificity analysis of the Environment Grant Program. On April 7, 1998 and on April 24, 1998, the Department requested information from the GOI regarding eligibility for and actual use of the benefits provided under this program. The GOI provided information regarding the total number of applicants that applied for or received grants, and the total amount of the grants given under the program. However, the GOI did not attempt to extrapolate the required information from its aggregate data, nor did they explain why such information could not be provided. In accordance with section 776(a)(2) of the Act, the Department used facts available because the GOI withheld information that had been requested. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Because the GOI did not comply with the Department's request for information, and they did not give an explanation as to why they could not provide the information, they did not act to the best of their ability. Therefore, the Department determines it appropriate to use an adverse inference in concluding that the environmental grants are specific. For further discussion, *see Preliminary Results*, 63 FR at 48195.

Comment 8: Grants to Project 15

Respondents argue that grants to project 15 are not countervailable because the green acid produced in this facility was not used as an input into IPA. Although the green acid from project 15 could be used chemically for IPA, it is not economically suitable for IPA; therefore, it cannot be viewed as a viable input. Respondents also argue that under the Department's practice of tying subsidies, where a subsidy is tied to a product other than the product under investigation, the Department will not allocate the subsidy to the product under investigation. Respondents argue that the Department's rationale in the 1995 review for countervailing these grants because the products produced from project 15 could be incorporated into IPA, does not comport with the Department's tying requirement. While there may be a potential benefit, there is, in fact, no actual benefit, and the countervailing duty law deals with actualities, not potentialities. The *1997 Proposed Rules* refer to an input into a downstream product and not a potential input product; it refers to actual inputs. Therefore, they argue that the product produced from project 15 was not used in the downstream production of IPA, even if it could have been used, and as such, it does not fall within the definition of an input.

Petitioners agree with the Department's finding, and counter that there is no reason for the Department to reconsider its previous decision.

Department's Position

The Department fully addressed respondents' argument in the 1995 administrative review. As previously stated, green acid can be used in the production of all downstream products, including IPA. The ECIL subsidies are provided to inputs that are also incorporated into other downstream products produced by the same integrated company. Therefore, to the extent that ECIL grants are tied to green acid, they are also tied to the sales of all other merchandise incorporating those inputs. *See*, the *1995 Final*, 63 FR at 13630.

The Department's practice is to countervail the value of the subsidies at the time they are provided to the company without regard to their actual use by that same company or their effect on its subsequent performance. As stated in the *GIA*, ''nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect.'' Specifically, section 771(5)(C) of the Act states that the Department ''is not required to consider the effect of the subsidy in determining whether a subsidy exists.'' *See GIA*, 58 FR at 37260, and the *1995 Final* 63 FR at 13631. Because neither the statute nor the Department's regulations permit an analysis of the use and effect of subsidies, the Department does not attempt such an analysis.

Final Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1996 through December 31, 1996, we determine the net subsidy for Rotem to be 5.89 percent *ad valorem*.

We will instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993); *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the Act, as amended by the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See 1992/93 Final Results,* 61 FR 28842. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677(f)(i)(7)).

Dated: January 7, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–1116 Filed 1–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011199F]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Information & Education Committee, Tilefish Committee, Surfclam and Ocean Quahog Committee, Executive Committee, Comprehensive Management Committee, and Habitat Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, February 2, 1999 to Thursday, February 4, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the New York Marriott, 3 World Trade Center, New York, NY; telephone: 212–938–9100.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, February 2, the Information & Education (I&E) Committee will meet from 1:00–2:00 p.m. The Tilefish Committee will meet from 2:00–3:00 p.m. The Surfclam and Ocean Quahog Committee will meet from 3:00–5:00 p.m. On Wednesday, February 3, there will be a tour of the Fulton Fish Market from 5:30–8:00 a.m. The Executive Committee will meet from 9:00–10:00 a.m. The Comprehensive Management Committee will meet from 10:00 a.m. until noon. The Habitat Committee will meet from 1:00–2:00 p.m. The Council will meet from 2:00–5:00 p.m. to address scallop management and possible dogfish actions. On Thursday, February 4, the Council will meet at 9:00 a.m. and adjourn at approximately noon.

Agenda items for these meetings are: Review the 1999 schedule for I & E activities; review progress on Tilefish fishery management plan (FMP) development; possible selection of tilefish advisors; discuss Delmarva surfclam issue and future economic modeling; discuss comprehensive management activities for 1999; possible development of recommendations to reduce bycatch of scup; discuss scallop management issues; discuss 1999 schedule Habitat Committee; review New England Council action on dogfish FMP and develop recommendations on interim and/or emergency actions for spiny dogfish management measure implementation; possible discussion of commercial and recreational management measures for other Mid-Atlantic species, discussion and possible adoption of management measures for species managed by the New England and South Atlantic Councils; and other fishery management matters.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues

specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: January 12, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–1118 Filed 1–15–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010799C]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene a joint meeting of its Snapper Grouper Assessment Group and Wreckfish Advisory Panel to review wreckfish landings and the wreckfish assessment and develop recommendations to the Council for setting the 1999/2000 wreckfish framework actions including total allowable catch.

DATES: The meeting will be held on February 2, 1999 from 1:00 p.m. to 5:30 p.m., on February 3, 1999 from 8:30 a.m. to 5:30 p.m., and on February 4, 1999 from 8:30 a.m. to 12:00 noon.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2001 Savannah Highway, Charleston, SC 29407; telephone: 843-571-1000.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (843) 571-4366; fax: (843) 769-4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION: The Snapper Grouper Assessment Group will review and discuss the gag, greater amberjack and red porgy assessments and develop group recommendations to the Council; review and discuss the trends report and updated spawning potential ratio estimates for snapper grouper species and develop recommendations; review, discuss and develop recommendations on the compliance and logbook reports and the snowy grouper, golden tilefish and greater amberjack quotas. The Assessment Group will also discuss and make recommendations on: the status of snapper grouper species as reflected in the most recent assessments and the projected status based upon Amendment 9 actions, special management zones, marine fishery reserves, oculina research, frequency of trends and compliance reports, the stock assessment and fishery evaluation (SAFE) report; and essential fish habitat (EFH) and EFH habitat areas of particular concern. The Assessment Group will then review and discuss the Council's Sustainable Fisheries Act Amendment before making recommendations for future action. The Assessment Group will discuss other business which may arise before adjourning.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by January 26, 1998.

Dated: January 12, 1999.

Bruce Morehead,

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

[FR Doc. 99–1119 Filed 1–15–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4:00 p.m., February 8–9, 1999.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

February 8, 1999

Place: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

8:30 a.m. Meeting—Board of Regents

(1) Strategic Planning
(2) Group I & Group II Meeting
(3) Executive Committee

February 9, 1999

Place: National Library of Medicine, Bethesda, MD.

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—October 26, 1998
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

FOR FURTHER INFORMATION CONTACT: Mr. Bobby D. Anderson, Executive Secretary of the Board of Regents, (301) 295–3116.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–1154 Filed 1–13–99; 4:24 pm]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of claims and the availability of funds for reimbursement in fiscal year 1999 and changes in reimbursement ceilings.

SUMMARY: This Notice announces the Department of Energy acceptance of claims for reimbursement. Approximately $30 million in funds for fiscal year 1999 are available for reimbursement of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992.

After the payment of fiscal year 1999 funds against outstanding approved claims through fiscal year 1998, there will be remaining unpaid outstanding approved claims. Thus any approved claim amounts for fiscal year 1999 will be added to the outstanding balances and eligible for prorated payment in fiscal year 2000 based on the availability of funds from congressional appropriations.

Changes in Reimbursement Ceilings: Section 11 of the Energy Conservation Reauthorization Act of 1998 (Secs. 11(a) and (b), Pub. L. 105–388) amends the Energy Policy Act of 1992 to increase the ceiling for thorium reimbursements by $75,000,000 to $140,000,000.

The overall ceiling for Title X reimbursements is thus increased from $415,000,000 to $490,000,000. This increase is effective immediately and will be applied in calculating the remaining available ceiling for thorium claims.

Title X directs that reimbursements to each uranium licensee will not exceed $5.50 per dry short ton of byproduct material. When Title X was enacted, the Department determined that the authorized amount of $270,000,000 for the total reimbursements to uranium licensees would not be sufficient if the reimbursable costs for each of the uranium licensees were to equal or exceed $5.50 per dry short ton of byproduct material. The Department has been utilizing a preliminary dry short ton ceiling that is less than the statutory ceiling of $5.50 per dry short ton to assure that all licensees would receive their fair share of authorized funds.

The Department has determined that the preliminary dry short ton ceiling is no longer needed. Beginning with the fiscal year 1999 reimbursement, each uranium licensee's approved reimbursable costs will be limited to their actual cost per dry short ton or the statutory dry short ton ceiling, whichever is less. The statutory dry short ton ceiling, which when adjusted for inflation through calendar year 1997, is currently $7.07 per dry short ton. This amount will be adjusted in early 1999 for inflation during calendar year 1998.

DATES: The Department will process payments of approximately $30 million against outstanding approved claims through fiscal year 1998 by April 30, 1999. The closing date for the submission of claims in fiscal year 1999 is May 3, 1999.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, P.O. Box 5400, Albuquerque, NM 87185–5400, or by express mail to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, H and Pennsylvania Streets, Albuquerque, NM 87116. All claims should be addressed to the attention of Mr. James B. Coffey. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Messrs. James Coffey (505–845–4026) or Gil Maldonado (505–845–4035), U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division.

SUPPLEMENTARY INFORMATION: The Department of Energy published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994 (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (Secs. 1001–1004, Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires the Department of Energy to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a state pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by the Department of Energy in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Secs. 1001–1004, Pub. L. 102–46, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*), as amended by secs. 11 (a) and (b), Pub. L. 105–388.

Issued in Washington DC, on the 11th of January, 1999.

David E. Mathes,

Leader, UMTRA/Surface Ground Water Team, Office of Southwestern Area Programs, Environmental Restoration.

[FR Doc. 99–1108 Filed 1–15–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Availability of Solicitation for Awards of Financial Assistance

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of Availability of Solicitation Number DE–PS07–99ID13750—Steel Industries of the Future.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research and development of technologies which will enhance economic competitiveness, reduce energy consumption and reduce environmental impacts of the steel industry. The research is to address research priorities identified by the steel industry in the Steel Industry Technology Roadmap.

DATES: The deadline for receipt of full applications is March 18, 1999, at 3:00 p.m. MST.

ADDRESSES: Applications should be submitted to: Beth Dahl, Contract Specialist, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Beth Dahl, Contract Specialist at *dahlee@id.doe.gov*, or Linda Hallum, Contracting Officer at *hallumla@id.doe.gov*.

SUPPLEMENTARY INFORMATION: The Steel Industry Technology Roadmap can be found at *http://www.steel.org/MandT/contents.htm*. Approximately $5,000,000 in federal funds are expected to be available to fund the first year of selected research efforts. DOE anticipates making 1 to 5 cooperative agreement awards each with a duration of five years or less. A minimum 30% non-federal cost-share is required for research and development projects. Proposals for demonstration projects of existing technologies will require a minimum 50% cost share. Collaborations between industry, university, and National Laboratory participants are encouraged. The issuance date of Solicitation Number DE–PS07–99ID13750 is on or about January 4, 1999. The solicitation is available in its full text via the Internet at the following address: *http://www.id.doe.gov/doeid/PSD/proc-div.html*. The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on January 6, 1999.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 99–1109 Filed 1–15–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–15–002]

Black Marlin Pipeline Company; Notice of Compliance Filing

January 12, 1999.

Take notice that on January 6, 1999, Black Marlin Pipeline Company (Black Marlin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheets, with an effective date on November 2, 1998:

Second Substitute Fourth Revised Sheet No. 201A
Substitute Original Sheet No. 211D
Original Sheet No. 211E

Black Marlin states that on October 1, 1998, in Docket No. RP99–15–000 tariff changes were filed (October 1 Filing) to implement the provisions of Order Nos. 587–G and 587–H regarding the intraday nomination and scheduling procedures and timeline promulgated by the Gas Industry Standards Board (GISB), including the regulations adopted by the Commission regarding the bumping of scheduled interruptible service by firm shippers. On October 30, 1998 the Commission issued a Letter Order (October 30 Order) accepting the tariff sheets subject to Black Marlin filing, within 15 days of the date of the order, revisions consistent with certain conditions discussed in the October 30 Order. On November 12, 1998 Black Marlin filed revised tariff sheets (November 12 Filing) to comply with the Order 30 Order.

Black Marlin further states that parts (i) through (iii) of GISB Standard 1.3.22 were included verbatim on Sheet No. 211D and part (iv) incorporated by reference on Sheet 201A in the October 1 Filing. The October 30 Order stated that Black Marrlin must either include the entire standard verbatim or incorporate the entire standard by reference. Black Marlin filed a revision to include the entire standard by reference on Sheet No. 201A in the November 12 Filing but did not remove the verbatim language from Sheet No. 211D. On December 22, 1998 the Commission issued a Letter Order (December 22 Order) accepting the revised tariff sheet submitted with the November 12 Filing, but reiterated that the October 30 Order required Black Marlin to either include the entire GISB Standard 1.3.22 verbatim or by reference, but not both. The December 22 Order directed Black Marlin to make another compliance filing within 15 days.

Black Marlin states that it has elected in the instant filing to include the entire standard verbatim on Sheet Nos. 211D and 211E and to eliminate the incorporation by reference on Sheet No. 201A consistent with the October 30 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1061 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–14–002]

Florida Gas Transmission Company; Notice of Compliance Filing

January 12, 1999.

Take Notice that on January 6, 1999, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective February 1, 1999:

Second Substitute Seventh Revised Sheet No. 102B
Substitute First Revised Sheet No. 118A

FGT states that on October 1, 1998, in Docket No. RP99–14–000, tariff changes were filed (October 1 Filing) to implement the provisions of Order Nos. 587–G and 587–H regarding the intraday nomination and scheduling procedures and timeline promulgated by the Gas Industry Standards Board (GISB), including the regulations adopted by the Commission regarding the bumping of scheduled interruptible service by firm shippers. In addition, FGT filed concurrently, in Docket No. RP99–29–000, a Request for Waiver proposing that these changes become effective February 1, 1999. On October 30, 1998 the Commission issued a Letter Order (October 30 Order) granting FGT's request to implement the changes effective February 1, 1999 and accepting the tariff sheets subject to FGT filing, within 15 days of the date of the order, revisions consistent with certain conditions discussed in the October 30 Order. Errata to the October 30 Order correcting the listing of accepted tariff sheets was issued November 3, 1998. On November 12, 1998 FGT filed revised tariff sheets (November 12 Filing) to comply with the October 30 Order.

FGT further states that parts (i) through (iii) of GISB Standard 1.3.22 were included verbatim on Sheets Nos. 118 and 118A and part (iv) incorporated by reference on Sheet 102B in the October 1 Filing. The October 30 Order stated that FGT must either include the entire standard verbatim or incorporate the entire standard by reference. FGT filed a revision to include the entire standard by reference on Sheet No. 102B in the November 12 Filing but did not remove the verbatim language from Sheets Nos. 118 and 118A. On December 22, 1998 the Commission issued a Letter Order (December 22 Order) accepting the revised tariff sheets submitted with the November 12 Filing, but reiterated that the October 30 Order required FGT to either include the entire GISB Standard 1.3.22 verbatim or by reference, but not both. The December 22 Order directed FGT to make another compliance filing within 15 days.

FGT states that it has elected in the instant filing to include the entire standard verbatim with the addition of part (iv) on Sheet No. 118A, and to eliminate the standard's incorporation by reference on Sheet No. 102B consistent with the October 30 Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1060 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project 2177, GA]

Georgia Power Company; Notice of Stakeholder Meeting for an Applicant Prepared Environmental Assessment

January 12, 1999.

On May 26, 1998, the Commission approved the use of the APEA process in the preparation of license application for Georgia Power Companies' (GPC) Middle Chattahoochee Project, No. 2177.

GPC will hold a stakeholder meeting as a follow up to the Scoping and Initial Information Meeting held on July 9, 1998, to review and discuss the comments received at the scoping meeting and written comments on the scoping document. GPC will: (1) Summarize ongoing administrative, procedural, and schedule issues; (2) review and discuss the outline for Scoping Document 2; and (3) review and discuss the Resource Study Plan.

Stakeholder Meeting

The Stakeholder Meeting will be held on February 11, 1999, from 9:00 a.m. until 5:00 p.m. The meeting will be held at the Georgia Power Company, Columbus Operation Headquarters, 3610 Gentian Blvd., Columbus, Georgia 31907.

All signees of the Middle Chattahooche Communication Protocol, as well as interested individuals, organizations, and agencies are invited and encouraged to attend.

Any additional information may be obtained by calling George Martin, Georgia Power Company, at (404) 506–1357, E-mail at gamartin@southernco.com or mail at Georgia Power Company, 241 Ralph McGill Blvd., BIN 10221, Atlanta, Georgia 30307–3374.

For further information please contact George Martin at (404) 506–1357 or Ronald McKitrick of the Commission at (770) 452–3778.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1052 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–280–003]

Kansas City Power & Light Company; Notice of Filing

January 12, 1999.

Take notice that on December 23, 1998, Kansas City Power & Light Company submitted revised standards of conduct under Order Nos. 889 *et seq.*[1]

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, 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). All such motions and protests should be filed on or before January 22, 1999. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1050 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–25–007]

West Texas Gas, Inc; Notice of PGA Reconciliation and Refund Reports

January 12, 1999.

Take notice that on December 3, 1998, West Texas Gas, Inc. (West Texas) tendered for filing its PGA Reconciliation and Refund Reports.

West Texas states that this filing is in compliance with the Commission's November 27, 1998 letter order accepting the tariff sheets implementing the settlement approved in this proceeding on September 17, 1998. As directed in the order, West Texas is filing with the Commission the final reconciliation of its PGA account balance within 60 days of closing out the PGA accounts. The filing also includes Refund Reports detailing the amounts collected in excess of the settlement rates since May 1, 1998, the effective date of the settlement, plus interest calculated in accordance with the Commission's regulations.

West Texas states that a copy of the report has been served upon affected customers, interested state commissions and all parties designated on the official service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 19, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1059 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

January 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2056–016.

c. *Date filed:* December 21, 1998.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* St. Anthony Falls Project.

f. *Location:* On the Mississippi River, near Minneapolis and St. Paul, Hennepin County, Minnesota.

g. *Filed pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mark H. Holmberg, P.E., Northern States Power

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[1] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on rehearing,* 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997) (Order No. 889–A); Order No. 889–B, *rehearing denied,* 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

Company, 414 Nicollet Mall, Minneapolis, MN 55401, (612) 330–6568.

i. *FERC Contact:* Any questions on this notice should be addressed to Monte TerHaar, E-mail address monte.terhaar@ferc.fed.us, or telephone: 202–219–2768.

j. *Deadline for filing additional study requests:* March 2, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The Project consists of the following existing facilities located across from the U.S. Army Corps of Engineers Upper Saint Anthony Lock: (1) Horseshoe Dam, a 1,952-foot-long concrete, timber, and rock structure topped with 1.6-foot-high wooden flashboards; (2) the main spillway, a concrete, timber and rock structure 425 feet wide and 150 feet-long; (3) a 340-foot-long roll dam; (4) a 358-acre reservoir with a normal pool water surface elevation of 799.2 feet NGVD, and a total storage capacity of 967 acre-feet; (5) a concrete and masonry powerhouse, 133 feet long by 92 feet wide; (6) 5 turbines with a total installed capacity of 12,400 kilowatts, and a maximum hydraulic capacity of 4,025 cfs, producing an average of 79,518 megawatthours annually; and (7) four 115-kilovolt primary transmission lines; and other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1051 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Request for Motions To Intervene and Protests

January 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11624–000.

c. *Date filed:* November 6, 1998.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Arkansas L&D #3 Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Arkansas Lock & Dam #3 on the Arkansas River, near the Town of Gillett, Jefferson and Lincoln Counties, Arkansas.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@FERC.fed.us.

j. *Comment Date:* February 9, 1999.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Arkansas Lock & Dam #3 and Reservoir and would consist of the following facilities: (1) A new powerhouse to be constructed on the tailrace side of the dam having an installed capacity of 22.75 megawatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 150 gigawatthours. The cost of the studies under the permit will not exceed $2,700,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36.). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) name in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering

plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests of other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1053 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request For Motions To Intervene and Protests

January 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11625–000.

c. *Date Filed:* November 6, 1998.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Oliver Dam (William Bacon Oliver Replacement) Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Oliver Dam on the Black Warrior River, near the Town of Tuscaloosa, Tuscaloosa County, Alabama.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@FERC.fed.us.

j. *Comment Date:* February 9, 1999.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Oliver Dam and Reservoir, and would consist of the following facilities: (1) A new powerhouse to be constructed on the tailrace side of the dam having an installed capacity of 6,200 kilowatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 42 gigawatthours. The cost of the studies under the permit will not exceed $1,400,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1054 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

January 12, 1999.

Take notice that the following hydroelectric applications has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11628–000.

c. *Date filed:* November 6, 1998.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Demopolis L&D Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Demopolis Lock & Dam on the Tombigbee River, near the Town of McDowell, Marengo County, Alabama.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2789 or E-mail address at susan.tseng@FERC.fed.us.

j. *Comment Date:* February 9, 1999.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers's Demopolis Lock & Dam and Reservoir, and would consist of the following facilities: (1) A new powerhouse to be constructed on the tailrace side of the dam having an installed capacity of 23.7 megawatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 155 gigawatthours. The cost of the studies under the permit will not exceed $2,700,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electronic Power Corp., Mr. Ronald S. Feltenberger 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular applications. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include a unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATIONS'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1055 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

January 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11629–000.

c. *Date filed:* November 6, 1998.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Claiborne L&D Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Claiborne Lock and Dam on the Alabama River, near the Town of Claiborne Landing, Monroe County, Alabama.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@FERC.fed.us.

j. *Comment Date:* February 9, 1999.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Claiborne Lock and Dam and Reservoir, and would consist of the following facilities: (1) A new powerhouse to be constructed on the tailrace side of the dam having an installed capacity of 29.25 megawatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 180 gigawatthours. The cost of the studies under the permit will not exceed $3,000,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents

must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1056 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions to Intervene and Protests

January 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Premlinary Permit.

b. *Project No.:* P–11632–000.

c. *Date filed:* November 6, 1998.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Coffeeville L&D Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Coffeeville Lock & Dam on the Tombigbee River, near the Town of Coffeeville, Choctaw County, Alabama.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@FERC.fed.us.

j. *Comment Date:* February 9, 1999.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Coffeeville Lock & Dam and Reservoir, and would consist of the following facilities: (1) A new powerhouse to be constructed on the tailrace side of the dam having an installed capacity of 9,550 kilowatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 62 gigawatthours. The cost of the studies under the permit will not exceed $2,000,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the result of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the

Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1057 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions to Intervene and Protests

January 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11633–000.

c. *Date filed:* November 6, 1998.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Tom Bevill L&D Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Tom Bevill Lock & Dam on the Tombigbee River and Aliceville Reservoir, near the Town of Memphis, Pickens County, Alabama.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@FERC.fed.us.

j. *Comment Date:* February 9, 1999.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Tom Bevill Lock and Dam and Reservoir, and would consist of the following facilities: (1) A new powerhouse to be constructed on the tailrace side of the dam having an installed capacity of 3,660 kilowatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 24 gigawatthours. The cost of the studies under the permit will not exceed $1,100,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1058 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AI99–2–000]

To All Jurisdictional Public Utilities, Licensees, Natural Gas Companies and Oil Pipeline Companies

January 8, 1999.

Subject: Records Storage Media

Introduction

The Commission's present regulations [1] for long-term storage of records generally require the media form to be paper or microforms. As a result of rapidly changing technological advances, other storage media forms have developed. The alternative storage media often allows for more efficient storage capability. This letter constitutes the requisite authority for public utilities and licensees, natural gas companies and oil pipeline carriers to use storage media other than those specified in our regulations.

1. *Question:* What types of storage media will the Commission allow?

Response: The Commission will give each jurisdictional company the flexibility to select its own storage media. It will not limit the companies to the currently approved storage media: paper and card stock; magnetic and punched tape; microfilm, including Computer Output Microfilm, microfiche jackets, and aperture cards; updatable microfilm; and metallic recording data strips. This will enable each jurisdictional company to avail itself of the latest technological advances and, depending on its resources and storage requirements, select the most economical and efficient storage media.

2. *Question:* Is the media selected required to have a life expectancy at least equal to the specified retention period?

Response: The storage media selected must have a life expectancy at least equal to the applicable record retention period unless there is a quality transfer from one media to another with no loss of data.

3. *Question:* The regulations require that ''records supporting plant and licensed project cost shall be retained in their original form, unless microfilmed.'' Does this requirement still apply?

Response: No, jurisdictional companies are now allowed to retain these records on any type of storage media.

4. *Question:* What are the jurisdictional companies' internal control responsibilities?

Response: The Commission is concerned that records stored on and produced from machine readable media may be susceptible to accidental alteration, or incorrect processing. Accordingly, each jurisdictional company is required to implement internal control procedures that assure the reliability of and ready access to data stored on machine readable media. When records are transferred, each transfer of data from one media to another must be verified for accuracy and documented. Similarly, the software and hardware required to produce readable records must be retained for the same period the media format selected is used.

5. *Question:* What is the effective date of this authorization?

Response: This authorization is effective immediately. The use of any type of storage media may be implemented without obtaining specific authorization from the Commission to do so.

By direction of the Commission.

David P. Boergers,

Secretary.

[FR Doc. 99–1049 Filed 1–15–99; 8:45 am]

BILLING CODE 6717–01–M

[1] See 18 CFR 125.2(d)(1), 18 CFR 225.2(d)(1), and 18 CFR 356.6(a) (1998).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6221–1]

Meeting of the Small Community Advisory Subcommittee of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This meeting is the fourth for the Small Community Advisory Subcommittee of the Local Government Advisory Committee. The group takes up the work of an earlier advisory group known as the Small Towns Task Force. At this meeting, the subcommittee will hear presentations about the Small Community Activities Inventory Update. In addition, the group will examine the efforts of certain EPA regional offices to address small community issues. Finally, the group will consider proposals to improve upon EPA's implementation of the Regulatory Flexibility Act as it relates to small communities. Responsibility for the Small Community Advisory Subcommittee of the Local Government Advisory Committee rests with the Office of Administrator, Office of Congressional and Intergovernmental Relations (OCIR) under the leadership of Joseph R. Crapa, Associate Administrator for Congressional and Intergovernmental Relations and Linda B. Rimer, Deputy Associate Administrator for State and Local Relations. OCIR serves as the Agency's principal liaison with State and local government officials and the organizations which represent them.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the Designated Federal Officer (DFO). Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating is limited and will be available on a first come, first serve basis.

This meeting will be conducted at the Environmental Protection Agency's Region IX Office, 75 Hawthorne Street, San Francisco, California. Those individuals wishing to make a statement before the Subcommittee are encouraged to submit a written statement. From 8:30—8:45 a.m. on February 5th, the Subcommittee will hear comments from the public. Each individual or organization wishing to address the Subcommittee will be allowed at least two minutes. Please contact the DFO at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

DATES: The meeting will begin at 8:30 a.m. on Thursday, February 4 and conclude at 4:30 p.m. on Friday, February 5, 1999.

ADDRESSES: The meeting will be held at the Environmental Protection Agency's Region IX Office, 75 Hawthorne Street, San Francisco, California 94105.

Requests for Minutes and other information can be obtained by writing to 401 M Street, SW. (1305), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Subcommittee is Steven R. Wilson. He is the point of contact for information concerning any Subcommittee matters and can be reached by calling (202) 260–2294.

Dated: January 8, 1999.

Steven R. Wilson,

Designated Federal Officer,

Small Community Advisory Subcommittee of the Local Government Advisory Committee.

[FR Doc. 99–1129 Filed 1–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6221–4]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of Johnson Iron Industries Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: Notice of Settlement: in accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given of a settlement concerning past and future response costs at the Johnson Iron Industries Superfund Site in Charlotte, Michigan. This proposed agreement has been approved by the Attorney General, as required by Section 122(g)(4) of CERCLA.

DATES: Comments must be provided on or before February 18, 1999.

ADDRESSES: Comments should be addressed to Karen L. Peaceman, Assistant Regional Counsel, Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and should refer to: In the Matter of Johnson Iron Industries Superfund Site.

FOR FURTHER INFORMATION CONTACT: Karen L. Peaceman, Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5751.

SUPPLEMENTARY INFORMATION: The following party executed binding certification of its consent to participate in the settlement: Hoover Investments, Inc.

Hoover Investments, Inc. will pay $30,000 for response costs related to the Johnson Iron Industries Superfund Site, if the United States Environmental Protection Agency determines that it will not withdraw or withhold its consent to the proposed settlement after consideration of comments submitted pursuant to this notice.

U.S. EPA may enter into this settlement under the authority of Section 122(g) of CERCLA. Section 122(g) authorizes EPA to settle any claims under Section 107 of CERCLA with *de minimis* parties if the amount and the toxicity of hazardous substances contributed by that party is minimal in comparison to other hazardous substances at the facility. Pursuant to this authority, the agreement proposes to settle with a party who is potentially responsible for costs incurred by EPA at the Johnson Iron Industries Superfund Site.

A copy of the proposed administrative order on consent and additional background information relating to the settlement are available for review and may be obtained in person or by mail from Karen L. Peaceman, Mail Code C–14J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The U.S. Environmental Protection Agency will receive written comments relating to this settlement for thirty days from the date of publication of this notice.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*

William E. Muno,

Director, Superfund Division.

[FR Doc. 99–1130 Filed 1–15–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6220–2]

Technical Correction; Final National Pollutant Discharge Elimination System Storm Water Multi-Sector General Permit for Industrial Activities

AGENCY: Environmental Protection Agency.

ACTION: Corrections; and notice of final NPDES storm water general permit for Alaska.

SUMMARY: This action corrects a typographical error and inadvertent omission in the text of ''Final National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities'' (MSGP) which was published on Friday, August 7, 1998.

This action also provides notice for the final modification to the NPDES MSGP for storm water discharges associated with industrial activity in the State of Alaska.

DATES: Today's corrections are effective January 19, 1999. In accordance with 40 CFR 23.2, the correction and permit modification for the State of Alaska shall be considered final for the purposes of judicial review at 1 p.m. (Eastern time) on February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Wallace at 206–553–6645.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 7, 1998, (63 FR 42534), EPA published a modification to the NPDES Multi-Sector General Permits (MSGP) for storm water discharges associated with industrial activity, which was originally published on September 29, 1995 (60 FR 50804).

Today's notice corrects typographical errors, and inadvertent omissions in the text of the MSGP modification, as well as clarifies the fact sheet to the permit.

Today's notice also notices the modification of the final NPDES storm water MSGP for storm water discharges associated with industrial activity in the State of Alaska.

II. Technical Correction

The modification to the permit (related to hard rock mining) published on August 7, 1998 (63 FR 42534) contains two inadvertent typographical errors. Specifically, in the note to Table G–4 in the final clarification published at 63 FR at 42545, in the first column, EPA neglected to include one word (''and'') and inadvertently included another word (''not''). In the August 7, 1998, notice, the second sentence in the note read:

> For such sources, coverage under this permit would be available if the discharge is composed entirely of *storm water does* not combine with other sources of mine drainage that are not subject to 40 CFR Part 440, as well as meeting other eligibility criteria contained in Part I.B. of the Permit. (Emphasis added.)

EPA is today correcting those typographical errors so that the sentence will read:

> For such sources, coverage under this permit would be available if the discharge is composed entirely of *storm water and does* not combine with other sources of mine drainage that are subject to 40 CFR Part 440, as well as meeting other eligibility criteria contained in Part I.B. of the Permit. (Emphasis added.)

Based on the explanation in the fact sheet published on August 7, 1998, as well as the other provisions of the Permit at Part I.B., these corrections make the intended meaning of the sentence clear.

III. Notice of Modification of NPDES Storm Water Permit in Alaska

On October 22, 1997 (62 FR 54950), EPA proposed to modify the MSGP in

the State of Alaska. EPA was not able to provide notice of the final permit in Alaska on August 7, 1998, when the Agency modified the MSGP in other jurisdictions where EPA administers the NPDES permitting program, because at that time the State of Alaska had not concluded proceedings to certify compliance with Alaska water quality standards (pursuant to Clean Water Act section 401) and to determine consistency with the State's coastal zone management program. Today's action finalizes the modifications to the NPDES MSGP for storm water discharges associated with industrial activity in the State of Alaska.

B. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in the final MSGP in Alaska under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collection requirements in today's final notice for Alaska have already been approved by the Office of Management and Budget in previous submissions made for the NPDES permit program under the provisions of the Clean Water Act.

C. 401 Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters, shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA. The Section 401 certification process has been completed for the State of Alaska. The following summary indicates where additional permit requirements have been added as a result of the certification process and also provides a more detailed discussion of additional requirements for Alaska.

Alaska 401 conditions provide that a copy of the Notice of Intent form, in addition to the NOI already required to be submitted to EPA, and a copy of the storm water pollution prevention plan (PPP) must be sent to the appropriate nearest office listed below prior to discharging under the MSGP. Copies of any discharge monitoring reports or other reports required under the permit must also be sent to the appropriate State office. A copy of any Notice of Termination must be submitted to the appropriate State office. The addresses of State offices to which copies are to be sent are:

For projects nearest to Anchorage or Fairbanks, send to the attention of Bill Lamoreaux at: Alaska Department of Environmental Conservation, Water Quality Permitting Section/Storm Water, 555 Cordova Street, Anchorage, AK 99501, (907) 563–6529, FAX (907) 563–4026.

For projects nearest to Juneau, send to the attention of Kenwyn George at: Alaska Department of Environmental Conservation, Water Quality Permitting Section/Storm Water, 410 Willoughby Avenue, Juneau, AK 99801, (907) 465–5300, FAX (907) 465–5274.

Because Alaska DEC has certified the MSGP, authorization under the MSGP constitutes authorization under a State permit as a matter of Alaska law.

IV. Signatures

Region X

Signed this 6th day of October, 1998.

Philip G. Millam,

Director, Office of Water.

Areas of coverage	Permit No.
Alaska	AKR05*###

Accordingly, I hereby find consistent with the provisions of the Regulatory Flexibility Act, that these final permit modifications will not have a significant impact on a substantial number of small entities. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: October 7, 1998.

Jane S. Moore,

Acting Regional Administrator, Region 10.

For the reasons set forth in this preamble, Table G–4, Parts VIII and XII of the NPDES Storm Water Multi-Sector General Permit Modification (63 FR 42534) are amended as follows:

Table G–4—[Amended]

1. The Note following Table G–4 is amended to insert the word ''and'' and delete the word ''not'' to read as follows:

Note: Discharges from overburden/waste rock and overburden/waste rock-related areas are not subject to 40 CFR Part 440 unless: (1) it drains naturally (or is intentionally diverted) to a point source; and (2) combines with ''mine drainage'' that is otherwise regulated under the Part 440 regulations. For such sources, coverage under this permit would be available if the discharge is composed entirely of storm water and does not combine with other sources of mine drainage that are subject to 40 CFR Part 440, as well as meeting other eligibility criteria contained in Part I.B. of the permit. Permit applicants bear the initial responsibility for determining the applicable technology-based standard for such discharges. EPA recommends that permit applicants contact the relevant NPDES permit issuance authority for assistance to determine the nature and scope of the ''active mining area'' on a mine-by-mine basis, as well as to determine the appropriate permitting mechanism for authorizing such discharges.

Part VIII—[Amended]

1. Part VIII is amended by revising paragraph D. Paperwork Reduction Act, Region X to include ''Alaska'' above ''Alaska Indian Country'' in the Areas of Coverage table on page 42544, and to include ''AKR05*###'' above ''AKR05*##F'' in the Permit No. column of the same table.

Part XII—[Amended]

Alaska 401 certification adds special permit conditions to the permit modification as follows:

Part XII. Coverage Under This Permit

* * * * *

Region X

The State of Alaska, except Indian Country Lands (AKR05*###)

Part IV. F. is added to the Permit as follows:

1. Storm Water Pollution Prevention Plans are to be submitted to the Department prior to discharging under this permit. Plans are to be submitted to the same Department of Environmental Conservation office the notice of intent is sent to.

2. Any project within the Matanuska-Susitna Borough (MSB) Coastal District must comply with the following conditions:

a. Within the 75-foot shoreline setback, all areas not occupied by allowed development must minimize disturbance of natural vegetation. The intent is to provide natural filtering of surface water runoff, minimize erosion, and provide separation between the water body and potential sources of pollutants.

b. A MSB Development Permit is required for any project located in a federally-designated Flood Hazard Area.

c. The MSB should be contacted to insure that projects comply with local rules applicable to special land use districts or geographic areas affected.

Part IX. B. 1. is added to the Permit as follows:

1. A copy of the Notice of Termination is to be sent to the same Department of Environmental Conservation office the Notice of Intent is sent to.

* * * * *

Part II. Notification Requirements

* * * * *

Alaska 401 conditions provide that a copy of the Notice of Intent form, in addition to the NOI already required to be submitted to EPA, and a copy of the storm water pollution prevention plan

(PPP) must be sent to the appropriate nearest office listed below prior to discharging under the MSGP. Copies of any discharge monitoring reports or other reports required under the permit must also be sent to the appropriate State office. A copy of any Notice of Termination must be submitted to the appropriate State office. The addresses of State offices to which copies are to be sent are:

For projects nearest to Anchorage or Fairbanks, send to the attention of Bill Lamoreaux at: Alaska Department of Environmental Conservation, Water Quality Permitting Section/Storm Water, 555 Cordova Street, Anchorage, AK 99501, (907) 563–6529, FAX (907) 563–4026.

For projects nearest to Juneau, send to the attention of Kenwyn George at: Alaska Department of Environmental Conservation, Water Quality Permitting Section/Storm Water, 410 Willoughby Avenue, Juneau, AK 99801, (907) 465–5300, FAX (907) 465–5274.

* * * * *

[FR Doc. 99–1030 Filed 1–15–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 7, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, 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 March 22, 1999. 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, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0875.

Title: Long-Term Portability Cost Classification Proceeding, CC Docket No. 95–116, MO&O, RM 8535, and Telephone Number Portability, CC Docket No. 95–116, Third R&O.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 67.

Estimated Time Per Response: 85.5 hours (avg.)

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 5,729 hours.

Total Annual Costs: $0.

Needs and Uses: Incumbent local exchange carriers that want to recover their carrier-specific number portability costs must file tariffs and cost support with the Commission for federal end-user charges. These tariffs and cost support must detail both the nature and specific amount of those carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability. The Commission will use this information to ensure that the end-user charge recovers the incumbent LECs' cost of implementing and providing number portability in a competitively neutral manner.

OMB Control Number: 3060–0877.

Title: 1999 Central Office Code Utilization Survey (COCUS).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,900.

Estimated Time Per Response: 9 hours (avg.)

Frequency of Response: Annually; On occasion reporting requirements.

Total Annual Burden: 26,100 hours.

Total Annual Costs: $0.

Needs and Uses: The 1999 Central Office Code Utilization Survey seeks information not only on the number of central office codes assigned to carriers, but also on the amount of individual numbers assigned to consumers from the central office codes. This information will assist the Commission in determining methods to help alleviate some of the costs associated with the addition of new area codes.

OMB Control Number: 3060–0874.

Title: Consumer Complaint Forms.

Form Numbers: FCC 475 and FCC 476.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 80,000.

Estimated Time Per Response: 0.50 hours (avg.)

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 40,000 hours.

Total Annual Costs: $0.

Needs and Uses: FCC Forms 475 and 476 will allow the Commission to collect detailed data from consumers on the practices of common carriers. The information contained in the collection will allow consumers to provide the Commission with the relevant information required and help consumers to develop a concise statement outlining the issue in dispute. The information will then be used to assist in the resolution of informal complaints and to collect data required to assess the practices of common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1080 Filed 1–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

January 12, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An

agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 18, 1999. 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, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0841.

Title: Public Notice—Additional Processing Guidelines for DTV.

Form Number(s): FCC 301 and FCC 340.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 75.

Estimated Time per Response: 3 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 225 hours.

Total Annual Costs: $270,000.

Needs and Uses: The Commission released a public notice on August 10, 1998, that explains how ''nonchecklist'' applications (i.e., applications that do not conform to certain criteria to enable fast-track processing) will be processed for DTV station construction permits. This public notice explains what should be included in engineering showings and other types of application exhibits and cover letters. This public notice for ''nonchecklist'' applications should help to resolve processing uncertainties, enable the preparation of complete and quality applications, and hasten the authorization of DTV service. The data provided will be used by FCC staff to ensure that interference to other DTV and NTSC stations is minimized.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1081 Filed 1–15–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket Nos. 93–61 and GN 96–228; FCC 99–2]

Small Business Size Standards

AGENCY: Federal Communications Commission.

ACTION: Notice; seeking comment.

SUMMARY: In this Notice, the Commission is seeking further comment on the small business size standard definitions adopted for the auction of Location Monitoring Service and Wireless Communication Service spectrum.

DATES: Comment deadline: January 20, 1999.

ADDRESSES: To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW–A325, Washington, D.C. 20554. In addition, parties must submit one copy to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Ken Burnley or Arthur Lechtman, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This Public Notice was released on January 13, 1999, and is available in its entirety, including all attachments, for inspection and copying during normal business hours in the Wireless Telecommunications Bureau's Public Reference Room, Room 5608, 2025 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at http://www.fcc.gov.

Synopsis of Public Notice

In accordance with a recent ruling by the Small Business Administration (SBA), the Commission is seeking further comment on small business size standards adopted for the auction of Location and Monitoring Service (LMS) and Wireless Communications Service (WCS) spectrum. This ruling is detailed in the attached letter from the Administrator of the Small Business Administration. The Commission seeks comment on these issues for purposes of obtaining SBA approval of the LMS and WCS size standards. This action will not affect the outcome of the WCS auction or the payment obligations of WCS licensees.

The LMS auction is scheduled to begin on February 23, 1999. In our rules for that auction, the Commission adopted small business size standards and associated bidding credits for LMS to remove entry barriers and ensure the participation of small businesses in the LMS auction and in the provision of service. The Commission sought comment, in general, on small business size standards for LMS, and one party commented on this issue. This commenter, Comtrak, recommended that the Commission adopt two small business categories in the LMS auction: (1) a ''small business'' category, for businesses with average gross revenues not to exceed $10 million; and (2) a ''very small business'' category, for businesses with average gross revenues not to exceed $3 million. Comtrak also recommended that the Commission rely solely on gross revenues, and not the number of employees, for the purpose of determining an entity's eligibility for small business incentives, as it has done in previous auctions. None of the commenters addressed capital requirements supporting the suggested small business thresholds.

The rules the Commission adopted for LMS define a ''small business'' as an entity with average annual gross revenues for the preceding three years not to exceed $15 million. They define a ''very small business'' as an entity with average annual gross revenues for the preceding three years not to exceed $3 million. Thus, in accordance with the Part 1 rules concerning competitive bidding, small businesses will receive a 25 percent bidding credit and very small businesses will receive a 35 percent bidding credit.

The WCS auction closed on April 25, 1997. In the expedited rulemaking proceeding for this service, the Commission adopted tiered small business size standards and associated bidding credits. The Commission took this action to ensure that small businesses have the opportunity to participate in the provision of spectrum-based services, as required by Section 309(j) of the Communications Act. The record in the WCS proceeding supported the establishment of small business provisions. Several commenters urged the Commission to use tiered definitions, with levels similar to those employed for broadband PCS. As was the case with LMS, none of the commenters discussed capital requirements supporting the suggested small business thresholds.

The Commission adopted the same small business definitions for WCS as it did for broadband PCS. Thus, it defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not to exceed $40 million. The Commission defined a ''very small business'' as an entity with average annual gross revenues for the preceding three years not to exceed $15 million. The Commission established bidding credits of 25 percent for small businesses and 35 percent for very small businesses.

The SBA recently informed the Commission that the SBA is unable to approve the LMS and WCS definitions because the Commission did not seek comment on specific small business proposals in the *LMS Further Notice* and the *WCS Notice*. Herein, the Commission takes this opportunity to solicit comments on the specific small business size standards that it adopted for LMS and WCS. Comments are due on or before January 13, 1999. To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Federal Communications Commission, 445 Twelfth Street, SW., TW–A325, Washington, DC 20554. In addition, parties must submit one copy to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street NW., Washington, DC 20554. Comments will be available for public inspection during regular business hours in the Wireless Telecommunications Bureau Public Reference Room, Room 5608, 2025 M Street NW., Washington, DC 20554.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 99–1141 Filed 1–13–99; 4:56 pm]

BILLING CODE 6712–01–P

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 February 2, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Jack Ray Ferguson, Candler, North Carolina; Gilbert R. Miller, Miller's Creek, North Carolina; Dwight E. Pardue, North Wilkesboro, North Carolina; Robert F. Ricketts, North Wilkesboro, North Carolina; R. Colin Shoemaker, Wilkesboro, North Carolina; and Ronald S. Shoemaker, Miller's Creek, North Carolina; all to acquire additional voting shares of Community Bancshares, Inc., Wilkesboro, North Carolina, and thereby indirectly acquire voting shares of Wilkes National Bank, Wilkesboro, North Carolina.

B. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Leo A. Altier, Corning, Ohio; Lois A. Altier, Corning, Ohio; William H. Altier, Zanesville, Ohio; John F. Altier, Crooksville, Ohio; Paul W. Altier, Corning, Ohio; Christine M. Altier, Columbus, Ohio; Mary Ann Flowers, Lancaster, Ohio; Pamela R. Compston, New Lexington, Ohio; Donald M. Altier, Somerset, Ohio; and Angela Hopkins, Cedar Hill, Texas; to acquire voting shares of North Valley Bank, Corning, Ohio.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. The Arnold Family Group, Marked Tree, Arkansas; to retain voting shares of Marked Tree Bancshares, Inc., Marked Tree, Arkansas, and thereby indirectly retain voting shares of Marked Tree Bank, Marked Tree, Arkansas.

Board of Governors of the Federal Reserve System, January 13, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1114 Filed 1–15–99; 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 February 12, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Flag Financial Corporation, LaGrange, Georgia; to acquire 100 percent of the voting shares of First Flag Bank, LaGrange, Georgia (formerly First Federal Savings Bank of LaGrange),

upon its conversion from a federal savings bank to a state-chartered bank.

Board of Governors of the Federal Reserve System, January 13, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1115 Filed 1–15–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Federal Supply Service, Engineering Division; Creation of OF 89, Maintenance Record For Security Containers/Vault Doors

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/Federal Supply Service, Engineering Division is creating the OF 89, Maintenance Record For Security Containers/Vault Doors to record all maintenance performed on a container or vault by locksmiths or other technical person. You can obtain a camera copy in two ways:

On the internet. Address: http://www.gsa.gov/forms/forms.htm, or;

From Form-X, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffery Schatz (703) 305–6338. This contact is for information about completing the form only.

DATES: Effective January 19, 1999.

Dated: December 21, 1998.

Barbara M. Williams,

Deputy Standard Optional Forms Management Officer.

[FR Doc. 99–1074 Filed 1–15–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Hanford Thyroid Disease Study Draft Report

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting.

Name: Release of Hanford Thyroid Disease Study Draft Report

Time and Date: 7 p.m.–9 p.m., January 28, 1999.

Place: Doubletree Hotel, 802 George Washington Way, Richland, Washington 99352. Telephone 509/946–7611, fax 509/943–8564.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 200 people.

Purpose: Investigators from Seattle's Fred Hutchinson Cancer Research Center (FHCRC) and the CDC will present findings to the media and general public from the Hanford Thyroid Disease Study Draft Report. The purpose of the study was to determine if there was an increased risk for thyroid disease among a randomly selected study population that was exposed to atmospheric releases of radioactive iodine-131 from the Hanford Nuclear Site in eastern Washington State during the 1940s and 1950s. The study, mandated by Congress, was conducted by a team of scientists at the FHCRC under contract from the CDC.

Background: In 1986, Freedom of Information Act requests led the Department of Energy to make public thousands of pages of documentation indicating that large quantities of radioactive materials were released into the atmosphere from the Hanford Nuclear Site. The radioactivity was a byproduct of nuclear weapons production from December 1944 through 1957. Most of the radioactivity was released in the form of iodine-131 (I–131), which concentrates in the thyroid glands of those who eat food contaminated by it. The amount of I–131 released during this period was more than half a million curies, prompting concern regarding thyroid health effects. The government convened a special Hanford Health Effects Review Panel to review the documents and recommend steps to evaluate possible health consequences among those who live near the Hanford Site. Two studies were undertaken as a result of these recommendations. The first was the Hanford Environmental Dose Reconstruction Project, which estimated potential radiation doses to the thyroid among persons exposed to Hanford I–131 releases. The second was the Hanford Thyroid Disease Study. This study was designed to determine whether the exposures from Hanford resulted in an increased risk of thyroid disease in a randomly selected study population. In late 1989, a contract to perform this study was awarded to the FHCRC.

FOR FURTHER INFORMATION CONTACT: General information may be obtained from Mr. Mike Donnelly, Project Officer, Radiation Studies Branch (RSB), Division of Environmental Hazards and Health Effects (DEHHE), NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724. Telephone 770/488–7040, fax 770/488–7044. Technical information may be obtained from Dr. Paul Garbe, RSB. DEHHE, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724. Telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: January 8, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–1068 Filed 1–15–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 069296, October 20, 1980, as amended most recently at 63 FR 50916–17, dated September 23, 1998) is amended to reflect reorganization of the Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health (NIOSH).

Section C–B, Organization and Functions, is hereby amended as follows:

After the title for the *Division of Respiratory Disease Studies (CCA),* delete the functional statement and insert the following:

(1) Provides national and international leadership for understanding and preventing occupational respiratory disease; (2) plans, designs and conducts a national research program for the prevention of occupational respiratory disease; (3) upon request, conducts hazard evaluations and provides technical assistance to address emerging problems in occupational respiratory disease; (4) plans, designs and conducts a national surveillance program for occupational respiratory diseases; (5)-communicates study findings for the prevention of occupational respiratory diseases and evaluates the effectiveness of these communications; (6) carries out a program of testing, evaluation, certification, and quality assurance monitoring of respiratory protective devices and publishes and promulgates such regulations, notices, and findings necessary for the efficient and effective conduct of these programs under the Federal Mine Safety and Health Act (FMSHAct) of 1977 and the Occupational Safety and Health Act (OSHAct) of 1970; (7) administers a program of legislatively mandated

medical services for coal miners under the FMSHAct of 1977.

After the title and functional statement for the *Office of the Director (CCA1),* insert the following:

Communication and Information Activity (CCA12). (1) Collaborates with Division staff to translate findings from research, surveillance and other Division activities to produce products that motivate respiratory disease prevention activities; (2) coordinates with other health communication, health education, and information dissemination activities within the Institute to ensure the effective dissemination of these products; (3) coordinates all Division activities relating to grants and cooperative agreements in conjunction with the NIOSH Office of Extramural Coordination and Special Projects; (4) provides the Division with systems analysis, archiving guidance, and computer programming support; (5) coordinates and promotes regular seminars, workshops, and other meetings as necessary; (6) operates the Division's local area network in coordination with the NIOSH Office of Administrative and Management Services, Management Systems Branch.

Field Studies Branch (CCA7). (1) Designs and conducts short- and long-term field investigations of occupational respiratory diseases; (2) responds to requests for health hazard evaluations and technical assistance relevant to occupational respiratory disease; (3) conducts morbidity and mortality studies relating to occupational respiratory diseases in order to: (a) identify causal agents (and other risk factors); (b) quantify exposure-effect relationships; (c) evaluate prevalence and severity of specific respiratory diseases in selected worker populations; (4) conducts environmental studies, industrial hygiene research, experiments, and demonstrations of workplace exposures and controls including the use of respiratory protective equipment, and to study problems created by new technology; (5) provides statistical design and implements data analysis and verification for Division research projects; (6) develops and evaluates research methods of data collection, processing, and statistical analysis.

Laboratory Research Branch (CCA9). (1) Conducts laboratory research complementary to and coordinated with field investigations of occupational respiratory diseases and respirator testing and certification; (2) formulates and implements laboratory research which will identify factors involved in the early detection and differential rates of susceptibility to occupational respiratory disease; (3) develops new methods to improve detection and measurement of human response to respiratory hazards found in the workplace; (4) develops new methods and technologies to characterize and measure respiratory exposure agents; (5) devises and conducts clinical research studies on the causes, detection, and quantification of occupational respiratory disease; (6) in conjunction with researchers in the Health Effects Laboratory Division, carries out an experimental pathology program utilizing appropriate laboratory animals to study the mechanism and progression of lung damage from occupational respiratory exposures; (7) carries out laboratory studies of respirators, their components, and evaluates new respirator technology to: (a) Determine the effectiveness of respirators; (b) develop new or improved testing and certification instrumentation needed to evaluate emerging respirator technologies; (c) evaluate the added stresses from the use of respiratory protective equipment.

Respirator Branch (CCAA). (1) Provides for the protection of workers in dangerous environments by certifying reliability, safety, and efficacy of respiratory protection devices; (2) evaluates, certifies, and maintains official records on air-supplied and air-purifying respirators as required by the FMSHAct of 1977 and the OSHAct of 1970; (3) assists in the development and promulgation of new performance criteria, standards, and guidelines for certification of respirators; (4) evaluates quality control plans, conducts in-plant audits of the manufacturers' quality control programs, and monitors the quality and performance of certified respirators procured on the open market; (5) investigates field problems associated with NIOSH-certified respirators; (6) provides technical assistance on the selection, use, maintenance, and operation of respiratory protective equipment.

Surveillance Branch (CCAB). (1) Periodically collects, analyzes and disseminates health and hazard information related to occupational respiratory diseases; (2) collaborates on the establishment of health surveillance systems in order to: (a) Summarize information relating to overall incidence, prevalence, mortality, and importance of occupational respiratory diseases; (b) describe the occurrence of specific diseases (including temporal trends) with regard to occupation, industry, geography, demographic characteristics, and other factors for which information is available; (c) describe the distribution and trends in occupational exposure to agents responsible for respiratory diseases; (3) periodically produces and develops reports describing workplace hazards and work-related occupational lung diseases; (4) coordinates with other Federal agencies and promulgates rules as provided for in the FMASHAct of 1977, and the OSHAct of 1970, to provide for the collection and reporting of health and hazard surveillance data related to occupational respiratory diseases; (5) provides technical assistance and recommendations concerning medical screening and health surveillance of workers exposed to respiratory hazards in the workplace; (6) conducts surveys of hazardous exposures and the use of personal protective equipment; (7) synthesizes data and frames recommendations for priority setting, hypothesis generation, and improved methods for data collection; (8) develops and evaluates surveillance methods of data collection, processing, and statistical analysis.

Coal Workers Health Surveillance Program Activity (CCAB2). (1) Plans, coordinates, and processes the medical examinations provided under the FMSHAct of 1977; (2) operates a certification program for participating medical facilities and physicians; (3) evaluates and approves employer programs for the examination of employees in accordance with published regulations; (4) arranges for the examination of employees who work at locations not having an approved examination program; (5) operates the National Coal Workers Autopsy Program.

Delete in their entirety the titles and functional statements for the following: *Epidemiological Investigations Branch (CCA2); Environmental Investigations Branch (CCA3); Clinical Investigations Branch (CCA4); Laboratory Investigations Branch (CCA5); Certification and Quality Assurance Branch (CCA6);* and *Examination Processing Branch (CCA8).*

Dated: January 6, 1999.

Jeffrey P. Koplan,

Director.

[FR Doc. 99–1131 Filed 1–15–99; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0371]

Rami Elsharaiha; Proposal to Debar; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to issue an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. Rami Elsharaiha from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this proposal on a finding that Mr. Elsharaiha was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. This notice also offers Mr. Elsharaiha an opportunity for a hearing on the proposal. The agency is issuing this notice in the **Federal Register** because all other appropriate means of service of the notice upon Mr. Elsharaiha have proven ineffective.

DATES: Written request for a hearing by February 18, 1999.

ADDRESSES: Submit written requests for a hearing and supporting information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Conduct Related to Conviction

On November 22, 1993, Mr. Elsharaiha entered into a plea agreement to plead guilty to one count of making false declarations before a grand jury. Based on this plea, the United States District Court for the District of Maryland entered judgment against Mr. Elsharaiha on March 4, 1994, for one count of making false declarations before a grand jury, a Federal felony offense under 18 U.S.C. 1623.

The underlying facts supporting this felony conviction, and to which Mr. Elsharaiha stipulated in his plea agreement, are as follows:

Mr. Elsharaiha was employed by Quad Pharmaceuticals Co., Inc. (Quad), from June 1986 to September 1991 as an inspector in Quad's quality control laboratory. On January 13, 1993, Mr. Elsharaiha testified before a grand jury empaneled by the United States District Court for the District of Maryland. In his testimony, Mr. Elsharaiha falsely denied that he was aware that anyone had tried to make changes to the raw materials log book while he was an inspector at Quad. Mr. Elsharaiha also falsely denied that he was aware that anyone had poured a substance such as acid onto the pages of the raw material log book in order to expunge information that they did not want seen.

II. FDA's Finding

Section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product. Mr. Elsharaiha's felony conviction under 18 U.S.C. 1623 was for illegal conduct relating to the regulation of Quad's drug product. His false statements to the grand jury concerned matters that affect FDA's regulatory decisions about drug products. Under section 306(1)(2) of the act, mandatory debarment applies when an individual is convicted within the 5 years preceding this notice. Section 306(c)(2)(A)(ii) of the act requires that Mr. Elsharaiha's debarment be permanent.

III. Proposed Action and Notice of Opportunity for a Hearing

Based on the findings discussed in section II of this document, FDA proposes to issue an order under section 306(a)(2) of the act permanently debarring Mr. Elsharaiha from providing services in any capacity to a person that has an approved or pending drug product application.

In accordance with section 306 of the act and part 12 (21 CFR part 12), Mr. Elsharaiha is hereby given an opportunity for a hearing to show why he should not be debarred. If Mr. Elsharaiha decides to seek a hearing, he must file on or before February 18, 1999, a written notice of appearance and request for a hearing. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, and a grant or denial of a hearing are contained in part 12 and section 306(i) of the act.

Mr. Elsharaiha's failure to file a timely written notice of appearance and request for a hearing constitutes an election by him not to use the opportunity for a hearing concerning his debarment, and a waiver of any contentions concerning this action. If Mr. Elsharaiha does not request a hearing in the manner prescribed by the regulations, the agency will not hold a hearing and will issue the debarment order as proposed in this letter.

A request for a hearing may not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the information and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact which precludes the order of debarment, the Commissioner of Food and Drugs will enter summary judgment against Mr. Elsharaiha, making findings and conclusions and denying a hearing.

The facts underlying Mr. Elsharaiha's conviction are not at issue in this proceeding. The only material issue is whether Mr. Elsharaiha was convicted as alleged in this notice and, if so, whether, as a matter of law, this conviction mandates his debarment.

A request for a hearing, including any information or factual analyses relied on to justify a hearing, must be identified with Docket No. 94N–0371 and sent to the Dockets Management Branch (address above). All submissions pursuant to this notice of opportunity for a hearing are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 306 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.99).

Dated: December 23, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 99–1034 Filed 1–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 23, 1999, 8 a.m. to 5 p.m.

Location: Holiday Inn, The Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss issues in the design and assessment of clinical trials of drugs, biologics, and devices that are being developed for treatment of systemic lupus erythematosus.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 18, 1999. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:30 a.m. and 2 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 18, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 28, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–1038 Filed 1–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0222]

Agency Information Collection Activities; Announcement of OMB Approval; Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 20, 1998 (63 FR 64556), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0390. The approval expires on May 31, 1999.

Dated: January 9, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1033 Filed 1–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0304]

Agency Information Collection Activities; Announcement of OMB Approval; Application for FDA Approval to Market a New Drug

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Application for FDA Approval to Market a New Drug'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 28, 1998 (63 FR 29229), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0001. The approval expires on November 30, 2001.

Dated: January 9, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1035 Filed 1–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0331]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices: Third–Party Review Program under FDAMA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Devices: Third–Party Review Program under FDAMA'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 30, 1998 (63 FR 58397), the agency announced that

the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0375. The approval expires on December 31, 2001.

Dated: January 6, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1039 Filed 1–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–253 & HCFA–R–251]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Request:* Extension of a currently approved collection.

Title of Information Collection: Call-Back Survey of Callers to the Medicare+Choice Toll-free Line.

Form Number: HCFA–R–253 (OMB approval #: 0938–0737).

Use: The primary purpose of the call-back survey is to obtain information from callers about their satisfaction with the Medicare+Choice toll-free line. This information will be used to identify problems and make recommendations for ways of improving the service provided through the Medicare+Choice toll-free line.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1,050.

Total Annual Responses: 1,050.

Total Annual Hours Requested: 175 hours.

(2) *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Medicare & You Bounce Back Survey Form.

Form No.: HCFA–R–251 (OMB# 0938–0740).

Use: The primary purpose of the bounce back form is to provide HCFA feedback from users of the Medicare+Choice handbook. The information collected through the bounce back form will be used in conjunction with other information collected in the States piloting Medicare & You to make revisions for future publications of the Medicare & You, Medicare+Choice handbook.

Frequency: On occasion.

Affected Public: Individuals or Households, Businesses or other For-profit.

Number of Respondents: 9,855.

Total Annual Responses: 9,855.

Total Annual Hours: 986.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 29, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–1110 Filed 1–15–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the National Leadership Institute Program and Services—New—The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) intends to conduct an evaluation of its National Leadership Institute (NLI). The goal underlying the technical assistance and training opportunities provided through the NLI is to strengthen the competitive position and power of nonprofit ''community-based organizations'' (CBOs) which are essential components of local services for the uninsured and under-insured.

The NLI gathers, adapts, and disseminates the best available knowledge about business management for nonprofit agencies, including competitive bidding, strategic development and business planning, cultural competency, team building and change management, and Management Information Systems. Participants in the NLI technical assistance programs are self-identified and participate in either short- or long-term technical assistance (TA). Short-term TA includes 2 on-site TA visits, 1 training event, 1 group

technical assistance activity, and up to 5 resource packages. Long-term TA includes up to 4 on-site TA visits, up to 3 training events, 2 group TA activities, and up to 10 resource packages. Training efforts are also conducted by the NLI, using curricula developed by and administered by the NLI.

Both a process and an impact evaluation will be conducted. The process evaluation will describe the needs faced by CBOs, the types of training and technical assistance that CBOs receive through the NLI, and CBO satisfaction with services. The impact evaluation will focus on specific changes made by CBOs in response to NLI recommendations, and improvements in self-rated organizational performance and several organization status measures.

Analysis of this information will assist CSAT in documenting the numbers and types of participants accessing these services, and describing the extent to which participants improve in their knowledge, skill, and ability to manage their organizations in this changing business environment. This type of information is crucial to support CSAT in complying with GPRA reporting requirements and will inform future development of technical assistance activities.

The evaluation design for technical assistance participants will be a pre-post design that collects identical information at initiation of NLI contact and again after 12 months. This time frame is necessary to allow CBOs the opportunity to address NLI technical assistance recommendations and to plan and implement their changes. In addition, the evaluation will collect satisfaction measures after each technical assistance event, and both a comprehensive satisfaction summary and an activity summary at 6 and 12 months after initial NLI contact. A formal comparison group is not available, but comparisons of changes in key organization status measures can be made with similar data on changes collected from other CSAT KDA-funded grantees. These key status indicators include organization revenues, revenue per client, revenue sources, client flow, staff level, staff turnover, services provided, and major growth/expansion or contraction. In addition, these same indicators will be collected, in one interview, for several prior years to establish a pattern of change within specific CBOs.

A feature of the data collected in this evaluation is the inclusion of pre- and post-service perceptions of organizational functioning across 14 business and financial management domains. This information constitutes a self-assessment that is used in planning NLI services, and comprises the baseline against which follow-up measures of functioning will be assessed.

NLI anticipates receiving requests for assistance from 79 CBOs per year over the next 3 years, for a total of 237 programs. This includes up to 54 CBOs requiring long-term TA, and up to 25 CBOs requiring short-term TA. Data collection burden will be borne primarily by directors of the CBOs who will provide initial contact information (30 minutes), pre- and post-test versions of organizational self assessments (60 minutes), satisfaction forms (5 minutes each for 2 types of questionnaire), and activity summaries (10 minutes). Moreover, up to 10 focus groups will be held with staff representatives from 3 to 6 CBOs per focus group.

Discussions will be held with staff representatives from CBOs receiving NLI services. An estimated 54 staff representatives will be contacted each year. Each focus group will have approximately 18 attendees. Finally, an estimated 475 attendees at training events per year will also receive a brief satisfaction questionnaire. The chart below summarizes the total three-year and annualized burden for this project.

Respondent type	Number	Average responses/ respondent	Average time/ response (hours)	Total time (hours)	Annual time (hours)
CBO Directors	237	2	1.5	711	237
CBO Staff	180	1	1.5	270	90
Training participants	1,425	1	.133	190	63
Totals	1,842			1,171	390

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 12, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–1066 Filed 1–15–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in January 1999.

The meeting will be open and include discussion of the Center's policy issues and current administrative, legislative, and program developments. If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

A summary of the meeting and roster of council members may be obtained from: Mrs. Marjorie Cashion, CSAT, National Advisory Council, Rockwall II Building, Suite 619, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Date: January 26, 1999—9 a.m.–5 p.m.

Place: Omni Shoreham Hotel 2500 Calvert Street, NW, Washington, D.C. 20008.

Type: Open: January 26, 1999—9 a.m.–5 p.m.

Contact: Marjorie M. Cashion, Executive Secretary, Telephone: (301) 443–8923, and FAX: (301) 480–6077.

This notice is being published less than fifteen days prior to meeting date due to a delay resulting from the need to determine whether a closed session would be required.

Dated: January 12, 1999.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–1090 Filed 1–15–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Privacy Act of 1974: Annual Publication of Privacy Act Systems of Records

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Privacy Act of 1974: annual republication of notices of systems of records.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) has conducted a comprehensive review of all Privacy Act systems of records and is publishing a Table of Contents of active systems and a comprehensive publication all of its active systems consolidating minor changes in accordance with the Office of Management and Budget Circular No. A–130, Appendix I, ''Federal Agency Responsibilities for Maintaining Records about Individuals.

SUPPLEMENTARY INFORMATION: SAMHSA has completed the annual review of its systems notices and has determined that minor changes are needed. SAMHSA has consolidated such minor changes to make a comprehensive publication of all of its active systems notices. Published below are: (1) A Table of Contents which lists all active systems of records in SAMHSA, and (2) a complete text of all notices consolidating minor changes which affect the public's right or need to know, such as changes in the system location of records, the designation and address of system managers, clarification of system name, records retention and disposal, and minor editorial changes.

Dated: January 12, 1999.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

1. Table of Contents

A list of SAMHSA system notices of active systems of records is published below:

09–30–0023 Records of Contracts Awarded to Individuals, HHS/SAMHSA/OPS.
09–30–0027 Grants and Cooperative Agreements: Alcohol, Drug Abuse, and Mental Health Services Evaluation, Services, Demonstration, Education, Fellowship, Training, Clinical Training, and Community Services Programs. HHS/SAMHSA/OA.
09–30–0029 Records of Guest Workers, HHS/SAMHSA/OPS.
09–30–0033 Correspondence Files, HHS/SAMHSA/OA.
09–30–0036 Alcohol, Drug Abuse, and Mental Health Epidemiologic Data, HHS/SAMHSA/OA.
09–30–0047 Patient Records on Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky (1942 to the Present), HHS/SAMHSA/CMHS.
09–30–0049 Consultant Records Maintained by SAMHSA Contractors, HHS/SAMHSA/OPS.

2. A complete text of SAMHSA active systems of records is published below:

09–30–0023

SYSTEM NAME:

Records of Contracts Awarded to Individuals. HHS/SAMHSA/OPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Director, Division of Contracts Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, Room 6–70, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

An individual who receives a contract as well as individuals who apply or compete for an award but do not receive the award and their consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae, salary information, evaluations of proposals by contract review committees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAMHSA: Public Health Service Act, sections 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c), and 501–05 (42 U.S.C. 290aa et. seq.). CSAT: Center for Substance Abuse Treatment, Section 507–12 (42 U.S.C. 290bb et. seq.). CSAP: Center for Substance Abuse Prevention, Section 515–8 (42 U.S.C. 290bb–21 et. seq.). CMHS: Center for Mental Health Services, Section 520–35 (42 U.S.C. 290bb–31 et. seq.). Protection and Advocacy for Individuals with Mental Health Illness Act of 1986 as amended (42 U.S.C. 10801 et. seq.); Refugee Education Assistance Act 1980, section 501(c) (8 U.S.C. 1522 note). Pub. L. 96–422; Executive Order 12341; and Disaster Relief Act of 1974, section 413. Pub. L. 93–288, as amended by section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Pub. L. 100–107.

PURPOSE(S):

To document the history of each contract procurement action and award made within SAMHSA to an individual. The records are also used by contract review committee members when evaluating a proposal submitted by an individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

(a) To another Federal agency so that agency can effect a salary offset;

(b) To another Federal agency so that agency can effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

(c) To the Treasury Department, Internal Revenue Service (IRS), to request his/her mailing address to locate him/her or in order to have a credit report prepared;

(d) To agents of the Department and to other third parties to help locate him/

her in order to help collect or compromise a debt;

(e) To debt collection agents under 31 U.S.C. 3718 or under common law to help collect a debt; and

(f) To the Justice Department for litigation or further administrative action.

Disclosure under part (d) of this routine use is limited to the individuals's name, address, Social Security number, and other information necessary to identify him/her. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for purposes of preparing a commercial credit report on the individual. Part (a) applies to claims or debts arising or payable under the Social Security Act if and only if the employee consents in writing to the offset.

4. SAMHSA may disclose information from its records in this system to consumer reporting agencies in order to obtain credit reports to verify credit worthiness of contract applicants. Permissible disclosures include name, address, Social Security number of other information necessary to identify the individual; the funding being sought; and the program for which the information is being obtained.

5. When a debt becomes partly or wholly uncollectible, either because the time period for collection under the statute of limitations has expired or because the Government agrees with the individual to forgive or compromise the debt, a record from this system of records may be disclosed to the Internal Revenue Service to report the written-off amount as taxable income to the individual.

6. A record from this system may be disclosed to another Federal agency that has asked the Department to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States.

Disclosure under this routine use is limited to: name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the administrative offset.

7. SAMHSA may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's name, address, Social Security number, and other information necessary to identify the debtor; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the debtor.

DISCLOSURES TO CONSUMERS REPORTING AGENCIES:

Disclosures may be made from this system to 'consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681) (F)) or the Federal Claims Collection Act of 1966(31 U.S.C. 3701(a)(3)). The purpose of such disclosures is to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Information disclosed will be limited to name, Social Security number, address, other information necessary to establish the identity of the individual, and amount, status, and history of the claim, and the agency or program under which the claim arose. Such disclosures will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been met.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Documents are filed in manual files in enclosed and/or locked file cabinets.

RETRIEVABILITY:

Records are retrieved by contract number and cross indexed by individual's name.

SAFEGUARDS:

1. *Authorized Users:* Federal contract and support personnel, Federal contract review staff and outside consultants acting as peer reviewers of the project.

2. *Physical Safeguards:* All folders are in file cabinets in a room that is locked after business hours in a building with controlled entery (picture identification). Files are withdrawn from cabinet for Federal staff who have a need to know by a sign in and out procedure.

3. *Procedural Safeguards:* Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. *Implementation Guidelines:* DHHS Chapter 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

a. Procurement or purchase copy, and related papers:

(1) Transactions of more than $25,000 are destroyed 6 years and 3 months after final payment.

(2) Transactions of $25,000 or less are destroyed 3 years after final payment.

b. Other copies of records used by the Division of Contracts Management for administrative purposes are destroyed upon termination or completion.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Contracts Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, Room 6–70, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the appropriate System Manager at the address above or appear in person to the Division of Contracts Management. An individual may learn if a record exists about himself/herself upon written request with notarized signature. The request should include, if known, contractor's name, contract number, and approximate date contract was awarded. An individual who is the subject of records maintained in this record system may also request an accounting of all disclosures that have been made from that individual's records, if any.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Contract proposals and supporting contract documents, contract review committees, site visitors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–30–0027

SYSTEM NAME:

Grants and Cooperative Agreements: Alcohol, Drug Abuse, and Mental Health Services Evaluation, Service, Demonstration, Education, Fellowship, Training, Clinical Training, and Community Services Programs. HHS/SAMHSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Director, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Room 9D10, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857

Director, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Room 10–75, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857

Director, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Room 15–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prinicipal investigators, program directors, trainees, fellows, and other employees of applicant or grantee institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant and cooperative agreement applications and review history, including curriculum vitae, salary information, summary of review committee deliberations and supporting documents, progress reports, financial records, and payback records of clinical training awardees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAMHSA: Public Health Service Act, sections 301, (42 U.S.C. 241), 303 (42 U.S.C. 242(a), 322 (42 U.S.C. 249(c), 501 (42 U.S.C. 290aa), 503 (42 U.S.C. 290aa–2), and 505 (42 U.S.C. 290aa–4). CSAP: Center for Substance Abuse prevention, section 515–18 (42 U.S.C. 290bb–21 et seq.). CSAT: Center for Substance Abuse Treatment, section 507–12 (42 U.S.C. 290bb et. seq.). CMHS: Center for Mental Health Services, sections 506 (42 U.S.C. 290aa–5) and 520–35 (42 U.S.C. 290bb–31 et seq.). Protection and Advocacy for Individuals with Mental Illness Act of 1986 as amended (42 U.S.C. 10801 et. seq.); Refugee Education Assistance Act of 1980, section 501(c) (8 U.S.C. 1522 note), Pub. L. 96–422; Executive Order 12341; and Disaster Relief Act of 1974, section 413, Pub. L. 93–288, as amended by section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100–107.

PURPOSE(S):

Records are maintained as official documentation relevant to the review, award, and administration of grant programs. Specifically, records are: (1) Used by staff program and management specialists for purpose of awarding and monitoring grant funds; and (2) used to maintain communication with former trainees/fellows who have incurred an obligation for clinical training under Pubic Health Service Act, section 303 (42 U.S.C. 242a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to qualified experts not within the definition of Department employees for opinion during the application review process.

2. Disclosure may be made to SAMHSA contractors for the purpose of providing services related to the grant review or for carrying out quality assessment, program evaluation, and management reviews. Contractors are required to maintain Privacy Act safeguards with respect to the records.

3. In the event that a system of records maintained by this agency to carry out is functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal (e.g., the Department of Justice) or State (e.g., the State's Attorney's Office), charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto for litigation.

4. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

5. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

6. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

7. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

8. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

(a) To another Federal agency so that agency can effect a salary offset;

(b) To another Federal agency so that agency can effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

(c) To the Treasury Department, Internal Revenue Service (IRS), to request his/her mailing address to locate him/her or in order to have a credit report prepared;

(d) To agents of the Department and to other third parties to help locate him/her in order to help collect or compromise a debt;

(e) To debt collection agents under 31 U.S.C. 3718 or under common law to help collect a debt; and

(f) To the Justice Department for litigation or further administrative action.

Dislosure under part (d) of this routine use is limited to the individual's name, address, social security number and other information necessary to identify him/her. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for the purpose of preparing a commercial credit report on the individual. Part (a) applies to any claims or debts arising or payable under the

Social Security Act if and only if the employee consents in writing to the offset.

9. SAMHSA may disclose information from its records in this system to consumer reporting agencies in order to obtain credit reports to verify credit worthiness of grant/cooperative agreement applicants. Permissible disclosures include name, address, Social Security number or other information necessary to identify the individual; the funding being sought; and the program for which the information is being obtained.

10. When a debt becomes partly or wholly uncollectible, either because the time period for collection under the statue of limitations has expired or because the Government agrees with the individual to forgive or compromise the debt, a record from this system of records may be disclosed to the Internal Revenue Service to report the written-off amount as taxable income to the individual.

11. A record from this system may be disclosed to another Federal agency that has asked the Department to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States.

Disclosure under this routine use is limited to: name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the administrative offset.

12. SAMHSA may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's name, address, Social Security number, and other information necessary to identify the debtor; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the debtor.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681 (f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of such disclosures is to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Information disclosed will be limited to name, Social Security number, address, other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose. Such disclosures will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been met.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Noncomupterized documents are filed in folders in enclosed file cabinets and open shelves. Computerized records exist in tape and disk form.

RETRIEVABILITY:

By grant numbers and cross-indexed by name.

SAFEGUARDS:

1. Authorized Users: Access is limited to the Director, Division of Grants Management, SAMHSA, and staff authorized by him/her: grants specialists, grants technicians, program officials assigned computer personnel, and possibly contractor staff including the project director and research associates.

2. Physical Safeguards: Records are maintained in a secured area. During normal work hours, area is staffed by authorized personnel who must show identification for entry. At other times, the computer area is locked. Hard copy files are stored in rooms which are locked at night. A 24-hour security guard patrols building.

3. Procedural Safeguards: Computer records are password protected; passwords are changed periodically. Contractors working on computerized records are given passwords to access data only on a need-to-know basis.

4. Implementation Guidelines: DHHS Chapter 45–13 of the General Administration Manual and part 6, ''Automated Information System Security'' of the Information Resources Management Manual.

RETENTION AND DISPOSAL:

a. Alcohol, Drug Abuse, and Mental Health Services Evaluation, Services and Demonstration Grants: A copy of the final report is offered to the National Archives and Records Administration when 10 years old. Other records are held two years after termination of support and final audit and then transferred to the Washington National Records Center located at 4105 Suitland Road, Suitland, MD 20409. Records are destroyed when 6 years and 3 months old.

b. Education Grants: Records are held 2 years after completion of grants activities and final audit and then transferred to the Washington National Records Center located at 4205 Suitland Road, Suitland, MD 20409. Records are destroyed when 13 years old.

c. Training Program Grants: Records are held 1 year after termination of support and final audit and then retired to the Washington National Records Center located at 4205 Suitland Road, Suitland, MD 20409. Records are destroyed when 3 years old.

d. Fellowships, Community Services Program Grants and Other Related Grants: Records are held 2 years after termination of support and final audit and then retired to the Washington National Records Center located at 4205 Suitland Road, Suitland, MD 20409. Records are destroyed when 5 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Same as System Location

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager at the above address. Verifiable proof of identity is required.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought, and should provide the official grant number when possible. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the appropriate System Manager at the address specified above and reasonably identify the record specify the information being contested, the corrective action sought, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Applicants, grantees, fellows, trainees, personnel at grantee institution on whom the record is maintained, Federal advisory committees, site visitors, consultants, references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–30–0029

SYSTEM NAME:

Record of Guest Workers. HHS/SAMHSA/OPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Director, Division of Human Resources Management, Office of

Program Services, Substance Abuse and Mental Health Services Administration, Room 14C–24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals using SAMHSA facilities who are not employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information including name, address, date and place of birth, education, employment, purpose for which SAMHSA facilities are desired, outside sponsor and SAMHSA sponsor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, section 301, (42 U.S.C. 241).

PURPOSE(S):

To documents individual's presence at SAMHSA and as a record that the individual is not performing services for SAMHSA and is therefore not an employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to the U.S. Office of Personnel Management for program evaluation purposes.

2. Disclosure may be made to institutions providing financial support for subject individual.

3. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

4. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

1. *Authorized Users:* Authorized employees of the Division of Human Resources Management and SAMHSA managers and supervisors with legitimate interest in guest workers.

2. *Physical Safeguards:* Records are stored in locked rooms.

3. *Procedural Safeguards:* Authorized individuals have been trained in accordance with the Privacy Act.

4. *Implementation Guidelines:* DHHS Chapter 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Records are held 1 year after guest worker separates and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Human Resources Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, Room 14C–24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact the System Manager at the address above. Individuals who request notification in person must supply one proof of identity containing individual's complete name and one other identifier with picture (e.g., driver's license, building pass). Individuals who request notification by mail must supply notarized signature as proof of identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant

RECORD SOURCE CATEGORIES:

Subject individual and SAMHSA sponsor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–30–0033

SYSTEM NAME:

Correspondence Files. HHS/SAMHSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Administrator, Substance Abuse and Mental Health Services Administration, Room 12–107, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Office of the Director, Center for substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Room 9D10, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857

Office of the Director, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Room 10–75, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857

Office of the Director, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Room 15–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information on SAMHSA programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAMHSA: Public Health Service Act, sections 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c)), and 501–05 (42 U.S.C. 290aa et seq.). CSAP: Center for Substance Abuse Prevention, section 515–8 (42 U.S.C. 290bb–21 et seq.). CSAT: Center for Substance Abuse Treatment, section 507–12 (42 U.S.C. 290bb et seq.). CMHS: Center for Mental Health Services, sections 506 (42 U.S.C. 290aa–5) and 520–35 (42 U.S.C. 290bb–31 et seq.). Protection and Advocacy for Individuals with Mental Illness Act of 1986 as amended (42 U.S.C. 1901 et. seq.); Refugee Education Assistance Act of 1980, section 501(c) (8 U.S.C. 1522 note), Pub. L. 96–422; Executive Order 12341; and Disaster Relief Act of 1974, section 413, Pub. L. 93–288, as amended by section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act Pub. L. 100–107.

PURPOSE(S):

To provide reference retrieval and control to assure timely and appropriate attention.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence records maintained in hard copy; control records maintained on computer printout, tape, and disk.

RETRIEVABILITY:

Hard copy records indexed alphabetically by name and date of outgoing correspondence, by subject, and/or by computerized numerical code. Records are cross-referenced in detail on computer.

SAFEGUARDS:

1. *Authorized Users:* Authorized correspondence control staff in each location and managers and supervisors on a need-to-know basis.

2. *Physical Safeguards:* Records are maintained in file cabinets in a locked, secure location; computer system records are secured through the use of passwords which are changed frequently.

3. *Procedural Safeguards:* Only authorized personnel have access to files and passwords.

4. *Implementation Guidelines:* DHHS Chapter 45–13 of the General Administration Manual and Part 6, ''Automated Information Systems Security'' in the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Records which are pertinent are held 5 years and then transferred to the Washington National Records Center (WNRC) located at 4205 Suitland Road, Suitland, MD 20409. Records are destroyed when 10 years old. Other material is destroyed when 2 years old. Control forms are destroyed when 1 year old.

SYSTEM MANAGER(S) AND ADDRESS:

Same as system location; each system manager maintains full responsibility for their specific correspondence system.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the appropriate System Manager as listed under system location above. Give name and approximate date of records requested. Individuals who request notification in person must supply one proof of identity containing individual's complete name and one other identifier with picture (e.g., driver's license, building pass). Individuals who request notification by mail must supply notarized signature as proof of identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the appropriate official at the address specified under Notification Procedures above and reasonably identify the record. Specify the information to be contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Records are derived from incoming and outgoing correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–30–0036

SYSTEM NAME:

Alcohol, Drug Abuse, and Mental Health Epidemiologic Data. HHS/SAMHSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at facilities which collect or provide service evaluations for this system under contract to the agency. Contractors may include, but are not limited to, research centers, clinics, hospitals, universities, research foundations, national associations, and coordinating centers. Records may also be located at the Office of Applied Studies, the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services. A current list of sites is available by writing to the appropriate System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subjects of epidemiologic, methodologic, services evaluations, and longitudinal studies and surveys of mental health and alcohol and drug use/abuse and mental, alcohol, and/or drug abuse disorders. These individuals are selected as representative of the general adult and/or child population or of special groups. Special groups include, but are not limited to, normal individuals serving as controls; clients referred for or receiving medical, mental health, and alcohol and/or drug abuse related treatment and prevention services; providers of services; demographic sub-groups as applicable, such as age, sex, ethnicity, race, occupation, geographic location; and groups exposed to hypothesized risks, such as relatives of individuals who have experienced mental health and/or alcohol, and/or drug abuse disorders, life stresses, or have previous history of mental, alcohol, and/or drug abuse related illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains data about the individual as relevant to a particular study. Examples include, but are not limited to, items about the health/mental health and/or alcohol or drug consumption patterns of the individual; demographic data; social security numbers (voluntary); past and present life experiences; personality characteristics; social functioning; utilization of health/mental health, alcohol, and/or drug abuse services;

family history; physiological measures; and characteristics and activities of health/mental health; alcohol abuse, and/or abuse care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAMHSA: Public Health Service Act, section 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c)), 501 (42 U.S.C. 290aa), 502 (42 U.S.C. 290aa–2), and 505 (42 U.S.C. 290aa–4), CSAP: Center for Substance Abuse Prevention, section 515–18 (42 U.S.C. 290bb–21 et seq.). CSAT: Center for Substance Abuse Treatment, section 507–12 (42 U.S.C. 290bb et seq.). CMHS: Center for Mental Health Services, section 506 (42 U.S.C. 290aa–5) and 520–35 (42 U.S.C. 290bb–31 et. seq.). Protection and Advocacy for Individuals with Mental Illness Act of 1980, section 501(c) (8 U.S.C. 1522 note), Pub. L. 96–422; Executive Order 12341; and Disaster Relief Act of 1974, section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100–107.

PURPOSE(S):

The purpose of the system of records is to collect and maintain a data base for health services evaluation activities of the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services. Analyses of these data involve groups of individuals with given characteristics and do not refer to special individuals. The generation of information and statistical analyses will ultimately lead to a better description and understanding of mental, alcohol, and/or drug abuse disorders, their diagnosis, treatment and prevention, and the promotion of good physical and mental health.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed for an evaluation purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; e.g., disclosure of alcohol or drug abuse patient records will be made only in accordance with 42 U.S.C. 290(dd–2).

(b) Has determined that the study purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the health services evaluation project, unless the recipient has presented adequate justification of an analytical or health nature for retaining such information, and (3) make no further use of disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another health services research or evaluation project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the evaluation project, if information that would enable study subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; and

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from a congressional office made at the written request of that individual.

3. In the event of litigation, where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee is his or her individual capacity where the Justice Department has agreed to represent such employee; the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., disclosure may be made to the Department of Justice or other appropriate Federal agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of the individuals' participation in activities of a Federal Government supported research project).

4. The Department contemplates that it will contract with a private firm for the purpose of collecting, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on index cards, file folders, computer tapes and disks, microfiche, microfilm, and audio and video tapes. Normally, the factual data, with study code numbers, are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper files.

RETRIEVABILITY:

During data collection stages and follow up, if any, retrieval by personal identifier (e.g., name, social security number (in some studies), or medical record number), is necessary. During the data analysis stage, data are normally retrieved by the variables of interest (e.g., diagnosis, age, occupation).

SAFEGUARDS:

1. Authorized Users: Access to identifiers and to link files is strictly limited to those authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel, including contractor personnel, who may be so authorized include those directly involved in data collection and in the design of research studies, e.g., interviewers and interviewer supervisors; project managers; and statisticians involved in designing sampling plans.

2. Physical Safeguards: Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link files are separated as much as possible and stored in locked files. Computer data access is limited through the use of key words known only to authorized personnel.

3. Procedural Safeguards: Collection and maintenance of data is consistent with legislation and regulations in the protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients where these apply. When a SAMSHA component or a contractor anonymous data to research scientists for analysis, study numbers which can be matched to personal

identifiers will be eliminated, scrambled, or replaced by the agency or contractor with random numbers which cannot be matched. Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

4. Implementation Guidelines: DHHS Chapter 45–13 of the General Administration Manual and Part 6,''Automated Information Systems Security'' of the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Records may be retired to the Washington National Records Center located at 4205 Suitland Road, Suitland, MD, 20409, and subsequently disposed of an in accordance with the SAMHSA Records Control Schedule. The records control schedule and disposal standard for these records may be obtained by writing to the appropriate System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Director
Office of Applied Studies
Substance Abuse and Mental Health Services Administration
Room 16–105, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857
Office of the Director
Center for Substance Abuse Prevention
Substance Abuse and Mental Health Services Administration
Room 9D10, Rockwall II Building
5600 Fishers Lane
Rockville, Maryland 20857
Office of the Director
Center for Substance Abuse Treatment
Substance Abuse and Mental Health Services Administration
Room 10–75, Rockwall II Building
5600 Fishers Lane
Rockville, Maryland 20857
Office of the Director
Center for Mental Health Services Administration
Substance Abuse and Mental Health Services
Room 15–105, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager at the address above. Provide individual's name; current address; date of birth; place and nature of participation in specific evaluation study; name of individual or organization administering the study (if known); name or description of the study (if known); address at the time of participation; and a notarized statement by two witnesses attesting to the individual's identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identify.

CONTESTING RECORD PROCEDURE:

Contact the appropriate official at the address specified under System Manager(s) above and reasonably identify the record, specify the information being contested, and state corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The system contains information obtained directly from the subject individual by interview (face-to-face or telephone), by written questionnaire, or by other tests, recording devices or observations, consistent with legislation and regulation regarding informed consent and protection of human subjects. Information is also obtained from other sources, such as health, mental health, alcohol, and/or drug abuse care providers; relatives; guardians; and clinical medical research records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–30–0047

SYSTEM NAME:

Patient Records on Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky, (1942 to the Present). HHS/SAMHSA/CMHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

CONTRACTOR: Commonwealth of Kentucky, Department of Mental Health/Mental Retardation, Mental Health Branch, Cabinet for Human Resources, 275 E. Main Street, Frankfort, Kentucky 40621.

SUBCONTRACTOR: Homestead Nursing Center, Inc., 1608 Versailles Road, Lexington, Kentucky 40505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Chronic mentally ill former merchant seamen originally treated at PHS Hospitals in Fort Worth, Texas, and Lexington, Kentucky, and now in nursing homes in Lexington, Kentucky (1942 to the present).

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative records, such as admission and release dates; name, address, Social Security number, and other demographic data; medical records, such as, but not limited to, psychological, medical and social evaluations as well as treatment information, any laboratory test, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 9079 (1942) authorizes the care and treatment of these individuals.

PURPOSE(S):

The records are used to facilitate patient care, to monitor progress, and to ensure quality and continuity of care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event of litigation where the defendant is (a) the Department, a component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective

defense, provided such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to the Center for Mental Health Services (CMHS) contractors and subcontractors, including nursing home staff, for the purpose of carrying out and maintaining quality care. Contractors maintain, and are also required to ensure that the subcontractors maintain, Privacy Act safeguards with respect to the records.

3. Disclosure may also be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual or his legally authorized representative.

4. Records may be disclosed to Federal, State, local, or other authorized organizations which provide medical care and treatment to these individuals to facilitate continuity of care by supplying information to medical care facilities/practitioners who provide treatment to individual seamen.

3. Records may be disclosed to the Department of Veterans Affairs, the Social Security Administration, or other Federal or State agencies having special benefit programs for the purpose of obtaining these benefits for these individuals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files stored in locked file cabinets in the State office. In the nursing homes, hard copy records are maintained at nursing stations.

RETRIEVABILITY:

The records are retrieved by patient name.

SAFEGUARDS:

1. *Authorized Users:* Only the System Manager and designated staff, designated contractor staff and appropriate subcontractor staff at the nursing home.

2. *Physical Safeguards:* The State records are stored in locked file cabinets. These cabinets are in a room within a building that is locked at night after business hours. Patient records of subject individuals at the nursing homes are commingled with the records of other patients at nursing stations under the supervision of the attendant on duty.

3. *Procedural Safeguards:* Only the System Manager, contractor staff and appropriate nursing home staff have access to the files. Only those authorized personnel are allowed to gain access to material in the locked file cabinets.

4. *Implementation Procedures:* DHHS Chapter 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

The administrative and medical records will be retained for 25 years after last treatment or after the death of a patient, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Program Development, Special Populations and Projects, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Room 16–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual or his legally authorized representative may learn if a record exists about himself upon written request with notarized signature. The request should include full name or any alias used and birth date.

An individual or his legally authorized representative who requests notification of, or access to, a medical record shall, at the time the request is made, designate a family physician or other health professional (other than a family member) to whom the record will be released. The representative must verify relationship to the individual as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requestors should also reasonably specify the record contents being sought. An individual or his legally authorized representative may also request an accounting of disclosures that have been made of the subject individual's records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information to be contested, and state the corrective action sought with supporting information to show how the record is inaccurate, incomplete,untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Patients; legally authorized representatives; nursing home and hospital personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–30–0049

SYSTEM NAME:

Consultant Records Maintained By SAMHSA Contractors. HHS/SAMHSA/OPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of contractor sites is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants who participate in Substance Abuse and Mental Health Services Administration (SAMHSA) conferences, meetings, evaluation projects, or technical assistance at site locations arranged by contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security numbers, qualifications, curricula vitae, travel records, and payment records for consultants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAMHSA: Public Health Service Act, as Amended, section 301 (42 U.S.C. 241), 322 (42 U.S.C. 249(c)), and 501–05 (42 U.S.C. 290aa et seq.). CSAP: Center for Substance Abuse Prevention, section 515–8 (42 U.S.C. 290bb–21 et seq.). CSAT: Center for Substance Abuse Treatment, section 507–12 (42 U.S.C. 290bb et seq.). CMHS: Center for Mental Health Services, section 506 (42 U.S.C. 290aa–5) and 520–35 (42 U.S.C. 290bb–31 et seq.). Protection and Advocacy for Individuals with Mental Illness Act of 1986 as amended (42 U.S.C. 10801 et seq.); Refugee Education Assistance Act of 1980, section 501(c) (8 U.S.C. 1522 note), Pub. L. 96–422; Executive Order 12341; and Disaster Relief Act of 1974, section 413, Pub. L. 93–288, as amended by section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100–107.

PURPOSE(S):

This umbrella system of records covers a varying number of separate sets of records used in different projects. These records are established by contractors to organize programs, obtain and pay consultants, and to provide necessary reports related to payment to the Internal Revenue Service for these programs for SAMHSA. SAMHSA personnel may use records when a technical assistance consultant is needed for a specialized area of research, review, advice, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. Disclosure may be made to private contractors for the purposes of handling logistics for conferences, reviews, development of training materials, and of obtaining the services of consultants. Relevant records will be disclosed to such a contractor or may be developed by the contractor for use in the project. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. Disclosure may be made to the Department of the Treasury, Internal Revenue Service, and applicable State and local governments those items to be included as income to an individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, on index cards, computer tapes and disks, microfiche, microfilm.

RETRIEVABILITY:

Information will be retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. *Authorized Users:* Only SAMHSA personnel working on these projects and personnel employed by SAMHSA contractors to work on these projects are authorized users as designated by the system managers.

2. *Physical Safeguards:* Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities.

3. *Procedural Safeguards:* Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project directors, contract officers, and project officers oversee compliance with these requirements.

4. *Implementation Guidelines:* DHHS Chapter 45–13 of the General Administration Manual, and Part 6, ''Automated Information Systems Security'' in the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after they are no longer used, or, if payment is involved, 3 years after closeout of the contract.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Contracts Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, Room 6–70, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager at the address above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) title of project individual participated in; (c) SAMHSA project officer, and (d) approximate date(s) of participation.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information gathered from individual consultants and from assignment or travel documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–1091 Filed 1–15–99; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting; Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss the recently released Phase II Report, and to discuss assessment of the Council for 1999.

The BDAC Ecosystem Roundtable will meet to discuss several issues including: an implementation and tracking system update, the designated actions and proposal solicitation package for FY 99, budget issues, funding coordination and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held on Thursday, January 21, 1999, from 9:00 a.m. to 5:00 p.m. The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held on Wednesday, February 3, 1999, from 9:30 a.m. to 3:30 p.m.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Grand Capitol Plaza, Fraternity Room, 1025 Ninth Street, Sacramento, California (916) 443–4483. The Ecosystem Roundtable will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: For the Bay-Delta Advisory Council Meeting, Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666. For the Ecosystem Roundtable, Wendy Halverson Martin, CALFED Bay-Delta

Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the State of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system. This group, known as the Bay-Delta Advisory Council has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the CALFED Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, California 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 99–968 Filed 1–15–99; 8:45 am]

BILLING CODE 4310–94–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, January 26, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

7114 Brief of Aviation Accident: Pacific Grove, California, October 12, 1997, and proposed Safety Recommendations.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: January 14, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–1265 Filed 1–14–99; 3:57 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3453]

Atlas Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request from Atlas Corporation to revise a site-reclamation milestone in License No. SUA–917 for the Moab, Utah facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 22, 1998, a request from Atlas Corporation (Atlas) to amend License Condition (LC) 55 B.(2) of Source Material License SUA–917 for the Moab, Utah, facility. The license amendment request proposes to modify LC 55 B.(2) to change the completion date for ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan. Atlas proposes to revise the date pursuant to the reasonable and prudent alternative and mitigative measures stipulated in the Biological Opinion issued by the U.S. Fish and Wildlife Service on July 31, 1998. The reasonable and prudent alternative states that ground water should be cleaned up to relevant standards within 7 years from Atlas' receipt of NRC approval of a revised ground-water corrective action plan.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555. Telephone (301) 415–6629.

SUPPLEMENTARY INFORMATION: The portion of LC 55 B.(2) with the proposed change would read as follows:

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—July 31, 2006.

Atlas' request to amend LC 55 B.(2) of Source Material License SUA–917, which describes the proposed changes to the license condition and the reason for the request, is being made available for public inspection at NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be

served, by delivering it personally or by mail, to:

(1) The applicant, Atlas Corporation, Republic Plaza, 370 Seventeenth Street, Suite 3050, Denver, Colorado 80202, Attention: Richard Blubaugh; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 12th day of January 1999.

For the Nuclear Regulatory Commission.

N. King Stablein,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–1076 Filed 1–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station); Application of Exemption

Exemption

I

Maine Yankee Atomic Power Company is the holder of Facility Operating License No. DPR–36, which authorizes the licensee to possess the Maine Yankee Atomic Power Station (MYAPS). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized-water reactor located at the licensee's site in Lincoln County, Maine. The facility is permanently shut down and defueled, and the licensee is no longer authorized to operate or place fuel in the reactor.

II

Section 50.54(w) of 10 CFR Part 50 requires power reactor licensees to maintain onsite property damage insurance coverage in the amount of $1.06 billion. Section 140.11(a)(4) of 10 CFR Part 140 requires a reactor with a rated capacity of 100,000 electrical kilowatts or more to maintain liability insurance of $200 million and to participate in a secondary insurance pool.

NRC may grant exemptions from the requirements of 10 CFR Part 50 of the regulations, which, pursuant to 10 CFR 50.12(a), (1) are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security and (2) present special circumstances. Special circumstances exist when (1) application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)) or (2) compliance would result in undue hardship or costs that are significantly in excess of those incurred by others similarly situated. The underlying purpose of Section 50.54(w) is to provide sufficient property damage insurance coverage to ensure funding for onsite post-accident recovery stabilization and decontamination costs in the unlikely event of an accident at a nuclear power plant.

NRC may grant exemptions from the requirements of 10 CFR Part 140 of the regulations, which, pursuant to 10 CFR 140.8, are authorized by law and are otherwise in the public interest. The underlying purpose of Section 140.11 is to provide sufficient liability insurance to ensure funding for claims resulting from a nuclear incident or a precautionary evacuation.

III

On January 20, 1998, the licensee requested exemption from the financial protection requirement limits of 10 CFR 50.54(w) and 10 CFR 140.11. The licensee requested that the amount of insurance coverage it must maintain be reduced to $50 million for onsite property damage and $100 million for offsite financial protection. The licensee stated that special circumstances exist because of the permanently shutdown and defueled condition of MYAPS.

The financial protection limits of 10 CFR 50.54(w) and 10 CFR 140.11 were established to require a licensee to maintain sufficient insurance to cover the costs of a nuclear accident at an operating reactor. Those costs were derived from the consequences of a release of radioactive material from the reactor. Although the risk of an accident at an operating reactor is very low, the consequences can be large. In an operating plant, the high temperature and pressure of the reactor coolant system, as well as the inventory of relatively short-lived radionuclides, contribute to both the risk and consequences of an accident. In a permanently shutdown and defueled reactor facility, the reactor coolant system will never again be operated, thus eliminating the possibility of accidents involving the reactor. A further reduction in risk occurs because decay heat from the spent fuel decreases over time. This reduction in decay heat reduces the amount of energy available to heat up the spent fuel to a temperature that could compromise the ability of the fuel cladding to retain fission products.

Along with the reduction in risk, the consequences of a release decline after a reactor permanently shuts down and defuels. The short-lived radionuclides contained in the spent fuel, particularly volatile components such as iodine-131 and most of the noble gases, decay away, thereby reducing the inventory of radioactive materials that are readily dispersible and transportable in air.

Although the risk and consequences of a radiological release decline substantially after a plant permanently defuels its reactor, they are not completely eliminated. There are potential onsite and offsite radiological consequences that could be associated with the onsite storage of the spent fuel in the spent fuel pool (SFP). In addition, a site may contain a radioactive inventory of liquid radwaste, activated reactor components, and contaminated structural materials. For purposes of modifying the amount of insurance coverage maintained by a power reactor licensee, the potential consequences, despite very low risk, are an appropriate consideration.

To determine the insurance coverage sufficient for a permanently defueled facility, the cost of recovery from potential accident scenarios must be evaluated. At MYAPS, spent fuel is the largest source term on the site. The spent fuel is stored in the SFP, which uses water to cool the fuel. Wet storage of spent fuel possesses inherently large safety margins because of the simplicity and robustness of the SFP design. The

design basis includes the ability to withstand an earthquake and to retain sufficient water to adequately cool and shield the stored spent fuel. In the MYAPS Defueled Safety Analysis Report, the licensee specifically states that the SFP structure is designed to Seismic Class I requirements and is capable of performing its intended safety function under the licensee's design-basis hypothetical earthquake with a 0.1-g peak ground acceleration. The floor and walls of the SFP are constructed of 6-ft thick reinforced concrete and are completely lined with ¼-inch steel plates. To add to the robustness of the design, the pool is founded on bedrock and is embedded 12.5 feet below grade level. Since the analyses used in designing the capability of structures, systems, and components (SSCs) to perform their safety function under a hypothetical earthquake have significant margin in them, it is expected that an SSC built to withstand the hypothetical design-basis earthquake actually will be able to withstand a larger earthquake. Thus, the loss of coolant from the Maine Yankee SFP, which partially or completely uncovers the fuel, is a beyond-design-basis event with a very low probability of occurrence.

The NRC staff has determined that a significant accident sequence for a permanently shutdown reactor involves the loss of water from the SFP and subsequent heatup of the fuel. If the decay heat is high enough, oxidation of the zirconium fuel clad could become self-sustaining, resulting in a zirconium clad fire. Although the zirconium clad fire may not be included in the design basis of the facility, the NRC staff considers it among those accidents that are ''reasonably conceivable'' and that should be considered in determining whether there is undue risk to the public from a permanently shutdown reactor facility. Analysis sponsored by the NRC in the late 1980s identified approximately 2 years after shutdown as the critical decay time necessary for pressurized-water reactor fuel to reach a decay power below the minimum decay power for self-sustaining oxidation. Additional NRC-sponsored analysis completed in 1997 identified 17 months as the critical decay time for pressurized-water reactors. On December 6, 1998, Maine Yankee had been shut down for 24 months. Because of the robust design and construction of the SFP and the fuel's having exceeded the critical decay time for the representative pressurized-water reactor, the staff has determined that there is reasonable assurance that rapid zirconium oxidation of the fuel cladding is no longer possible. The staff has also concluded that the cost of recovering from a loss of SFP water would be bounded by other accidents that may occur at a permanently defueled site.

In SECY 96–256, ''Changes to the Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w) and 10 CFR 140.11,'' dated December 17, 1996, the staff estimated the onsite cleanup costs of accidents considered to be the most costly at a permanently defueled site with spent fuel stored in the SFP. The staff found that the onsite recovery costs for a fuel-handling accident could range up to $24 million. The estimated onsite cleanup costs to recover from the rupture of a large liquid radwaste storage tank could range up to $50 million. The licensee's proposed level of $50 million for onsite property insurance is sufficient to cover these estimated cleanup costs.

The offsite cleanup costs of the accident scenarios previously discussed are estimated to be negligible in SECY 96–256. However, a licensee's liability for offsite costs may be significant as a result of lawsuits alleging damages from offsite releases. Experience at Three Mile Island Unit 2 showed that significant judgments against a licensee are possible despite negligible dose consequences from an offsite release. An appropriate level of financial liability coverage is needed to account for potential judgments and settlements and to protect the Federal Government from indemnity claims. The licensee's proposed level of $100 million in primary offsite liability coverage is sufficient for this purpose.

The staff has determined that participation in the secondary insurance pool for offsite financial protection is not required for a permanently shutdown and defueled plant after the time that air cooling of the spent fuel is sufficient to maintain the integrity of the fuel cladding. As previously noted, the staff finds that sufficient time has elapsed to ensure the integrity of the MYAPS spent fuel cladding.

IV

The NRC staff has completed its review of the licensee's request to reduce financial protection limits to $50 million for onsite property insurance and $100 million for offsite liability insurance. On the basis of its review, the NRC staff finds that the spent fuel stored in MYAPS's SFP is no longer susceptible to rapid zirconium oxidation. The requested reductions are consistent with SECY 96–256. The Commission informed the staff in a staff requirements memorandum dated January 28, 1997, that it did not object to the insurance reductions recommended in SECY 96–256. The licensee's proposed financial protection limits will provide sufficient insurance to recover from limiting hypothetical events, if they occur. Thus, the underlying purposes of the regulations will not be adversely affected by the reductions in insurance coverage.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption to reduce onsite property insurance to $50 million is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. Further, special circumstances are present, as set forth in 10 CFR 50.12(a)(2)(ii). Therefore the Commission hereby grants an exemption from the requirements of 10 CFR 50.54(w).

In addition, the Commission has determined that, pursuant to 10 CFR 140.8, an exemption to reduce primary offsite liability insurance to $100 million, accompanied by withdrawal from the secondary insurance pool for offsite liability insurance, is authorized by law and is in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 140.11(a)(4).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will not have a significant effect on the quality of the human environment (63 FR 67943, printed December 9, 1998).

These exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 7th day of January 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1075 Filed 1–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co., Haddam Neck Plant; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a petition dated September 11, 1998, filed by Ms. Rosemary Bassilakis, pursuant to Title

10 of the Code of Federal Regulations, § 2.206, (10 CFR 2.206), on behalf of the Citizens Awareness Network (Petitioner). The petition requests that (1) the U.S. Nuclear Regulatory Commission (NRC) immediately revoke or suspend the Connecticut Yankee Atomic Power Company's (CYAPCO's) operating license for the Haddam Neck Plant (HNP), (2) an informal public hearing on the petition be held in the vicinity of the site, and (3) the NRC consider requiring CYAPCO to conduct decommissioning activities under 10 CFR part 72.

The Director, Office of Nuclear Reactor Regulation, has determined that the Petition should be denied in part and granted in part for the reasons stated in the ''Director's Decision Under 10 CFR 2.206'' (DD–99–01). The complete text that follows this notice is available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2210 L Street, NW., Washington, DC, and at the Local Public Document Room for HNP at the Russell Library, 123 Broad Street, Middletown, Connecticut.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review. As provided for by 10 CFR 2.206(c), the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 12th day of January 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

I. Introduction

On September 11, 1998, Ms. Rosemary Bassilakis submitted a petition pursuant to Title 10 of the Code of Federal Regulations, § 2.206 (10 CFR 2.206), on behalf of the Citizens Awareness Network requesting (1) that the U.S. Nuclear Regulatory Commission (NRC) immediately revoke or suspend the Connecticut Yankee Atomic Power Company's (CYAPCO's) operating license for the Haddam Neck Plant (HNP), (2) an informal public hearing on the petition be held in the vicinity of the site, and (3) that the NRC consider requiring CYAPCO to conduct decommissioning activities under 10 CFR part 72.

In support of their requests, the petitioners state that (1) CYAPCO demonstrates incompetence in creating and maintaining a safe work environment and an effective, well-trained staff; (2) CYAPCO is not conducting its decommissioning activities in accordance with its post-shutdown decommissioning activities report (PSDAR) and, therefore, poses an undue risk to public health; (3) the problems encountered at the plant during the summer of 1998 might not have occurred if the requirements under 10 CFR Part 72 had been applied; and (4) the spent fuel stored onsite in the spent fuel pool (SFP) is the primary risk to public health and safety.

II. Background

CYAPCO submitted written certifications of permanent cessation of operations of HNP and permanent removal of fuel from the HNP reactor vessel on December 5, 1996. Upon the docketing of these documents, in accordance with 10 CFR 50.82(a)(2), CYAPCO was no longer authorized to operate the reactor or to place fuel into the reactor vessel. CYAPCO submitted its PSDAR on August 22, 1997, which, among other items, described its schedule and commitments for decommissioning HNP. The licensee chose the DECON option for the plant.

The licensee plans to keep its spent fuel stored in the SFP until such time as the Department of Energy takes possession of it. Systems supporting the SFP are being modified to operate independently of the rest of the site so that decommissioning activities will have no impact on the SFP.

On March 4, 1997, the NRC issued a confirmatory action letter to document the licensee's commitments to improve its radiological controls program. Subsequently, on May 5, 1998, the NRC determined that CYAPCO had met its commitments to make those improvements.

The petitioners state that since May 5, 1998, a series of incidents that occurred at HNP raises questions regarding the ability of CYAPCO to protect worker and public health and safety and the environment. The incidents noted by the petitioners and a brief statement of NRC's enforcement actions taken to date are listed below:

1. On June 20, 1998, 800 gallons of radioactive liquid, containing approximately 2,200 microcuries total activity (excluding tritium and noble gases), were inadvertently released into the Connecticut River from the HNP waste test tank (WTT). The licensee did not report the release for 2 days.

This event is discussed in Inspection Report 50–213/98–03, which was issued on August 21, 1998. The release was within regulatory limits. However, the event resulted in a Severity Level IV violation because of the licensee's failure to declare an Unusual Event for an unplanned liquid discharge in which the total activity exceeds 1,000 microcuries (excluding tritium and noble gases). The event also contributed to a Severity Level IV violation for inadequate configuration control in that a valve required to be closed was open.

2. On July 7, 1998, 350 gallons of demineralized water were inadvertently spilled, spraying workers in the spent fuel building.

This event is discussed in Inspection Report 50–213/98–03, which was issued on August 21, 1998. The workers involved were neither contaminated nor injured. However, the event contributed to a Severity Level IV violation for inadequate configuration control in that valves red-tagged shut and verified as closed were found open.

3. On July 27, 1998, approximately 1,000 gallons of reactor coolant system (RCS) decontamination solution were spilled inside the plant.

This event is mentioned in Inspection Report 50–213/98–03, which was issued on August 21, 1998, as an example of inadequate configuration control in that a valve required to be full open was found less than full open, which contributed to pressure transients and vibrations that resulted in the spill. The partially closed valve contributed to a Severity Level IV violation for inadequate configuration control.

The event is discussed in detail in Inspection Report 50–213/98–04, which was issued on October 29, 1998. There was no release of radioactive water to the environment. However, the report found that the licensee did not perform walkdown inspections or visual leak checks in the plant's pipe trenches during leak testing of the systems in preparation for the RCS decontamination. In addition, the report found that the licensee failed to adequately address potential transient conditions in the letdown system equipment. The NRC identified these deficiencies as apparent violations in that corrective actions to address weaknesses in configuration control were inadequate. The need for enforcement action related to this event is being evaluated by the NRC.

4. On August 11, 1998, the SFP demineralizer retention element and filter failed, allowing contaminated resin beads to enter plant piping.

This event is discussed in Inspection Report 50–213/98–04, which was issued on October 29, 1998. The failures were caused by a combination of increased flow and corrosion due to operating conditions created by the RCS decontamination procedure. The contaminated resin beads increased

radiation levels in the pipe trench and containment, areas not readily accessible to workers. The NRC identified this event as an apparent violation in that the licensee's technical evaluations and procedural controls failed to ensure that contaminated resin remained inside the demineralizer tank.

The final disposition of the apparent violations identified in items 3 and 4 above will be taken in accordance with the NRC's enforcement policy. The NRC is currently evaluating the events and the need for enforcement action. The results of the evaluation will be made available to the public.

The series of events during the summer of 1998 prompted the NRC to conduct a number of conference calls and management meetings with the licensee. Conference calls were made to licensee management on July 8 and 15, 1998. During the calls, the licensee described the results of its preliminary root cause analyses of the events of June 20 and July 7, 1998, and presented the corrective actions it took to ensure that no similar events would occur during the RCS decontamination procedure. The licensee documented the commitments it made during those calls in a letter dated July 16, 1998. As a result of the July 27 event, a management meeting was held at the plant site on August 3, 1998, to discuss additional corrective actions taken by the licensee. These commitments were documented by the licensee in a letter dated August 12, 1998. The Regional Administrator for NRC Region I met with licensee management on August 20, 1998, to discuss concerns raised by the licensee's performance. On September 3–4, 1998, Region I and Headquarters personnel conducted interviews at the site with 30 licensee managers, supervisors, and workers to obtain information on organizational and management issues associated with the events during the RCS decontamination.

The petitioners state that CYAPCO never finished its root cause analysis for the incident on June 20, 1998, before commencing similar work. By letter dated July 16, 1998, CYAPCO committed to completing a root cause analysis by July 27, 1998, but did not commit to limit or prohibit similar work until the analysis was completed. Inspection Report 50–213/98–03 stated that the licensee's preliminary analysis of the June 20 event found that the root cause was accidental bumping of a cross-connect valve, which allowed partial discharge of the ''A'' WTT while the ''B'' WTT was being discharged. Both tanks had been properly prepared for release; however, they were intended to be released one at a time. The licensee suspended WTT discharges until a number of corrective actions, such as installation of a locking device on the cross-connect valve, were taken to prevent recurrence of a similar event. After the preliminary corrective actions were taken, the licensee removed the prohibition on WTT discharges. The final root cause analysis was issued by CYAPCO as an internal document and was approved by the HNP Unit Director on July 29, 1998. However, there was no requirement to place the analysis on the docket.

The petitioners also state that, as of the time of their September 11, 1998 petition, they had not received a response to their letter dated July 7, 1998, to NRC Chairman Jackson, in which they requested that NRC delay the start of the RCS chemical decontamination. The NRC staff issued a response to the petitioners in a letter dated August 31, 1998. The response was docketed on September 8, 1998, under accession number 9809080105.

III. Discussion of Petitioners' Requests

The petitioners' first request is to revoke or suspend the HNP operating license. The petitioners' basis for the request is that CYAPCO continues to demonstrate incompetence in creating and maintaining a safe work environment and an effective, well-trained staff.

The petitioners present the series of events outlined in Section II, ''Background'' as evidence to support their basis.

The NRC considers the series of events that occurred during the summer of 1998 to have been challenges to the licensee's ability to maintain a safe work environment. As noted in Section II, NRC has taken enforcement action in response to the events. The enforcement actions are based on the Commission's regulations, which place certain requirements on a licensee. To place a licensee under the authority of the regulations, the Commission issues a license with appropriate conditions. As a result, the facility operating license becomes a mechanism through which the Commission holds a licensee to its regulatory responsibilities. Revoking or suspending the HNP license would not relieve the licensee of its responsibilities but could impede the NRC's ability to enforce regulatory requirements.

The events previously outlined did not result in a radiological release to the environment above regulatory limits, did not cause radiation exposure above regulatory limits, and did not cause injury to workers or the public. In addition, the permanently shutdown and defueled condition of the plant substantially reduces the risk to public health and safety. In light of these facts, the NRC believes that revoking or suspending the HNP license is not necessary or appropriate. The NRC's enforcement policy provides objective criteria for responding to licensee actions and is adequate to require CYAPCO to take appropriate corrective actions in response to the events outlined. Therefore, the request to revoke or suspend the HNP operating license is denied.

The petitioners' second request is to hold an informal public hearing in the vicinity of the site. The petitioners' basis for the request is that CYAPCO is not conducting its decommissioning activities in accordance with its PSDAR and, therefore, poses an undue risk to the public.

With regard to the petitioners' request for an informal public hearing, the staff reviewed the PSDAR and found that CYAPCO has followed the sequence of activities included in the PSDAR as Figure 1, ''CY Decommissioning Schedule.'' Additionally, in its PSDAR, CYAPCO committed to controlling radiation exposure to offsite individuals to levels less than both the Environmental Protection Agency's Protective Action Guidelines and NRC's regulations. Both radiation exposures to individuals and effluents to the environment due to decommissioning activities have been within regulatory limits. On the basis of these facts, the staff finds that there is no undue risk to public health and safety. The staff also determined that the petitioners neither provided new information that raised the potential for a significant safety issue (SSI) nor presented a new SSI or new information on a previously evaluated SSI. Therefore, the criteria for an informal public hearing on a petition submitted under the provisions of 10 CFR 2.206, contained in Part III (c) of Management Directive 8.11, are not satisfied and the petitioners' request for an informal public hearing has been denied.

The petitioners' third request is for the NRC staff to consider applying the requirements of 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste,'' to decommissioning activities at HNP. The petitioners present two bases for this request. First, the problems encountered during the decommissioning activities in the summer of 1998 might not have occurred if 10 CFR part 72 had been applied at HNP. Second, the spent fuel

stored in the SFP is the primary risk to public health and safety.

The problems encountered by the licensee during the summer of 1998 have been examined by the NRC. As illustrated in Section II, the problems were not due to a lack of regulatory requirements. Therefore, the staff believes that the requirements of 10 CFR part 72, which address activities associated with an independent spent fuel storage installation (ISFSI), would not have been applicable to the decommissioning activities underway at HNP during the summer of 1998.

The second basis for the request concerns the safe storage of spent fuel at HNP. The staff's consideration of applying the requirements of 10 CFR part 72 at HNP is presented in Section IV, below. Therefore, the third request is granted.

IV. Application of 10 CFR Part 72 at HNP

The staff reviewed the requirements of 10 CFR part 72 and compared them with the requirements of 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' which currently apply to HNP. The scope of part 72, as stated in 10 CFR 72.2, is limited to the receipt, transfer, packaging, and possession of power reactor spent fuel and other radioactive materials associated with spent fuel storage. As a result, decommissioning activities under part 72 would apply only to the portion of the 10 CFR part 50 site licensed as an ISFSI. However, the licensee has not applied for a part 72 license to establish the SFP as an ISFSI. Furthermore, the licensee does not intend to decommission the SFP until after the Department of Energy takes possession of the spent fuel. In light of these facts, part 72 does not apply to HNP and, even if CYAPCO held a part 72 license, the decommissioning provisions of that part would not apply to the decommissioning activities currently underway at the facility. Because the HNP facility consists of contaminated and activated structures, systems, and components associated with a permanently defueled reactor as well as the SFP, the limited scope of part 72 is not sufficient to cover the full range of decommissioning activities at a power reactor facility such as HNP.

In contrast, the scope of 10 CFR part 50 applies to HNP and covers all the structures, systems, and components of a power reactor facility, including the SFP. Part 50 contains specific provisions for decommissioning power reactors in § 50.82, as well as other applicable sections. It follows that the decommissioning of HNP must proceed under 10 CFR part 50, at least until such time as the decommissioning activities at HNP fall completely within the scope of 10 CFR part 72 and the licensee applies for and obtains a part 72 license. As of now, the activities at HNP extend beyond the scope of part 72, and part 50 would continue to apply even if a licensed ISFSI were established at the site.

After considering the applicability of the regulations noted above, the staff concludes that 10 CFR part 72 does not apply to HNP at this time because the licensee does not possess an ISFSI licensed under part 72 and many of the decommissioning activities to be performed cannot be accommodated within the scope of part 72.

V. Decision

For the reasons stated herein, the petition is denied in part and granted in part. The requests to revoke or suspend the HNP operating license and to hold an informal public hearing in the vicinity of the site are denied. The request to consider application of the requirements of 10 CFR part 72 to HNP is granted. The staff's evaluation of the applicability of 10 CFR part 72 at HNP is presented in Section IV; however, the staff finds that part 72 does not apply to the decommissioning activities now underway at the plant.

The decision and the documents cited in the decision are available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the Local Public Document Room for HNP at the Russell Library, 123 Broad Street, Middletown, Connecticut.

In accordance with 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission for the Commission's review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 12th day of January 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1086 Filed 1–15–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23645; 812–11180]

Ivy Fund, et al.; Notice of Application

January 12, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to implement a ''fund of funds'' arrangement. The fund of funds would invest in funds in the same group of investment companies, and in funds that are not part of the same group of investment companies in reliance on section 12(d)(1)(F) of the Act. The order also would permit the fund of funds to offer its shares to the public with a sales load that exceeds the 1.5% limit of section 12(d)(1)(F)(ii) of the Act.

APPLICANTS: Ivy Management, Inc. (''IMI''); Ivy Mackenzie Distributors, Inc. (''IMDI''); Mackenzie Financial Corporation (''MFC''); Ivy Fund, on behalf of its series (Ivy Asia Pacific Fund; Ivy Bond Fund; Ivy Canada Fund; Ivy China Region Fund; Ivy Developing Nations Fund; Ivy Global Fund; Ivy Global Natural Resources Fund; Ivy Global Science & Technology Fund; Ivy Growth Fund; Ivy Growth With Income Fund; Ivy International Fund; Ivy International Fund II; Ivy International Small Companies Fund; Ivy International Strategic Bond Fund; Ivy Money Market Fund; Ivy Pan-Europe Fund; Ivy South America Fund; Ivy US Blue Chip Fund; and Ivy US Emerging Growth Fund); and Mackenzie Solutions, on behalf of its series (International Solutions I—Conservative Growth; International Solutions II—Balanced Growth; International Solutions III—Moderate Growth; International Solutions IV—Long-Term Growth; and International Solutions V—Aggressive Growth).

FILING DATES: The application was filed on June 10, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 February 4, 1999, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: IMI, IMDI, Mackenzie Solutions, and Ivy Fund, 700 South Federal Highway, Boca Raton, FL 33432; MFC, 150 Bloor Street, West, Toronto, Ontario, M5S 3B5 Canada.

FOR FURTHER INFORMATION CONTACT: Timothy R. Kane, Senior Counsel, at (202) 942–0615, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone 202–942–8090).

Applicants' Representations

1. Ivy Fund and Mackenzie Solutions are Massachusetts business trusts registered under the Act as open-end management investment companies. Mackenzie Solutions consists of five series; Ivy Fund consists of 19. Ivy Fund and Mackenzie Solutions are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act.

2. IMI, registered under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser to 17 series of Ivy Fund. IMI is a wholly-owned subsidiary of Mackenzie Investment Management, Inc., which is a majority-owned subsidiary of MFC. MFC serves as investment adviser to two portfolios of Ivy Fund and is registered under the Advisers Act.

3. Applicants request relief to permit the series of Mackenzie Solutions and any other registered open-end management investment company created in the future that is part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as Mackenzie Solutions (collectively, the ''Asset Allocation Funds''), to purchase shares of series of Ivy Fund and other registered open-end management investment companies or series thereof, now existing or created in the future, that are part of the same ''group of investment companies,'' as so defined, as the Asset Allocation Funds (collectively, the ''Underlying Portfolios'').[1] The Asset Allocation Funds also would invest in other registered open-end management investment companies that are not part of the same group of investment companies as Mackenzie Solutions (the ''Other Portfolios'') in reliance on section 12(d)(1)(F) of the Act, discussed below. With respect to an Asset Allocation Fund's investment in Other Portfolios, applicants also seek an exemption from the sales load limitation in section 12(d)(1)(F) of the Act. Applicants state that the proposed structure of the Asset Allocation Funds will provide a consolidated and efficient means through which investors can have access to a comprehensive investment vehicle.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquire investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the SEC; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1) (F) or (G). Section 12(d)(1)(G)(ii) defines the term ''group of investment companies'' to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Asset Allocation Funds will invest in shares of the Other Portfolios, they cannot rely on the exemption from sections 12(d)(1)(A) and (B) afforded by section 12(d)(1)(G).

3. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. The Asset Allocation Funds will invest in Other Portfolios in reliance on section 12(d)(1)(F). If the requested relief is granted, shares of the Asset Allocation Funds will be sold with a sales load that exceeds 1.5%, subject to applicants' compliance with condition 3 of the application.

4. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

[1] Applicants request relief for each existing or future registered open-end management investment company or series of such a company that is part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as Mackenzie Solutions, and (1) is, or will be advised by IMI or by any entity controlling, controlled by, or under common control with IMI; or (2) for which IMDI or any entity controlling, controlled by, or under common control with IMDI serves as principal underwriter. Each existing registered open-end management investment company that intends to rely on the order is named as an applicant. Any registered open-end management investment company that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

5. Applicants request relief under section 12(d)(1)(J) of the Act from the limitation of sections 12(d)(1) (A) and (B) to permit the Asset Allocation Funds to invest in the Underlying Portfolios and from section 12(d)(1)(F) to permit the Asset Allocation Funds to sell shares to the public with a sales load that exceeds 1.5%.

6. Applicants state that the Asset Allocation Funds' investments in the Underlying Portfolios do not raise the concerns about undue influence that sections 12(d)(1) (A) and (B) were designed to address. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of sales charges or other fees.

7. The Asset Allocation Funds will invest in Other Portfolios only within the limits of section 12(d)(1)(F). Applicants believe that an exemption from the sales load limitation in that section is consistent with the protection of investors because applicants' proposed sales load limit would cap the aggregate sales charges of the Asset Allocation Fund and the Other Portfolio in which it invests. Applicants have agreed, as a condition to the relief, that any sales charges, asset-based distribution and service fees relating to the Asset Allocation Fund's shares, when aggregated with any sales charges, asset-based distribution and service fees paid by the Asset Allocation Fund relating to its acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Conduct Rules'').

B. Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Asset Allocation Funds and the Underlying Portfolios will be advised by IMI or MFC, its indirect parent. As a result, applicants submit that the Asset Allocation Funds and Underlying Portfolios may be deemed to be affiliated persons of one another by virtue of being under common control of IMI and MFC, or because the Asset Allocation Funds Own 5% or more of the shares of an Underlying Portfolio. Applicants state that purchases and redemptions of shares of the Underlying Portfolios by the Asset Allocation Funds could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) and 17(b) of the Act to permit the Asset Allocation Funds to purchase and redeem shares of the Underlying Portfolios.

4. Applicants state that the terms of the proposed transactions will be reasonable and fair and will not involve overreaching because shares of Underlying Portfolios will be sold and redeemed at their net asset values. Applicants also state that the investment by the Asset Allocation Funds in the Underlying Portfolios will be effected in accordance with the investment restrictions of the Asset Allocation Funds and will be consistent with the policies as set forth in the registration statement of the Asset Allocation Funds.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. All Underlying Portfolios will be part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the Asset Allocation Funds.

2. No Underlying Portfolios will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1((A) of the Act, except to the extent that such Underlying Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the SEC permitting such Underlying Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions. No Asset Allocation Fund will acquire securities of an Other Portfolio if, at the time of acquisition, the Other Portfolio owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. Any sales charges, distribution-related fees, and service fees relating to the shares of the Asset Allocation Funds, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Asset Allocation Funds relating to their acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

4. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Asset Allocation Funds, including a majority of the trustees who are not ''interested persons'' (as defined in section 2(a)(19) of the Act), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Asset Allocation Funds.

5. Each Asset Allocation Fund's investments in Other Portfolio will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1088 Filed 1–15–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23643; File No. 812–11334]

The Lincoln National Life Insurance Company, et al.

January 12, 1999.

AGENCY: Securities and Exchange Commission (the ''Commission'' or ''SEC'').

ACTION: Notice of application for an order of approval pursuant to Section 26(b) of the Investment Company Act of 1940 (the ''1940 Act'' or ''Act'').

SUMMARY OF APPLICATIONS: Applicants seek an order to permit Lincoln National and LLANY, on behalf of Lincoln National Account L and LLANY Account L, to substitute securities issued by certain management investment companies and held by the Accounts to support certain group variable annuity contracts (the ''Contracts'') issued by Lincoln National and LLANY.

APPLICANTS: The Lincoln National Life Insurance Company (''Lincoln National''), Lincoln National Variable Annuity Account L (''Lincoln National Account L''), Lincoln Life & Annuity Company of New York (''LLANY'') and Lincoln Life & Annuity Variable Annuity Account L (''LLANY Account L'') (Lincoln National Account L and LLANY Account L together, the ''Accounts'') (all collectively, the ''Applicants'').

FILING DATE: The application was filed on October 1, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on February 8, 1999, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549. Applicants, Jeremy Sachs, Esquire, The Lincoln National Life Insurance Company, 1300 South Clinton Street, Fort Wayne, IN 46801–1110, Robert O. Sheppard, Esquire, Lincoln Life & Annuity Company of New York, 120 Madison Street, Suite 1700, Syracuse, NY 13202–2802. Copies to Kimberly J. Smith, Esquire, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Attorney, or Mark Amorosi, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Lincoln National, a stock life insurance company incorporated under the laws of Indiana, is the depositor and sponsor of the Lincoln National Account L. Lincoln National is wholly-owned by Lincoln National Corporation, a publicly-held insurance holding company.

2. LLANY is a life insurance company chartered under New York law and is a subsidiary of Lincoln National. LLANY is the depositor and sponsor of LLANY Account L.

3. Lincoln National Account L is registered under the Act as a unit investment trust (Rile No. 811–7645). The assets of Lincoln National Account L support certain group flexible premium deferred variable annuity contracts. Interests in Lincoln National Account L offered through such contracts are registered under the Securities Act of 1933 (''1933 Act'') on Form N–4 (File Nos. 333–4999, 333–5827, and 333–5815). The following nine sub-accounts are currently available as options under Lincoln National Account L Contracts: Index Account; Growth I Account; Asset Manager Account; Growth II Account; Balanced Account; International Stock Account; Socially Responsible Account; Equity-Income Account; and Small Cap Account.

4. LLANY Account L is registered under the Act as a unit investment (File No. 811–7785). The assets of LLANY Account L support certain group flexible premium deferred variable annuity contracts. Interests in LLANY Account L offered through such contracts are registered under the 1933 Act on Form N–4 (Reg. File Nos. 333–10963, 333–10805, and 333–10861). LLANY Account L is invested in the same investment sub-accounts as are available under Lincoln National Account L.

5. Each of the nine sub-accounts of the Lincoln National Account L and LLANY Account L invests exclusively in the shares of a single portfolio that is a separate series of an open-end management investment company registered on Form N–1A. The nine portfolios are: Dreyfus Stock Index Fund, Calvert Social Balanced Portfolio of Calvert Variable Series, Small Cap Portfolio of Dreyfus Variable Investment Fund, Fidelity Variable Insurance Products Fund (''VIP'') Equity-Income Portfolio, VIP Growth Portfolio, and VIP Money Market Portfolio, Fidelity Variable Insurance Products Fund II Asset Manager Portfolio, American Century VP Capital Appreciation and American Century VP Balanced of American Century Variable Portfolios, Inc., and International Stock Portfolio of T. Rowe Price International Series, Inc.

6. The Contracts reserve to Lincoln National and LLANY the right, subject to Commission approval, to substitute shares of another open-end management investment company for the shares of an open-end management investment company held by any sub-account. The reservation is disclosed in the prospectuses for the Contracts.

7. Currently, Contract owners may transfer cash value among and between the sub-accounts without the imposition of a transfer charge. All the Contracts, however, reserve to Lincoln National or LLANY, as applicable, the right to restrict transfer privileges.

8. The Applicants propose on or about April 30, 1999, to replace shares of the Calvert Social Balanced Portfolio with shares of the Lincoln National Social Awareness Fund, Inc. (the ''Social Awareness Fund''), and shares of the American Century VP Capital Appreciation with shares of the Lincoln National Aggressive Growth Fund, Inc. (the ''Aggressive Growth Fund'') (the Social Awareness Fund and the Aggressive Growth Fund together, the ''Substitute Funds''). Lincoln National and LLANY, on behalf of Lincoln National Account L and LLANY Account L respectively, will redeem shares of the replaced funds for cash and use the proceeds to purchase shares in the Substitute Funds. The companies will place redemption requests and purchase orders simultaneously so that contract values are fully invested at all times.

9. The investment objective of the Calvert Social Balanced Portfolio, a nondiversified fund, is to achieve a total return above the rate of inflation through an actively managed, nondiversified portfolio of common and preferred stocks, bonds, and money market instruments which offer income and capital growth opportunity and which satisfy the social concern criteria

established for the fund. The fund invests in enterprises that make a significant contribution to society through their products and services and through the way they do business. The Calvert Social Balanced Portfolio's investment objective is not fundamental and may be changed at any time with 60 days notice to shareholders.

10. The investment objective of the Social Awareness Fund, a diversified fund, is to achieve long-term capital appreciation. It seeks to achieve this objective by investing primarily in common stocks of established companies which satisfy certain social criteria, with the objective of maximizing long-term capital appreciation, while giving some emphasis to income. The fund invests in common stock and securities convertible into common stock, all selected in accordance with the fund's social criteria. The Social Awareness Fund's investment objective is fundamental, and cannot be changed without a shareholder vote.

11. The investment objective of the American Century VP Capital Appreciation is to seek capital growth. The fund seeks to achieve its investment objective by investing in common stocks and other securities that meet certain fundamental and technical standards of selection and have, in the opinion of the fund's investment manager, better than average potential for appreciation. The fund seeks to stay fully invested in such securities, regardless of the movement of stock prices generally.

12. The investment objective of the Aggressive Growth Fund is to seek to maximize capital appreciation. The fund pursues its objective by investing in a diversified portfolio of equity securities of small and medium-sized companies which have a dominant position within their respective industries, are undervalued or have potential for growth in earnings.

13. The following chart shows the total returns for the replaced funds for the past two years as well as the average annual total return since each fund's date of inception.

Replaced funds	Total return [1] of replaced funds		
	Inception of portfolio through 12/31/97 [2] (percent)	1997 (percent)	1996 (percent)
Calvert Social Balanced (inception date: September 2, 1986)	11.20	20.08	12.62
American Century VP Capital Appreciation (inception date: November 20, 1987)	9.34	−3.26	−4.32

[1] Total return for the replaced funds represents the historic performance of the Funds calculated in accordance with methods prescribed in Form N–1A.
[2] Total returns for the period from inception through December 31, 1997 have been annualized.

14. The following chart shows the total returns for the Substitute Funds for the past two years as well as average annual total return since each fund's date of inception. Each Substitute Fund has outperformed the corresponding replaced fund during each period shown.

Substitute funds	Total return [3] of substitute portfolios		
	Inception of fund through 12/31/97 [4] (percent)	1997 (percent)	1996 (percent)
Social Awareness Fund (inception date: May 2, 1988)	19.03	37.53	28.94
Aggressive Growth Fund (inception date: February 3, 1994)	15.04	23.09	17.02

[3] Total return for the Substitute Funds represents historic performance calculated in accordance with methods prescribed in Form N–1A.
[4] Total returns for the period from inception through December 31, 1997 are annualized.

15. The following chart shows the approximate size and expense ratio for each of the replaced funds for the past two and one-half years.[5]

Replaced funds	Net assets at December 31 (in thousands)	Expense ratio (percent)
Calvert Social Balanced:		
1996	$161,473	0.81
1997	227,834	0.80
June 30, 1998 (inception date: September 2, 1986)	275,385	0.77
American Century VP Capital Appreciation:		
1996	1,313,865	1.00
1997	593,698	1.00
June 30, 1998 (inception date: November 20, 1987)	515,262	1.00

16. The following chart provides the approximate size and expense ratios for each of the Substitute Funds for the past two and one-half years.[6]

[5] Expense ratios include management fees and operating expenses. Each Fund currently pays a monthly management fee based on its average daily net assets at the following annual rates: Calvert Social Balanced Portfolio, 0.70% (plus or minus a fee adjustment of 0.05% to 0.15%) and American Century VP Capital Appreciation, 1.00%. As of October 1, 1998, the management fee for the American Century VP Capital Appreciation will be: 1.00% of the first $500 million, 0.95% of the next $500 million, and 0.90% of the excess over $500 million.

[6] Expense ratios include management fees and operating expenses. Each Substitute Fund currently pays a monthly management fee based on its average daily net assets. The management fee for each Substitute Fund as of December 31, 1997 is as follows: Social Awareness Fund—0.48% of the first $200 million, 0.40% of the next $200 million, 0.30% of the excess over $400 million; and Aggressive Growth Fund—0.75% of the first $200 million, 0.70% of the next $200 million, 0.65% of the excess over $400 million.

Substitute funds	Net assets at December 31 (in thousands)	Expense ratio (percent)
Social Awareness Fund:		
1996	$636,595	0.46
1997	1,255,494	0.41
June 30, 1998 (inception date: May 2, 1988)	1,708,434	0.38
Aggressive Growth Fund:		
1996	242,609	0.82
1997	342,763	0.81
June 30, 1998 (inception date: February 3, 1994)	381,554	0.79

17. All Contract owners will be notified of the substitution before it occurs by supplements to the prospectus for the Contracts dated October 1, 1998. The supplements will also disclose that neither Lincoln National nor LLANY will exercise any rights resered by it under any of the Contracts to impose restrictions or fees on transfers until at least thirty days after the proposed substitutions.

18. At least sixty days before the date of the substitutions, Contract owners invested in the affected subaccounts will receive a prospectus for each Substitute Fund.

19. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's cash value or death benefit or the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any additional fees or charges as a result of the proposed substitutions nor will their rights or Lincoln National's and LLANY's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by Lincoln National and LLANY. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

20. Within five days after the substitutions, the companies will send to all Contract owners invested in the affected subaccounts notice that the substitutions were completed. The notice will also advise the Contract owners of their right to transfer cash value from either of the affected sub-accounts to other available sub-accounts and reiterate that neither Lincoln National nor LLANY will impose any restriction or fee on transfers for at least 30 days after the substitutions.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. The section further provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer and to prevent unscrutinized substitutions that might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares and, thereby, possibly incur a sales charge. Section 26(b) protects investors by preventing a depositor or trustee of a unit investment trust from substituting the shares of one issuer for those of another issuer unless the Commission approves the substitution.

3. Applicants assert that the proposed substitutions meet the standards that the Commission has applied to past substitutions.

4. Applicants assert that despite some differences, the investment objectives and policies of the Substitute Funds are sufficiently similar to those of the replaced funds to assure that the core investment goals of the affected Contract owners can continue to be met. The Social Awareness Fund, like the Calvert Social Balanced Fund uses social criteria to select investments. The Aggressive Growth Fund, like the American Century VP Capital Appreciation Portfolio, is a growth-oriented stock fund.

5. Applicants further assert that Contract owners will benefit from the proposed substitutions. In both cases, the performance of the Substitute Fund has been superior to that of the fund it will replace as measured in each of the past two calendar years and since the inception of the fund. In addition, the fees and expenses of the Substitute Fund are lower than those of the respective replaced fund. Applicants assert that the fees and expenses of the Substitute Funds are likely to remain lower for the foreseeable future because the Social Awareness Fund has substantially more assets than the Calvert Social Balanced Fund and because the asset base of the Aggressive Growth Fund, though currently lower than the American Century VP Capital Appreciation Portfolio, is growing, while the asset base of the American Century portfolio is declining.

Conclusion

Applicants assert, for the reasons stated above, that the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that the requested order approving the substitution should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1089 Filed 1–15–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Powertech, Inc.; Order of Suspension of Trading

January 13, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Powertech, Inc. (''Powertech'') because of questions regarding the accuracy of publicly disseminated information concerning, among other things, contracts entered into by Powertech.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading

in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, January 14, 1999, through 11:59 p.m. EST, on January 28, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–1193 Filed 1–14–99; 11:55 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40932; File No. SR–NASD–98–92]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Change in Position Limits for Standardized Equity Options

January 11, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 1998, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend Rule 2860(b)(3)(A) of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), to triple the position limits on standardized (exchange-traded) equity options and make them equivalent to the limits on conventional (over-the-counter) equity options overlying the same security.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Below is the text of the proposed [rule change. Proposed new language is in italics; proposed deletions are in brackets.

Rule 2860. Options

(3) Position Limits.

(A) Stock Options—Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) [4,500] *13,500* option contracts of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

(ii) [7,500] *22,500* options contracts of the put class and the call class on the same side of the market covering the same underlying security, providing that the [7,500] *22,500* contract position limit shall only be available for option contracts on securities which underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of [7,500] *22,500* option contracts; or

(iii) [10,500] *31,500* option contracts of the put class and the call class on the same side of the market covering the same underlying security providing that the [10,500] *31,500* contract position limit shall only be available for option contracts on securities which underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of [10,500] *31,500* option contracts; or

(iv) [20,000] *60,000* options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the [20,000] *60,000* contract position limit shall only be available for option contracts on securities which underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of [20,000] *60,000* option contracts; or

(v) [25,000] *75,000* options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the [25,000] *75,000* contract position limit shall only be available for option contracts on securities which underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of [25,000] *75,000* option contracts; or

* * * * *

(ix) Conventional Equity Options.

a. For purposes of this paragraph (b), standardized equity options contracts of the put class and call class on the same side of the market overlying the same security shall not be aggregated with conventional equity options contracts or FLEX Equity Options contracts overlying the same security on the same side of the market. Conventional equity options contracts of the put class and call class on the same side of the market overlying the same security shall be subject to a position limit equal to the greater of:

1. [three times] the basic limit of [4,500] *13,500* contracts, or

2. [three times] any standardized equity options position limit as set forth in subparagraphs (b)(3)(A)(ii) through (v) for which the underlying security qualifies or would be able to qualify.

b. In order for a security not subject to standardized equity options trading to qualify for an options position limit of more than [4,500] *13,500* contracts, a member must first demonstrate to the Association's Market Regulation Department that the underlying security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation is proposing to amend the options position limits prescribed by Rule 2860(b)(3)(A) to triple the position limits on standardized (exchange-traded) equity options and make them equivalent to the limits on conventional (over-the-counter) equity options overlying the same security.

Position limits impose a ceiling on the number of options contracts of each options class on the same side of the market that can be held or written by a member, an investor, or a group of investors acting in concert for purposes of limiting the potential for manipulation that may be associated with options trading. NASD Rule 2860(b)(3)(A) provides that the position limits for equity options are determined according to a five-tiered system in which more actively traded stocks with larger public floats are subject to higher position limits. Currently, the five tiers for standardized equity options [3] are 4,500, 7,500, 10,500 20,000 and 25,000 contracts.[4] The position limits for conventional equity options [5] are three times the limits for standardized equity options: 13,500, 22,500, 31,500, 60,000 and 75,000 contracts.[6] The NASD's limits on standardized equity options are applicable only to those members who are not also members of the exchange on which the option is traded; the limits on conventional equity options are applicable to all members.[7]

The American Stock Exchange, Inc. (''AMEX''), the Chicago Board Option Exchange, Inc. (''CBOE''), the Pacific Exchange, Inc. (''PCX'') and the Philadelphia Stock Exchange, Inc. (''PHLX'') (collectively ''Options Exchanges'') have filed proposed rule changes with the Commission to increase the limits for standardized equity options to establish parity with the limits currently in effect for conventional equity options.[8] In response to these filings, NASD Regulation is proposing two changes to its rules. First, the proposed rule change would triple the limits for standardized equity options to be consistent with the increase sought by the Options Exchanges. Without such an increase, the NASD's standardized equity options position limits would be lower than those established by the Options Exchanges and would lead to inconsistent treatment as to firms (and customers of such firms) that are NASD members but not members of an options exchange, the category of persons for whom our standardized position limits apply.

Second, the proposed rule change deletes the provisions of Rule 2860(b)(3)(A) that establish that the limits for conventional equity options are three times the standardized equity options overlying the same security. This proposed rule change will not affect the position limits for conventional equity options in numerical terms because of the commensurate increase in the position limits for standardized equity options. The proposed rule change, however, is necessary to eliminate the numerical relationship between standardized and conventional equity options. The NASD's rules currently provide that the position limit for conventional equity options shall be three times the limits for standardized equity options overlying the same security. This language was added as part of a rule change designed to increase the limits on conventional equity options to correspond to the numerical limits that were previously in effect with respect to FLEX Equity Options.[9]

NASD Regulation believes that the proposed rule change is necessary to ensure that the NASD's standardized equity options position limits are consistent with the limits of the Options Exchanges. Without an increase to the NASD's limits, the NASD's standardized equity options position limits would be lower than those established by the Options Exchanges and would lead to inconsistent treatment as to firms (and customers of such firms) that are NASD members but not members of an Options Exchange, the category of persons for whom its standardized position limits apply. The postponed rule change also provides NASD members (and their customers) with greater flexibility regarding their use of standardized equity options. NASD Regulation believes that the increased limits are appropriate in light of the surveillance by the Options Exchanges and the NASD's reporting requirements pursuant to Rule 2860(b)(3)(A)(5), which it believes provides sufficient protection against potential manipulation of these position levels.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, and promote just and equitable principle of trade, and, in general, to protect investors and the public interest. Specifically, NASD Regulation believes that the proposed rule change to increase the position limits for standardized equity options, consistent with the increase sought by the Options Exchanges, will promote just and equitable principles of trade, as well as protect investors and the public interest by providing members and their customers with greater flexibility regarding their use of standardized equity options and ensuring that NASD members are not competitively disadvantaged vis-á-vis members of an Options Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with

[3] Standardized equity options are exchange-traded options issued by the Options Clearing Corporation (''OCC'') that have standard terms with respect to strike prices, expiration dates, and the amount of the underlying security.

[4] NASD rules do not specifically govern how a specific equity option falls within one of the five position limit tiers. Rather, the NASD's position limit rule provides that the position limit established by an options exchange for a particular equity option is the applicable position limits for purposes of the NASD's rule.

[5] A conventional option is any option contract not issued, or subject to issuance, by the OCC.

[6] *See* Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998).

[7] NASD Rule 2860(b)(1)(A).

[8] The Commission notes that it recently approved the proposed rule changes by the Options Exchanges. *See* Exchange Act Release No. 40875 (December 31, 1998) (approving File Nos. SR–CBOE–98–25, SR–Amex–98–22, SR–PCX–98–33, and SR–Phlx–98–36) (''Exchanges' Position Limit Approval Order'').

[9] FLEX Equity Options are exchange-traded options issued by the OCC that give investors the ability, within specified limits, to designate certain terms of the options (*i.e.*, exercise price, exercise style, expiration date, and option type). The Commission has approved a two-year pilot program eliminating position limits for FLEX Equity Options on the AMEX, CBOE and the PCX. *See* Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48638 (September 16, 1997).

[10] 15 U.S.C. 78*o*–3.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, with the requirements of section 15A(b)(6).[11] Specifically, the Commission believes that the proposed rule change is designed to prevent just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[12]

The Commission finds good cause to approve the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, the Commission notes that the proposed rule change would make the NASD's position limits for standardized equity options equivalent to the increases of the Options Exchanges that were recently approved by the Commission.[13] Accelerating the NASD proposed rule change will ensure consistent treatment for persons trading in standardized equity options in that an NASDs member from that is not a member of an Options Exchange and its customers will have the same position limits for standardized equity option as an NASD member firm that is also a member of an Options Exchange. The Commission believes that failing to approve the conforming rule change for position limits for standardized equity options would result in confusion, as well as inconsistent treatment as to firms that are NASD's member but not members of an Options Exchange, the category of persons for whom the NASD's standardized equity option position limits apply. Accordingly, the Commission believes it is consistent with section 15A of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–98–92 and should be submitted by February 9, 1999.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–98–92) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1044 Filed 1–15–99; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78o–3(b)(6).

[12] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with section 3 of the Act. 15 U.S.C. 78c(f).

[13] *See* Exchanges' Position Limit Approval Order, *supra* note 8. The Commission incorporates by reference into this discussion its findings and rationale set forth in the Exchanges' Position Limit Approval Order *See id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40893; File No. SR–PCX–98–64]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Mandatory Year 2000 Testing

January 7, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 1998, the Pacific Exchange, Inc. (''PCX'' OR ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes that members and member organizations that have either direct electronic order flow or electronic clearing connections with the Exchange participate in testing of computer systems designed to prepare for year 2000.

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

Year 2000 Testing Requirements

Rule 1.15.(a) Each member not associated with a member organization and each member organization that has either direct electronic order flow or electronic clearing connections with the Exchange must participate in testing of computer systems designed to provide reports related to such testing as requested by the Exchange.

(b) The Exchange may exempt a member or member organization from this requirement if that member or member organization cannot be accommodated in the testing schedule by the organization conducting the test or if the member of member organization does not have or use computer systems in the conduct of their business (other than those supplied by the Exchange), or for other good reasons.

(c) A member of member organization that is subject to this rule and fails to participate or provide requested reports may be subject to disciplinary action pursuant to PCX Rule 10.

(d) Every member or member organization that clears securities transactions on behalf of other broker-dealers must take reasonable measures to ensure that each broker-dealer for which it clears securities transactions conducts testing with such member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed and comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. The ''Year 2000'' problem could have disastrous consequences for a number of businesses, including those in the securities industry, if the necessary changes are not made and tested in advance of the beginning of year 2000. On January 1, 2000, the internal data in computers will change from ''12/31/99'' to ''01/01/00.'' At that moment, if necessary changes have not been made to the computers' codes then a number of errors could occur in even the most routine processing. The computers may read the two digit ''00'' year code as 1900, or another incorrect date, instead of as 2000. Testing by and among a broad range of securities industry participants, including exchanges, registered clearing corporations and depositories, data processors and broker-dealers, will be of critical importance to ensure that the markets continue to operate efficiently after January 1, 2000.

Proposal. The proposed rule change establishes mandatory requirements for members and member organizations with regard to Year 2000 computer testing. Specifically, the Exchange proposes to require that members and member organizations that have either direct electronic order flow or electronic clearing connections with the Exchange participate in testing of computer systems designed to prepare for year 2000 in a manner and frequency as prescribed by the Exchange. Such testing may include PCX point-to-point testing and either Securities Industry Association (''SIA'') extended point-to-point testing, SIA industry-wide testing or any other testing the Exchange deems warranted. The Exchange also proposes that such members or member organizations be required to provide reports related to such testing as requested by the Exchange, including, but not limited to, reports on test preparation, prerequisite testing, and success or failure of such tests.

In addition, the Exchange proposes that members and member organizations that do not use computers in the conduct of their business, other than those provided by the Exchange for order entry and similar purposes, may be excluded from the requirements of testing. The Exchange also proposes that members of member organizations that cannot be accommodated in the testing schedule by the organization conducting the testing, or for other good reasons, may be excluded from the requirements of testing.

The Exchange further proposes that a member or member organization that is subject to this rule and fails to participate in the tests or fails to file any requested reports, may be subject to disciplinary action pursuant to PCX rule 10.

Finally, the Exchange proposes that every member or member organization that clears securities transactions on behalf of other broker-dealers must take reasonable measures to ensure that each broker-dealer for which it clears securities transactions conducts testing with such member.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[3] of the Act, in general, and furthers the objectives of Section 6(b)(5),[4] in particular, because it fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. In addition, the proposed rule change is designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with Section 6(b)(5) of the Act, which, among other aspects, requires that the rules of an exchange promote just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change will facilitate the PCX's and member firms' efforts to ensure the securities markets' continued smooth operation during the period leading up to and beyond January 1, 2000.

The Exchange has requested that the Commission approved the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register** because, in light of the industry wide tests that will soon begin and the tests that the Exchange is conducting, the Exchange wants to ensure that it can promptly deal with any problems that arise. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It is vital that self-regulatory organizations (''SROs'') such as the PCX have the authority to mandate that their member firms participate in Year 2000 testing and that they report test results (and other Year 2000 information) to the SROs. The proposed rule change will help the PCX participate in coordinating Year 2000 testing, including industry-wide testing, and in remediating any potential Year 2000 problems. This, in turn, will help ensure that the industry-wide tests and the PCX's Year 2000 efforts are successful. The proposed rule change will also help the PCX work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

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

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–60 and should be submitted by February 9, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [5] that the proposed rule change (SR–PCX–98–64) is hereby approved on an accelerated basis.[6]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1087 Filed 1–15–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(2).

[6] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Federal Assistance To Provide Financial Counseling and Other Technical Assistance to Women

AGENCY: Small Business Administration.

ACTION: Amendment to Program Announcement No. OWBO–99–012.

SUMMARY: The Small Business Administration (SBA) is amending the requirement regarding letters of commitment from state, local and community organizations. Where as item 7, (paragraph 2) on page 9 stated ''* * * the applicant must provide commitment letters and/or cooperative agreements from * * *,'' this statement is revised as follows: ''* * * the applicant must provide commitment letters and/or cooperative agreements, preferably from organizations including state and local governments, women's business organizations, Chambers of Commerce, financial institutions, SBDCs and most importantly, SBA district offices.''

FOR FURTHER INFORMATION CONTACT: Sally Murrell, (202) 205–6673 or Mina Wales (202) 205–6621.

Sherrye P. Henry,

Assistant Administrator, Office of Women's Business Ownership.

[FR Doc. 99–1048 Filed 1–15–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting at 8:30 a.m., on Monday, January 11, 1999, Hartford, District Office, 330 Main Street, 2nd Floor, Hartford, Connecticut 06106, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Marie A. Record, District Director, U.S. Small Business Administration, 330 Main Street, 2nd Floor, Hartford, Connecticut 06106, (860) 240–4700.

Dated: January 8, 1999.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–1047 Filed 1–15–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IV, North Florida District; Jacksonville, Florida; Advisory Council; Public Meeting

The U.S. Small Business Administration, North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 12 p.m. to 2 p.m., January 14, 1999, at the U.S. Small Business Administration District Office, 7825 Baymeadows Way, Suite 100–B, Conference Room, Jacksonville, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Claudia D. Taylor, U.S. Small Business Administration, 7825 Baymeadows Way, Suite 100–B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Dated: January 8, 1999.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–1046 Filed 1–15–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Wisconsin State Advisory Council; Public Hearing

The U.S. Small Business Administration Wisconsin State Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12:00 p.m. to 1:00 p.m. January 21, 1999 at Metro Milwaukee Area Chamber (MMAC) Association of Commerce Building; 756 North Milwaukee Street, Fourth Floor, Milwaukee, Wisconsin to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Yolanda Lassiter, U.S. Small Business Administration, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203; (414) 297–1092.

Dated: January 8, 1999.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 99–1045 Filed 1–15–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2958]

Secretary of State's Advisory Committee on Private International Law; Study Group on International Family Support Enforcement Meeting Notice

There will be a public meeting of the Study Group on International Family Support Enforcement of the Secretary of State's Advisory Committee on Private International Law on Friday, January 29, 1999. The meeting will be held from 9:30 AM to 4:30 PM in Room 1107 of the U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. The purpose of the meeting is to assist the Department of State to prepare the position of the U.S. delegation to a special commission session of the Hague Conference on Private International Law, April 13–16, 1999.

The Hague Conference on Private International Law (of which the United States is a member state) has scheduled the special commission session to review the operation of existing conventions dealing with the establishment, recognition, and enforcement of family support orders, and to explore the desirability of developing over the next four years a new Hague Convention on the enforcement of family support obligations. Such a convention could incorporate and revise certain features of the support enforcement process now included in the 1956 United Nations Convention on the Recovery Abroad of Maintenance, 268 U.N.T.S. 3 (1957); and four Hague conventions dealing with applicable law and recognition orders—1956 Convention sur la loi applicable aux obligations alimentaires envers les

enfants [Applicable law Convention], 510 U.N.T.S. 161 (1964); 1958 Convention concernant la reconnaissance et l'exécution des décisions en matiére d'obligations alimentaires envers les enfants [Recognition and Enforcement Convention], 539 U.N.T.S. 27 (1965); 1973 Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations 1021 U.N.T.S. 209 (1976); and 1973 Convention on the Law Applicable to Maintenance Obligations, 1056 U.N.T.S. 199 (1977). The Permanent Bureau of the Hague Conference is preparing a report for the special commission that will set out in more detail the issues to be before it during the April session. A preliminary draft version of that report is available for consideration at the Study Group meeting.

The United States is not currently a party to any treaties or conventions addressing the enforcement of family support obligations, which are ordinarily a matter of state law in the United States. Many of the states of the United States do have nonbinding, reciprocal arrangements with foreign countries on the enforcement of family support obligations. Moreover, under the Welfare Reform Act of 1996, authority to enter into reciprocal arrangements on a bilateral basis has also been given to the federal government. 42 U.S.C. 659A. A new, multilateral convention would most likely require additional statutory authority for implementation.

Persons interested in the Study Group or in attending the January 29 meeting in Washington may request copies of the documents under consideration at the meeting, including the conventions listed above and the draft report in preparation by the Permanent Bureau. Documents may be requested from Ms. Rosie Gonzales by fax at 202–776–8482, by telephone at 202–776–8420, or by email to <pildb@his.com>, attention Study Group on Family Support Enforcement. Please note the documents requested, name, telephone number, and mailing address.

The meeting of the study group is open to the public up to the capacity of the meeting room. Because access to the State Department building is controlled, any person wishing to attend should provide Ms. Gonzales the following information no later than Friday, January 22, 1999: name, Social Security number, date of birth, affiliation, address, phone, fax numbers, and email address. Participants must use the main entrance of the State Department building, on C Street between 21 and 23rd Streets, NW, where someone will be available to assist their entry. Persons who cannot attend but nevertheless wish to be included on the Department's mailing list of interested persons may also provide Ms. Gonzales with their company's or organization affiliations, mailing and email addresses, and fax and telephone numbers.

Any person who is unable to attend, but who wises to have his or her views considered, may send comments to Ms. Gonzales at the above fax or email address, or may address them to Office of the Assistant Legal Adviser for Private International Law (L/PIL), Suite 203, South Building, 2430 E Street, NW, Washington, DC 20037–2800.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law.

[FR Doc. 99–1077 Filed 1–15–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2967]

Imposition of Nonproliferation Measures Against Entities in Russia, Including Ban on U.S. Government Procurement

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The U.S. Government has determined that three entities in Russia have engaged in nuclear or missile technology proliferation activities that require the imposition of measures pursuant to Executive Order 12938 of November 14, 1994, as amended by Executive Order 13094 of July 28, 1998.

EFFECTIVE DATE: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State, (202–647–1142). On import ban issues: John T. Roth, Director, Policy Planning and Program Management, Office of Foreign Assets Control, Department of the Treasury, (202–622–2500). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to the authorities vested in the President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (''IEEPA''), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and Executive Order 12938 of November 14, 1994, as amended, the U.S. Government determined on January 8, 1999 that the following foreign persons have engaged in proliferation activities related to Iran's nuclear and/or missile programs that require the imposition of measures pursuant to sections 4(b), 4(c) and 4(d) of Executive Order 12938:

D. Mendeleyev University of Chemical Technology of Russia (including at 9 Miusskaya Sq. Moscow 125047, Russia);

Moscow Aviation Institute (MAI) (including at 4 Volokolamskoye Shosse, Moscow 125871, Russia); and

The Scientific Research and Design Institute of Power Technology (aka NIKIET, Research and Development Institute of Power Engineering [RDIPE], and ENTEK) (including at 101000, P.O. Box 788, Moscow, Russia).

Accordingly, until further notice and pursuant to the provisions of Executive Order 12938, the following measures are imposed on these entities, their subunits and successors:

1. All departments and agencies of the United States Government shall not procure or enter into any contract for the procurement of any goods, technology or services from these entities. Existing contracts shall be subject to case-by-case review;

2. All departments and agencies of the United States Government shall not provide any assistance to these entities, and shall not obligate further funds for such purposes;

3. The Secretary of the Treasury shall prohibit the importation into the United States of any goods, technology, or services produced or provided by these entities, other than information or informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

These measures shall be implemented by the responsible departments and agencies as provided in Executive Order 12938.

Dated: January 13, 1999.

Eric D. Newsom,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 99–1186 Filed 1–15–99; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2968]

Suspension of Munitions Export Licenses and Other Approvals Destined for Russian Companies and Related Matters

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to Section 38 of the Arms Export Control Act and section 126.7 of the International Traffic in Arms Regulations, all licenses and other approvals for defense articles and defense services involving certain Russian entities, identified below, are suspended, effective immediately. Notice is further given that it is the policy of the United States to deny licenses, other approvals, exports and temporary imports of defense articles and defense services destined for these Russian entities.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Deputy Director, Department of State, Office of Defense Trade Controls, Department of State, 703–812–2568.

SUPPLEMENTARY INFORMATION: On January 8, 1999, the U.S. Government decided to suspend immediately any U.S. Government program or assistance, to impose trade restrictions on certain Russian entities involved in proliferation activities. Section 126.7 of the International Traffic in Arms Regulations (ITAR) provides that any application for an export license or other approval under the ITAR may be disapproved, and any license or other approval or exemption granted under the ITAR may be revoked, suspended or amended without prior notice under various circumstances, including whenever such action is deemed to be in furtherance of world peace, the national security or the foreign policy of the United States or is otherwise advisable.

Pursuant to section 126.7(a)(1) of the ITAR, it is deemed that suspending the following foreign entities from participating in any activities subject to Section 38 of the Arms Export Control Act would be in furtherance of the national security and foreign policy of the United States. Therefore, until further notice, the Department of State is hereby suspending all licenses and other approvals for: (a) Exports and other transfers of defense articles and defense services from the United States; (b) transfers of U.S.-origin defense articles and defense services from foreign destinations; and (c) temporary import of defense articles to or from the following entities:

D. Mendeleyev University of Chemical Technology of Russia (including at 9 Miusskaya Sq. Moscow 125047, Russia);

Moscow Aviation Institute (MAI) (including at 4 Volokolamskoye Shosse, Moscow 125871, Russia); and

The Scientific Research and Design Institute of Power Technology (aka NIKIET, Research and Development Institute of Power Engineering [RDIPE], and ENTEK) (including at 101000, P.O. Box 788, Moscow, Russia).

Moreover, it is the policy of the United States to deny licenses and other approvals for exports and temporary imports of defense articles and defense services destined for these Russian entities.

Dated: January 13, 1999.

Eric D. Newsom,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 99–1187 Filed 1–15–99; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues.

DATES: The meeting will be held on February 9, 1999, from 9 a.m. to 1 p.m. Arrange for presentations by January 27, 1999.

ADDRESSES: The meeting will be held at the Aircraft Owners and Pilots Association, 500 E Street SW, Suite 250, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carolina E. Forrester, Federal Aviation Administration, Office of Rulemaking (ARM–206), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9690; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on February 9, 1999, from 9 a.m. to 1 p.m. at the Aircraft Owners and Pilots Association, 500 E Street SW, Suite 250, Washington, DC. The agenda will include:

1. Opening remarks;
2. Committee Administration;
3. Status report from the General Aviation Maintenance Working Group;
4. Status report from the Clarification of Major/Minor Repairs or Alterations Working Group;
5. A discussion of future meeting dates, locations, activities, and plans.

Attendance is open to the interested public, but will be limited to space available. The public must make arrangements by January 27, 1999, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on January 14, 1999.

Ava L. Mims,

Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–1092 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (99–03–C–00–ISP) to impose and use a passenger facility charge (PFC) at Long Island MacArthur Airport Ronkonkoma, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Long Island MacArthur Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 18, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Dan Vornea, Project Manager, New York, Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Brad Ringhouse, Administrative Supervisor, for Town of Islip at the following address: 100 Arrival Avenue, Ronkonkoma, New York 11779.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Town of Islip under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, Project Manager, New York Airports District Office, 100 Arrival Avenue, Ronkonkoma, New York 11779, (516) 227–3812. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Long Island MacArthur Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR 158).

On December 31, 1998, the FAA determined that the application to impose and use a PFC submitted by the Town of Islip was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 17, 1999.

The following is a brief overview of the application.

Application number: 99–03–C–00–ISP.

Level of the proposed PFC: $3.00.

Proposed change effective date: July 1, 2012.

Proposed charge expiration date: September 1, 1012.

Total estimated PFC revenue: $180,000.

Brief description of proposed projects:

—Rehabilitation of Taxiways ''C'' & ''B–3''

—Rehabilitation of Runway 15L–33R

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Town of Islip.

Issued in Jamaica, New York on January 7, 1999.

Thomas Felix,

Manager, Planning & Programming Branch, AEA–610, Eastern Region.

[FR Doc. 99–1099 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Melbourne International Airport, Melbourne, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Melbourne International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 18, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Johnson, Director of Aviation at the following address: Melbourne International Airport, One Air Terminal Parkway, Suite 220, Melbourne, Florida 32901–1888

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Melbourne International Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ilia A. Quinones, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331 X 33. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Melbourne International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 8, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Melbourne International Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 30, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–03–C–00–MLB.

Level of the proposed PFC: $3.00

Proposed charge effective date: July 1, 1999

Proposed charge expiration date: July 31, 2000

Total estimated PFC revenue: $687,088

Brief description of proposed project(s): Master Plan Update Phase 2; Proximity Suits for Firefighters; ARFF Vehicle; Wetland Mitigation Land Acquisition; Construct Safety Area/Wetland Mitigation; Generators (2) Emergency for Terminal; Runway Power Sweeper.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Melbourne International Airport.

Issued in Orlando, Florida on January 11, 1999.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 99–1097 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pensacola Regional Airport, Pensacola, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pensacola Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 18, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank R. Miller, Airport Director of Pensacola Regional Airport at the following address: Pensacola Regional Airport, 2430 Airport Boulevard, #225 Pensacola, FL 32504–8964.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Pensacola Regional Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Bud Jackman, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, FL 32822–5024, (407) 812–6331, Ext. 22. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Pensacola Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 11, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Pensacola was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 27, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–04–C–00–PNS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1999.

Proposed charge expiration date: June 30, 2010.

Total estimated PFC revenue: $19,400,000.

1. *Brief description of proposed project(s):* Runway 8/26 Rehabilitation; Runway 8/26 Extension.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxi/Commercial Operators (ATCO's) filing Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pensacola.

Issued in Orlando, Florida on January 11, 1999.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 99–1098 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Foreign Waterborne Transportation Statistics Program

AGENCY: Maritime Administration, DOT.

ACTION: Notice of meeting

SUMMARY: The Maritime Administration and the U.S. Army Corps of Engineers, the agencies currently responsible for the U.S. Foreign Waterborne Transportation Statistics Program, are holding a public meeting to receive information from private sector U.S. maritime data users as to their ongoing requirements for such data. This information-gathering is part of the first step in development of a plan to improve the data collection, production and public access, without imposing any new reporting burden on the public. A questionnaire is available for all interested persons to indicate their data requirements, whether or not they attend the meeting.

DATES: March 4, 1999, from 8 a.m. to 5 p.m.

LOCATION: National Academy of Sciences, Lecture Room, 2101 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Susan Hassett, U.S. Army Corps of Engineers, Waterborne Commerce Statistics Center, PO Box 61280, New Orleans, LA 70161–1280 [fax: 504–862–1423; phone: 504–862–1453; e-mail: susan.k.hassett@usace.army.mil]; or, Norman Tague, Maritime Administration, Office of Statistical and Economic Analysis, MAR–450, 400 Seventh Street SW, Washington, DC 20590 [fax: 202–366–8886; phone: 202–366–2316; e-mail: norman.tague@marad.dot.gov].

SUPPLEMENTARY INFORMATION:

Background

Following a review of the U.S. Foreign Waterborne Transportation Statistics program, the Office of Management and Budget (OMB) designated the U.S. Army Corps of Engineers (Corps) as the ''central collection agency'' for the program, and transferred program responsibility to the Corps, with operational support from the Maritime Administration (MARAD), effective October 1, 1998. The Corps collects and publishes the data pursuant to its authority under the 1922 River and Harbor Act, as amended (33 U.S.C. 555), by which it has historically collected and published waterborne commerce statistics.

The Corps and MARAD have assumed complete responsibility for the ongoing production of official monthly and annual U.S. foreign waterborne transportation statistics. Under the new arrangement, monthly and annual vessel movement and cargo data previously produced by the Bureau of the Census (Census) are now available through the Corps/MARAD.

The public data products contain movement data on all vessels engaged in U.S. foreign trade and cargo data by type of service, U.S. and foreign port, country of origin/destination, commodity, value, weight, and containerized cargo. These products include: monthly and annual ''Vessel Movements'' (formerly TM/TA385 and 785), ''Waterborne Databank'' (formerly TM/TA305 and 705), quarterly and annual ''U.S. Waterborne Exports and General Imports'' (formerly TQ/TA985) and the annual ''Vessel Entrances and Clearances'' (formerly TA987).

To ensure the continuity of data, these products are currently identical to those formerly produced by Census. However,

the long-term goal is to meet customer data requirements through improved data collection, production and access. This information-gathering is the beginning of that process, and provides an opportunity for public input into the redesign of the program. This is consistent with the principles of the National Performance Review to provide better delivery of Federal services.

Meeting Registration Process

Users of U.S. maritime data as well as any other interested persons are encouraged to participate in this information-gathering initiative. A questionnaire has been developed for pre-registration of attendees, to facilitate preparation for the meeting, and to afford an opportunity for input to persons unable to attend. This questionnaire may be obtained on the Internet at *http://www.wrsc.usace.army.mil/ndc* or *http://marad.dot.gov/statistics* or from: Ms. Sandy Schafer, Waterborne Commerce Statistics Center, 504–862–1404, 504–862–1423 (fax) e-mail:, sandra.a.schafer@usace.army.mil, PO Box 61280, New Orleans, LA 70123–1289.

Persons completing the questionnaire are urged to mail, or fax it to Ms. Sandy Schafer by February 18, 1999, so that all data requirements can be adequately addressed at the meeting. The completed questionnaire will also serve as your pre-registration for the meeting, if you so indicate on the questionnaire. If you plan to attend the meeting, but are not completing a questionnaire, please notify Ms. Sandy Schafer by mail, e-mail, or fax. This will assist us in estimating attendance, and organizing meeting space.

Format of the Meeting

The meeting will be structured through the use of a facilitator to provide each participant with an overview of the existing program and production process, the results of the questionnaire, clarification of any of the data elements involved, and a thorough discussion of the issues.

It is an opportunity for private sector data users to describe their data needs and to share any views and insights as to how the U.S. Foreign Waterborne Transportation Statistics Program might be improved. Discussion should be extremely focused, in terms of specific data elements required, why it is needed and how it is used.

By Order of the Maritime Administrator.

Dated: January 13, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–1111 Filed 1–15–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Application and Renewal Fees Imposed on Surety Companies and Reinsuring Companies; Increase in Fees Imposed

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Application and renewal fees imposed on surety companies and reinsuring companies; Increase in fees imposed.

SUMMARY: Effective December 31, 1998, The Department of the Treasury, Financial Management Service, is increasing the fees it imposes on and collects from surety companies and reinsuring companies.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch, (202) 874–6765.

SUPPLEMENTARY INFORMATION: The fees imposed and collected, as referred to in 31 CFR 223.22, cover the costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business. These fees are determined in accordance with the Office of Management and Budget Circular A–25, as amended. The increase in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

The new fee rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$4,300.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$2,525.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$1,525.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$1,075.

Questions concerning this notice should be directed to the Surety Bond Branch, Financial Accounting and Services Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782, Telephone (202) 874–6850.

Dated: January 8, 1999.

Mitchell A. Levine,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 99–1136 Filed 1–15–99; 8:45 am]

BILLING CODE 4810–35–M

federal register

Tuesday
January 19, 1999

Part II

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6220–6]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds a total of 17 new sites to the NPL; 16 sites to the General Superfund Section of the NPL and 1 site to the Federal Facilities Section of the NPL.

EFFECTIVE DATE: The effective date of this final rule is February 18, 1999.

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

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

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

B. What is the NCP?

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

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

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

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

The NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities

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

D. How are Sites Listed on the NPL?

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

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

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 29, 1998 (43 FR 51882).

E. What Happens to Sites on the NPL?

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

F. How are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

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

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

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

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

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

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

G. How are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as

explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

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

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

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

As of January 4, 1999, the Agency has deleted 181 sites from the NPL.

H. Can Portions of Sites be Deleted From the NPL as They are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of January 4, 1999, EPA has deleted portions of 15 sites.

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

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

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

Of the 181 sites that have been deleted from the NPL, 172 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 413 sites also on the NPL CCL. Thus, as of January 4, 1999, the CCL consists of 585 sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund/.

II. Availability of Information to the Public

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

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

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

The Headquarters docket for this rule contains HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule, January 1999.''

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

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

D. How Do I Access the Documents?

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

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

Jim Kyed, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA Waste Management Records Center, HRC–CAN–7, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–9656

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

Kevin Wood, Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103, Mail Code: 3HS33, 215/814–3303.

Sherryl Decker, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 100 Alabama Street, SW, Atlanta, GA 30303, 404/562–8127

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

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mail Code 6SF–RA, Dallas, TX 75202–2733, 214/655–7436

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7224

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

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

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101, 206/553–2103

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

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

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds 17 sites to the NPL; 16 sites to the General Superfund Section of the NPL and 1 site to the Federal Facility Section of the NPL. Table 1 presents the 16 sites in the General Superfund Section and Table 2 contains the 1 site in the Federal Facilities Section. Sites in each table are arranged alphabetically by State. Please note that EPA is reclassifying the Middlesex Sampling Plant in Middlesex, New Jersey as a Federal Facility site and is changing the name to the Middlesex Sampling Plant (USDOE). The Middlesex Sampling Plant (USDOE) was proposed to the NPL on September 29,1998 (63 FR 51882) as a General Superfund site and is being added to the NPL today as a Federal Facility. EPA believes this change more accurately reflects the site.

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

State	Site name	City/county
CA	Lava Cap Mine	Nevada City.
CA	Omega Chemical Corporation	Whittier.
CA	Pemaco Maywood	Maywood.
LA	Delatte Metals	Ponchatoula.
MN	Fridley Commons Park Well Field	Fridley.
NC	Davis Park Road TCE	Gastonia.
NM	North Railroad Avenue Plume	Espanola.
NJ	Federal Creosote	Manville Borough.
NY	Hiteman Leather	West Winfield.
NY	Lehigh Valley Railroad	Le Roy.
NY	Mohonk Road Industrial Plant	High Falls.
NY	Smithtown Ground Water Contamination	Smithtown.
OK	Tulsa Fuel and Manufacturing	Collinsville.
TX	City of Perryton Well No. 2	Perryton.
TX	Many Diversified Interests, Inc.	Houston.
VT	Pownal Tannery	Pownal.

Number of Sites Added to the General Superfund Section: 16.

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

State	Site name	City/county
NJ	Middlesex Sampling Plant (USDOE)	Middlesex.

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

B. Status of NPL

With the 17 new sites added in today's rule, the NPL now contains 1,206 sites (1,053 in the General Superfund section and 153 in the Federal Facilities section). With a rule proposing to add 11 new sites to the NPL published elsewhere in today's **Federal Register**, there are now 59 sites proposed and awaiting final agency action, 50 in the General Superfund section and 9 in the Federal Facilities section. Final and proposed sites now total 1,265.

C. What did EPA do With the Public Comments it Received?

EPA reviewed all comments received on the site in this rule. The following sites were proposed on July 28, 1998 (63 FR 40188): Pemaco Maywood, Delatte Metals, North Railroad Avenue Plume, Davis Park Road TCE, Federal Creosote, and Lehigh Valley Railroad. The remaining sites were proposed on September 29, 1998 (63 FR 51882).

For the Pemaco Maywood, Delatte Metals, Federal Creosote, Many Diversified Interests, and Pownal Tannery sites, EPA received only comments in favor of placing the site on the NPL. EPA received no comments on the actual scoring of these sites and the Agency has identified no other reason to change the original HRS scores for the sites. Therefore, EPA is placing these sites on the final NPL at this time.

Based on comments received on the Smithtown Ground Water Contamination site, as well as investigation by EPA and the State (generally in response to comment), EPA responded to all relevant comments received. EPA's responses to site-specific public comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule, January 1999.''

No comments were received on the remainder of sites and therefore, EPA is placing them on the final NPL at this time.

IV. Executive Order 12866

A. What is Executive Order 12866?

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

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

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to

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

B. Does UMRA Apply to This Final Rule?

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

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

VI. Effect on Small Businesses

A. What is the Regulatory Flexibility Act?

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the rule on small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. Under section 605(b) of the RFA, EPA is not required to prepare a regulatory flexibility analysis if the Agency certifies that the rule will not have a substantial economic impact on a substantial number of small entities.

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

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

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

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

VII. Possible Changes to the Effective Date of the Rule

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

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

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

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

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government

agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

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

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

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

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

VIII. National Technology Transfer and Advancement Act

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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

EPA is not using technical standards as part of today's rule, which adds sites to the NPL. Therefore, the Agency did not consider the use of any voluntary consensus standards.

IX. Executive Order 13045

A. What is Executive Order 13045?

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

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

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

X. Paperwork Reduction Act

A. What is the Paperwork Reduction Act?

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

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

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

XI. Executive Order 12875

What is Executive Order 12875 and is it Applicable to This Final Rule?

Under Executive Order 12875, 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, 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 rule does not create a mandate on State, local or tribal governments. The rule 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 rule.

XII. Executive Order 13084

What is Executive Order 13084 and is it Applicable to This Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's

prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 11, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

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

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

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes(a)
*	*	*	*
CA	Lava Cap Mine	Nevada City	
*	*	*	*
CA	Omega Chemical Corporation	Whittier	
*	*	*	*
CA	Pemaco Maywood	Maywood	
*	*	*	*
LA	Delatte Metals	Ponchatoula	
*	*	*	*
MN	Fridley Commons Park Well Field	Fridley	
*	*	*	*
NC	Davis Park Road TCE	Gastonia	
*	*	*	*
NJ	Federal Creosote	Manville Borough	
*	*	*	*
NM	North Railroad Avenue Plume	Espanola	
*	*	*	*
NY	Hiteman Leather	West Winfield	
*	*	*	*
NY	Lehigh Valley Railroad	Le Roy	
*	*	*	*
NY	Mohonk Road Industrial Plant	High Falls	
*	*	*	*
NY	Smithtown Ground Water Contamination	Smithtown	
*	*	*	*
OK	Tulsa Fuel and Manufacturing	Collinsville	
*	*	*	*
TX	City of Perryton Well No. 2	Perryton	
*	*	*	*
TX	Many Diversified Interests, Inc	Houston	
*	*	*	*
VT	Pownal Tannery	Pownal	
*	*	*	*

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes(a)
*	*	*	*
NJ	Middlesex Sampling Plant (USDOE)	Middlesex	

[FR Doc. 99–1020 Filed 1–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6220–5]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 27

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add 11 new sites to the NPL, all to the General Superfund section. In addition, the rule withdraws one site from proposal to the NPL, from the General Superfund section.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before March 22, 1999.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Express Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

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

B. What Is the NCP?

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

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

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

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. section

105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

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

D. How Are Sites Listed on the NPL?

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

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

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 29, 1998 (63 FR 51882).

E. What Happens to Sites on the NPL?

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

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

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

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

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

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and

remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

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

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

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of January 4, 1999, the Agency has deleted 181 sites from the NPL.

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

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of January 4, 1999, EPA has deleted portions of 15 sites.

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

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

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

Of the 181 sites that have been deleted from the NPL, 172 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 413 sites also on the NPL CCL. Thus, as of January 4, 1999, the CCL consists of 585 sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Public Review/Public Comment

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

Yes, documents that form the basis for EPA's evaluation and scoring of sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the appropriate Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional 3 docket after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets are as follows:

Jim Kyed, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA Waste Management Records Center, HRC–CAN–7, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–9656

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

Kevin Wood, Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103, Mail Code: 3HS33, 215/814–3303.

Sherryl Decker, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 100 Alabama Street, SW, Atlanta, GA 30303, 404/562–8127

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

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mail Code 6SF–RA, Dallas, TX 75202–2733, 214/655–7436

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7224

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

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

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101, 206/553–2103

You may also request copies from EPA Headquarters or the appropriate Regional docket. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

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

The Headquarters docket for this rule contains: HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record. The Headquarters docket also contains an ''Additional Information'' document which provides a general discussion of the statutory requirements affecting NPL listing, the purpose and implementation of the NPL, and the economic impacts of NPL listing.

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

The Regional dockets for this rule contain all of the information in the Headquarters docket for those sites in its Region, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional docket.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

Table 1 identifies the 11 sites in the General Superfund section being proposed to the NPL in this rule. This table follows this preamble. All sites are proposed based on HRS scores of 28.50 or above. The sites in Table 1 are listed alphabetically by State, for ease of identification.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 17 sites to the NPL; resulting in an NPL of 1,206 sites; 1,053 in the General Superfund section and 153 in the Federal Facilities section. With this proposal of 11 new sites, there are now 59 sites proposed and awaiting final agency action, 50 in the General Superfund section and 9 in the Federal Facilities section. Final and proposed sites now total 1,265.

C. Withdrawal of Site From Proposal to the NPL

EPA is withdrawing the Rinchem Co., Inc. Site from proposal to the NPL from the General Superfund section.

IV. Executive Order 12866

A. What Is Executive Order 12866?

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

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

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake

remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

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

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the rule on small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. Under section 605(b) of the RFA, EPA is not required to prepare a regulatory flexibility analysis if the Agency certifies that the rule will not have a substantial economic impact on a substantial number of small entities.

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

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

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

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

VII. National Technology Transfer and Advancement Act

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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

VIII. Executive Order 13045

A. What Is Executive Order 13045?

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

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

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

IX. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

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

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

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

X. Executive Order 12875

What Is Executive Order 12875 and Is It Applicable to This Proposed Rule?

Under Executive Order 12875, 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, 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.''

This proposed rule does not create a mandate on State, local or tribal governments. The rule 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 rule.

XI. Executive Order 13084

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

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

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

State	Site name	City/county
AL	American Brass, Inc	Headland.
CO	Vasquez Boulevard and I–70	Denver.
LA	Central Wood Preserving Co	Slaughter.
LA	Ruston Foundary	Alexandria.
MD	68th Street Dump/Industrial Enterprises	Rosedale.
MO	Armour Road	North Kansas City.
MO	Newton County Wells	Newton County.
MO	Pools Prairie	Neosho.
NC	Georgia-Pacific Corporation Hardwood Sawmill	Plymouth.
NY	Stanton Cleaners Area Ground Water Contamination	Great Neck.
VA	Former Nansemond Ordnance Depot	Suffolk.

Number of Sites Proposed to General Superfund Section: 11.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

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

Dated: January 11, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 99–1021 Filed 1–15–99; 8:45 am]

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federal register

Tuesday
January 19, 1999

Part III

Department of Education

Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration: New Awards Applications Under Certain Programs for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.132B, 84.177A, 84.235E, 84.235F, and 84.235G]

Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year (FY) 1999

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph under each program.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and the following program regulations:

Training and Technical Assistance for the Centers for Independent Living Program—34 CFR Part 366.

Independent Living Services for Older Individuals Who Are Blind—34 CFR Part 367.

Statutory Requirements:

Training and Technical Assistance for the Centers for Independent Living Program—Section 721(b)(1), (2) and (3) of the Rehabilitation Act of 1973, as amended.

Independent Living Services for Older Individuals Who Are Blind—Chapter 2, Sections 751 and 752 of the Rehabilitation Act of 1973, as amended.

Braille Training Program—Section 303(d) of the Rehabilitation Act of 1973, as amended.

Parent Information and Training—Section 303(c)(1), (2), (3), (4), (5), and (7) of the Rehabilitation Act of 1973, as amended.

Parent Information and Training Program—Technical Assistance—Section 303(c)(6) of the Rehabilitation Act of 1973, as amended.

Program Title: Centers for Independent Living—Training and Technical Assistance (CFDA Number: 84.132B).

Purpose of Program: This program provides training and technical assistance to eligible agencies, centers for independent living, and Statewide Independent Living Councils with respect to planning, developing, conducting, administering, and evaluating centers for independent living.

Eligible Applicants: To be eligible to apply for funds under this program, an entity must demonstrate in its application that it has experience in the operation of centers for independent living. Experience of an applicant in the operation of a center for independent living is determined by the extent to which the applicant's management and staff have engaged in planning, developing, conducting, administering, and evaluating centers for independent living. A center for independent living is defined in section 702(1) of the Rehabilitation Act of 1973, as amended, as a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services.

Selection Criteria: The Secretary uses the following criteria to evaluate applications for new awards for training and technical assistance under the Centers for Independent Living program:

(a) *Meeting the purposes of the program* (30 points). The Secretary reviews each application to determine how well the project will be able to meet the purpose of the program of providing training and technical assistance to eligible agencies, centers, and Statewide Independent Living Councils (SILCs) with respect to planning, developing, conducting, administering, and evaluating centers, including consideration of—

(1) The objectives of the project; and

(2) How the objectives further training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers.

(b) *Extent of need for the project* (20 points). The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in title VII of the Rehabilitation Act of 1973, as amended (Act), including consideration of—

(1) The needs addressed by the project;

(2) How the applicant identified those needs;

(3) How those needs will be met by the project; and

(4) The benefits to be gained by meeting those needs.

(c) *Plan of operation* (15 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Quality of key personnel* (7 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including members of racial or ethnic minority groups, women, persons with disabilities, and elderly individuals.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(e) *Budget and cost effectiveness* (5 points). The Secretary reviews each application for information that shows the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its goals and objectives; and

(3) Are objective and produce data that are quantifiable.

(4) Cross-reference: See 34 CFR 75.590.

(g) *Adequacy of resources* (3 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Extent of prior experience* (15 points). The Secretary reviews each application to determine the extent of experience the applicant has in the operation of centers and with providing training and technical assistance to centers, including—

(1) Training and technical assistance with planning, developing, and administering centers;

(2) The scope of training and technical assistance provided, including methods used to conduct training and technical assistance for centers;

(3) Knowledge of techniques and approaches for evaluating centers; and

(4) The capacity for providing training and technical assistance as demonstrated by previous experience in these areas.

SUPPLEMENTARY INFORMATION: The Secretary has determined that this grant requires substantial Federal involvement during the grant award period. Therefore, the award will be made as a cooperative agreement.

FOR FURTHER INFORMATION CONTACT: Merri Pearson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3316, Switzer Building, Washington, D.C. 20202–2741. Telephone: (202) 205–8484 (voice) and (202) 205–8243 (TDD).

Program Authority: 29 U.S.C. 721(b)(2).

APPLICATION NOTICE FOR FISCAL YEAR 1999 TRAINING AND TECHNICAL ASSISTANCE FOR THE CENTERS FOR INDEPENDENT LIVING PROGRAM CFDA NO. 84.132B

Program title	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated number of awards	Available funds	Estimated average size of award	Project period (months)
Centers for Independent Living—Training and Technical Assistance.	March 15, 1999	May 14, 1999	1–2	$912,958	$456,000	36

Note: The Department is not bound by any estimates in this notice.

Program Title: Independent Living Services for Older Individuals Who Are Blind (CFDA Number: 84.177A)

Purpose of Program: This program supports projects that—(a) provide independent living (IL) services to older individuals who are blind; (b) conduct activities that will improve or expand services for these individuals; and (c) conduct activities to help improve public understanding of the problems of these individuals.

Eligible Applicants: Any designated State Agency (DSA) that does not currently have a project funded under this program and is authorized to provide rehabilitation services to individuals who are blind is eligible to apply for an award under this notice.

Selection Criteria: The Secretary uses the following criteria to evaluate applications for new awards under the Independent Living Services for Older Individuals Who are Blind program:

(a) *Extent of need for the project* (20 points).

(1) The Secretary reviews each application to determine the extent to which the project meets the specific needs of the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary reviews each application to determine—

(i) The extent that the need for IL services for older individuals who are blind is justified, in terms of complementing or expanding existing IL and aging programs and facilities; and

(ii) The potential of the project to support the overall mission of the IL program, as stated in section 701 of the Act.

(b) *Plan of operation* (25 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality and adequacy of the applicant's plan to use its resources (including funding, facilities, equipment, and supplies) and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability;

(6) A clear description of how the applicant will provide equal access to services for eligible project participants who are members of groups that have been traditionally under-represented, including members of racial or ethnic minority groups; and

(7) The extent to which the plan of operation and management includes involvement by older individuals who are blind in planning and conducting program activities.

(c) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other management and decision-making personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii)

of this section will commit to the project;

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, including—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Persons with disabilities; and

(D) Elderly individuals.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the scope of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(d) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant demonstrates the cost-effectiveness of project services in comparison with alternative services and programs available to older individuals who are blind.

(e) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Accurately evaluate the success and cost-effectiveness of the project;

(2) Are objective and produce data that are quantifiable; and

(3) Will determine how successful the project is in meeting its goals and objectives.

(4) Cross-reference: See 34 CFR 75.590.

(f) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including accessibility of facilities, equipment, and supplies.

(g) *Service comprehensiveness* (20 points).

(1) The Secretary reviews each application to determine the extent to which the proposed outreach activities promote maximum participation of the target population within the geographic area served by the project.

(2) The Secretary reviews each application to determine the extent to which the DSA addresses the unmet IL needs in the State of older individuals with varying degrees of significant visual impairment. In making this determination, the Secretary reviews the extent to which the DSA makes available appropriate services listed in § 367.3(b), which may include any or all of the following services:

(i) Orientation and mobility skills training that will enable older individuals who are blind to travel independently, safely, and confidently in familiar and unfamiliar environments.

(ii) Skills training in Braille, handwriting, typewriting, or other means of communication.

(iii) Communication aids, such as large print, cassette tape recorders, and readers.

(iv) Training to perform daily living activities, such as meal preparation, identifying coins and currency, selection of clothing, telling time, and maintaining a household.

(v) Provision of low-vision service and aids, such as magnifiers to perform reading and mobility tasks.

(vi) Family and peer counseling services to assist older individuals who are blind adjust emotionally to the loss of vision as well as to assist in their integration into the community and its resources.

(h) *Likelihood of sustaining the program* (10 points). The Secretary reviews each application to determine—

(1) The likelihood that the service program will be sustained after the completion of Federal project grant assistance;

(2) The extent to which the applicant intends to continue to operate the service program through cooperative agreements and other formal arrangements; and

(3) The extent to which the applicant will identify and, to the extent possible, use comparable services and benefits that are available under other programs for which project participants may be eligible.

FOR FURTHER INFORMATION CONTACT: Charlene M. Anderson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3328, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–9954. 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.

Program Authority: 29 U.S.C. 796k.

APPLICATION NOTICE FOR FISCAL YEAR 1999—INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND, CFDA NO. 84.177A

Program title	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated number of awards	Available funds	Estimated average size of award	Project period (months)
Independent Living Services for Older Individuals Who Are Blind.	March 15, 1999	May 14, 1999	52	$10,571,500	$203,000	60

Note: The Department is not bound by any estimates in this notice.

Program Title: Braille Training Program (CFDA Number: 84.235E).

Purpose of Program: To pay all or part of the cost of training in the use of braille for personnel providing vocational rehabilitation services or educational services to youths and adults who are blind. Grants must be used for the establishment or continuation of projects that may provide (1) development of braille training materials; (2) in-service or pre-service training in the use of braille, the importance of braille literacy, and methods of teaching braille to youths and adults who are blind; and (3) activities to promote knowledge and use of braille and nonvisual access technology for blind youths and adults through a program of training, demonstration, and evaluation conducted with leadership of

experienced blind individuals, including the use of comprehensive, state-of-the-art technology.

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under the Braille Training program.

Selection Criteria: The Secretary uses the following criteria to evaluate applications for new awards under the Braille Training Program:

(a) *Need for project* (5 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance* (10 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(ii) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(iii) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(c) *Quality of the project design* (20 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(iv) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(v) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(vi) The extent to which the proposed project encourages parental involvement.

(vii) The extent to which the proposed project encourages consumer involvement.

(d) *Quality of project services* (25 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(iii) The likelihood that the services to be provided by the proposed project will lead to improvements in the skills necessary to gain employment or build capacity for independent living.

(e) *Quality of project personnel* (10 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(f) *Adequacy of resources* (10 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(iii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(iv) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(g) *Quality of the management plan* (10 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(h) *Quality of the project evaluation* (10 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes

of the project and will produce quantitative and qualitative data to the extent possible.

(v) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(vi) The extent to which the evaluation will provide guidance about effective strategies suitable for replication on testing in other settings.

FOR FURTHER INFORMATION CONTACT: Susan Oswald, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3327, Switzer Building, Washington, DC 20202–2575. Telephone (202) 260–9870. 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.

Program Authority: 29 U.S.C. 773(d).

APPLICATION NOTICE FOR FISCAL YEAR 1999 BRAILLE TRAINING PROGRAM, CFDA NO. 84.235E

Program title	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated number of awards	Available funds	Estimated average size of award	Project period (months)
Braille training program	March 1, 1999	April 30, 1999	2	$200,000	$100,000	60

Note: The Department is not bound by any estimates in this notice.

Program Title: Parent Information and Training Program (CFDA Number: 84.235F).

Purpose of Program: To establish programs to provide training and information to enable individuals with disabilities, and the parents, family members, guardians, advocates, or other authorized representatives of the individuals, to participate more effectively with professionals in meeting the vocational, independent living, and rehabilitation needs of individuals with disabilities. These grants are designed to meet the unique training and information needs of those individuals who live in the area to be served, particularly those who are members of populations that have been unserved or underserved.

Eligible Applicants: Private nonprofit organizations that meet the requirement in section 303(c)(4)(B) of the Rehabilitation Act of 1973, as amended. The statute requires that to receive a grant an organization—

(a) shall be governed by a board of directors—

(1) that includes professionals in the field of vocational rehabilitation; and

(2) on which a majority of the members are individuals with disabilities or the parents, family members, guardians, advocates, or authorized representatives of the individuals; or

(b)(1) shall have a membership that represents the interests of individuals with disabilities; and

(2) shall establish a special governing committee that includes professionals in the field of vocational rehabilitation and on which a majority of the members are individuals with disabilities or the parents, family members, guardians, advocates, or authorized representatives of the individuals.

Selection Criteria: The Secretary uses the following criteria to evaluate applications for new awards under the Parent Information and Training Program:

(a) *Need for project* (5 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance:* (10 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(ii) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(iii) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(iv) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(c) *Quality of the project design* (20 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(iv) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(v) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(vi) The extent to which the proposed project encourages parental involvement.

(d) *Quality of project services* (25 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(iii) The likelihood that the services to be provided by the proposed project will lead to improvements in the skills necessary to gain employment or build capacity for independent living.

(e) *Quality of project personnel* (10 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(f) *Adequacy of resources* (10 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(iii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(iv) The potential for the incorporation of project purposes, activities, or benefits into the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(g) *Quality of the management plan* (10 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(h) *Quality of the project evaluation* (10 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(v) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(vi) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

FOR FURTHER INFORMATION CONTACT: Susan I. Oswald, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3327, Switzer Building, Washington, DC 20202–2575. Telephone: (202) 260–9870. 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.

Program Authority: 29 U.S.C. 773(c).

APPLICATION NOTICE FOR FISCAL YEAR 1999 PARENT INFORMATION AND TRAINING PROGRAM, CFDA NO. 84.235F

Program title	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated number of awards	Available funds	Estimated average size of award	Project period (months)
Parent Information and Training Program.	March 1, 1999	April 30, 1999	7	$695,000	$99,285	36

Note: The Department is not bound by any estimates in this notice.

Program Title: Parent Information and Training Program—Technical Assistance (CFDA Number: 84.235G).

Purpose of Program: To provide coordination and technical assistance for establishing, developing, and coordinating the Parent Information and Training Projects.

Eligible Applicants: State agencies and other public agencies or nonprofit private organizations. To the extent practicable, these organizations shall be the training and information centers established pursuant to section 682(a) of the Individuals with Disabilities Education Act.

Selection Criteria: The Secretary uses the following criteria to evaluate applications for new grants for technical assistance under the Parent Information and Training Program:

(a) *Need for project* (5 points).

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance* (15 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The potential contribution of the proposed project to increased knowledge or understanding of

rehabilitation problems, issues, or effective strategies.

(ii) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(iii) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(iv) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(c) *Quality of the project design* (20 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(iv) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(v) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(vi) The extent to which the proposed project encourages parental involvement.

(vii) The extent to which the proposed project encourages consumer involvement.

(d) *Quality of project services* (25 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(iii) The likelihood that the services to be provided by the proposed project will lead to improvements in the skills necessary to gain employment or build capacity for independent living.

(iv) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(e) *Quality of project personnel* (5 points)

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(f) *Adequacy of resources* (10 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iii) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(g) *Quality of the management plan* (10 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(h) *Quality of the project evaluation* (10 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(v) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(vi) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

FOR FURTHER INFORMATION CONTACT: Susan I. Oswald, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3327, Switzer Building, Washington, DC 20202–2575. Telephone: (202) 260–9870. 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.

Program Authority: 29 U.S.C. 773(c)(6).

APPLICATION NOTICE FOR FISCAL YEAR 1999 PARENT INFORMATION AND TRAINING PROGRAM—TECHNICAL ASSISTANCE, CFDA NO. 84.235G

Program title	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated number of awards	Available funds	Estimated average size of award	Project period (months)
Parent Information and Training Program—Technical Assistance.	March 1, 1999	April 30, 1999	1	$105,000	$105,000	36

Note: The Department is not bound by any estimates in this notice.

Intergovernmental Review of Federal Programs: These programs are subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 3, 1998 (63 FR 59452).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA # 84.132B, 84.177A, 84.235E, 84.235F, or 84.235G, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, D.C. 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.132B, 84.177A, 84.235E, 84.235F, or 84.235G), Washington, D.C. 20202–4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C.) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.132B, 84.177A, 84.235E, 84.235F, or 84.235G), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C. 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this notice is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Notice to All Applicants

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding: Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED Form 80–0013) and instructions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED Form 80–0014, 9/90) and instructions.

(Note: ED Form 80–0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

For Applications Contact. The Grants and Contracts Service Team (GCST), U.S. Department of Education, 400 Maryland Avenue, SW., Room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8351. 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. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document. Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Dated: December 16, 1998.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

BILLING CODE 4000–01–P

Application for Federal Education Assistance

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name:

Address:

City State County ZIP Code + 4

Organizational Unit

2. Applicant's D-U-N-S Number

3. Catalog of Federal Domestic Assistance #: 8 4 ➡ Title:

4. Project Director:

Address:

City State ZIP Code + 4

Tel. #: ( ) - Fax #: ( ) -

E-Mail Address:

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)*

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*:

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

10. Proposed Project Dates: Start Date: ___/___/_____ End Date: ___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #:

OR

b. Assurance of Compliance #:

c. IRB approval date: _____ { ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) - Fax #: ( ) -

d. E-Mail Address:

e. Signature of Authorized Representative Date: ___/___/_____

REV. 12.22.98

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000–01–C

Part III—Application Narrative

Prepare the Program Narrative in accordance with the following instructions. Before preparing the Program Narrative, applicants should carefully review the selection criteria contained in this application package.

In addition, applicants should read the applicable parts of the Education Department General Administrative Regulations (EDGAR), 34 CFR. These regulations set forth all general rules affecting application submittal, review, grant award, and post-award administration for Department of Education grant programs.

Since applications must be duplicated for distribution to reviewers, printed material should be legible, appear only on one side of each page, and be double spaced. To ensure that printed material is legible, the use of a high quality printer, with font size of 10 or 12 or larger typeface, in the preparation of your application is strongly urged. Use standard 8½ x 11 inch paper, white in color, and free from tabs. Also, use spring clips or rubber bands to hold the application together. *Do not use binders, folders, and staples* as they must be removed before duplicating applications.

It is recommended the Program Narrative be limited to 35 pages, double spaced, and number pages consecutively. The narrative should be written concisely. Only the required information should be submitted. If appendices or other supplemental materials are included, they must be kept to a minimum and must substantiate what is proposed in the narrative, e.g., the results of a needs survey or letters of commitment from organizations that will have significant involvement with the project. All vitae should be limited to one page in length showing the source and date of earned degrees, experience relevant to working with individuals who are disabled and the person's direct relationship to the project, e.g., how the person will function in the project.

The Program Narrative should begin with an overview statement (one page abstract) that summarizes the purpose/intent of project, the goals and objectives, the target population, the impact of project, and the expected outcomes or benefits. This abstract only may be single spaced.

The Program Narrative must respond to the selection criteria in the same order as they appear in this application kit.

Note: Funded projects will be required to report evaluation findings in the annual progress report (as part of the continuation application) and in the final report at the conclusion of the project.

The Rehabilitation Act of 1973, As Amended:

1. Delete the authority to fund construction costs as part of a services project under the Special Projects and Demonstrations program in section 311(a)(1);

2. Require that each applicant for a new project demonstrate in its application how it will address the needs of individuals with disabilities from minority backgrounds (section 21 of the Act). Before your application can be reviewed, it must include this description. Applications for which this information is not received will not be reviewed.

3. Require that each grantee (funded applicant) that provides services to individuals with disabilities must advise those individuals, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State Client Assistance Program (CAP), including information on means of seeking assistance under such program (section 20 of the Act). A list of State CAPs may be obtained by leaving your name and address on the voice mail system at (202) 205-9406.

If Applicable, Provide the Following Information:

(a) If a rehabilitation project is in its final year of support and refunding for a new project is being requested, provide a progress report that includes a discussion of all accomplishments to date in achieving project objectives and a schedule of accomplishments or milestones anticipated with the new funding request.

(b) A listing showing the Federal Domestic Assistance Catalog number, status and amount of each project where there is related previous, pending or anticipated assistance.

ESTIMATED PUBLIC REPORTING BURDEN: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1820–0018. Expiration date: 8/31/2001. The time required to complete this information collection is estimated to average 80–120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3314 Switzer Building, Washington D.C. 20202–2575.

[OMB Control No. 1801–0004 (Exp. 8/31/2001]

Notice to All Applicants

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local

circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; © Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (I) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; © protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176© of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead- based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying Registrant** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
11. **Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.**	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:**	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

[FR Doc. 99–1062 Filed 1–15–99; 8:45 am]
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Tuesday
January 19, 1999

Part IV

Department of Housing and Urban Development

24 CFR Part 206

Home Equity Conversion Mortgages; Consumer Protection Measures Against Excessive Fees; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR–4306–F–02]

RIN 2502–AH10

Home Equity Conversion Mortgages; Consumer Protection Measures Against Excessive Fees

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements several measures designed to provide protection to elderly homeowners in connection with HUD's Home Equity Conversion Mortgage (HECM) insurance program. The HECM program offers FHA-insured first mortgages providing payments to elderly homeowners based on the accumulated equity in their homes. These FHA-insured HECMs are commonly referred to as ''reverse mortgages.'' The rule is designed to protect homeowners in the HECM program from becoming liable for payment of excessive fees for third-party provided services of little or no value. This rule takes into consideration the comments received on a March 16, 1998 proposed rule.

EFFECTIVE DATE: February 18, 1999.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Home Mortgage Insurance Division, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–2700. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1997, HUD issued Mortgagee Letter 97–07, which prohibited FHA-approved lenders from being involved in transactions for HECMs referred by estate planning entities charging what HUD deemed to be exorbitant fees. Two estate planners engaged in the business of making referrals for reverse mortgages sued, seeking a temporary restraining order (TRO) and preliminary injunction to require HUD to withdraw the Mortgagee Letter on the ground that notice and comment rulemaking procedures should have been followed. A TRO was issued on March 26, 1997, and a preliminary injunction followed on April 11, 1997. Mortgagee Letter 97–07 was then withdrawn.

Due to the Secretary's concern about the need to protect senior citizens from practices that may subvert the HECM process, the Secretary decided that HUD should issue a proposed rule based on the consumer protection authority contained in section 255 of the National Housing Act as it then existed (see proposed rule published on March 16, 1998, 63 FR 12930).

With respect to the FHA insurance program for HECMs, current FHA requirements strictly limit the fees that a mortgagee can collect. The FHA regulations currently do not have any express provisions that protect mortgagors from fees collected by third parties. The proposed rule was intended to fill that gap. The public comment period ended on May 15, 1998, and HUD has taken these comments into account in the preparation of this final rule.

Congress has now enacted legislation to specifically address the problem to which the proposed rule was directed, and this action makes it unnecessary for HUD to rely solely on the previously-existing authority under the National Housing Act. Section 593(e) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (P.L. 105–276 approved October 21, 1998) amended section 255 of the National Housing Act to require that: (1) a HECM shall have been executed by a mortgagor who has received full disclosure, as prescribed by the HUD Secretary, of all costs charged to the mortgagor, which disclosure shall clearly state which charges are required to obtain the HECM and which are not, and (2) a HECM shall have been made with such restrictions as the HUD Secretary determines to be appropriate to ensure that the mortgagor does not fund any unnecessary or excessive costs for obtaining the HECM. Section 593(e)(2) directs HUD to issue a final rule no later than 90 days after section 593(e) takes effect (i.e., by January 19, 1999), after notice and opportunity for public comment. Section 593 does not require that the notice and public comment procedure occur after, rather than before, enactment of section 593. HUD has concluded that the previously published proposed rule is fully consistent with the requirements of section 593, with one exception, and that all interested persons have been provided with an adequate opportunity for public comment, consistent with the desires of the Congress and the demands of HUD's ''rule on rules'' in 24 CFR part 10. In order to address the one exception, HUD is adding an express requirement (based on statutory language) for a statement to the mortgagor of which charges are required and which are not. Therefore, HUD is proceeding with this final rule after considering the public comment previously submitted.

Section 593(e) also provides for immediate implementation of section 593, even in advance of consideration of public comments, through an interim notice procedure, if necessary. HUD already had received and reviewed public comments on the proposed rule by the time section 593 took effect and has taken those comments into account in this final rule. Therefore, HUD believes the procedure that it has followed, which accorded the public an opportunity to comment on a proposed rule that addressed the subjects of section 593(e), more than satisfies the intent of section 593.

Public Comments

The Department received 8 comments on its proposed rule. The comments are summarized below by pertinent section of the proposed rule, with other comments summarized at the end.

1. Section 206.3—Definition of ''Estate Planning Service Firm''

Comment: Two commenters supported the definition but urged that it be extended to include an individual or entity that charges an annuity premium paid for by mortgage proceeds, if the premium is not disclosed as part of the total cost of the mortgage under the Truth in Lending Act regulations for reverse mortgages.

Response: The final rule includes this suggestion.

Comment: A commenter argued against use of the term ''estate planning service firm'' (while not arguing against the substance of the definition) as unfair to legitimate financial planning/estate planning firms. The lender suggested the narrower term ''referral service firm''.

Response: The firms that engaged in the practices that led HUD and Congress to conclude that protective measures were needed did not characterize themselves as engaging in ''referrals'' but as providing estate planning services and HUD concludes that a broad label—with a careful definition that does not focus solely on referrals—is appropriate. The definition permits any legitimate provider of services that is concerned that its services may be impaired by overbreadth of the rule to be exempted from the rule by HUD.

Comment: A commenter argued that the definition should explicitly

recognize bona fide mortgage brokers in the same manner that bona fide attorneys, accountants and financial advisors are recognized.

Response: The rule provides special recognition of individuals or companies ''in the bona fide business of generally providing tax or other legal or financial advice''. It recognizes that, in the ordinary course of their business of providing advice, such individuals or companies are likely to routinely provide to clients who are elderly homeowners information and advice that may overlap with the information that counselors are required to provide under the HECM program. The rule provides that charging a fee for such advice—if the fee is not contingent on obtaining a loan—does not by itself make the individual or company an estate planning service firm for purposes of the rule. The rule mentions attorneys and accountants as examples of individuals or companies who may qualify for this exception because their ordinary business is providing advice. In contrast, mortgage brokers typically provide to prospective borrowers services such as locating available sources of loans, prequalifying borrowers, and assisting them in applying for a loan. A mortgage broker may provide some information similar to that provided by a HECM counselor in the course of providing its brokerage services, but prospective borrowers would be unlikely to seek out a mortgage broker solely for the purpose of obtaining information or advice for a fee, rather than for obtaining services for a fee. It is unlikely that a typical mortgage broker business would be characterized—as required by the rule—as being in the business of generally providing tax or other legal or financial advice. For this reason, HUD has concluded that specific mention of mortgage brokers in connection with this part of the definition of estate planning service firm is unwarranted.

Comment: A commenter interpreted this definition as making explicit that housing counseling agencies may charge fees to borrowers, and applauded this position, and another commenter who noticed a reference to counselor fees urged HUD to clarify whether counselors can charge fees, how much, and who can bear the costs. If borne by the consumer, the commenter said they should be included in HECM financing.

Response: Under HUD's program of grants to HUD-approved housing counselors, the counselor is not authorized to charge counseling fees for HUD-related clients except in fiscal years where no funds are given to the counseling agency by HUD. In that instance, the basis for any fees charged to a HUD-related client must be consistent with local practice and not duplicate other sources of HUD funding. Clients affected must be informed of the agency's fee structure in advance of services being provided.

2. Section 206.29—Initial Disbursement of Mortgage Proceeds

Comment: Two commenters who supported this provision urged that the lender be permitted to disburse an annuity premium if disclosed as part of the total cost of the mortgage under the Truth in Lending Act regulations for reverse mortgages.

Response: The final rule includes this suggestion.

Comment: A commenter requested that the phrase ''disbursed at closing'' be clarified because funds are actually not disbursed at closing because of a 3-day wait imposed by the Truth in Lending Act's right of rescission.

Response: The final rule includes this suggestion.

Comment: Two commenters believed that section 206.3 would permit counselors' fees and asked why mortgage proceeds could not be disbursed directly to counselors. One other commenter agreed and urged that all fees permitted to be paid by a mortgagee under HUD's Handbook 4235.1 REV–1 (including specifically mortgage broker fees and counselor fees) be disbursable to those parties at closing. That commenter interpreted § 206.29 and 206.31 together as reaching this result but requested clarification.

Response: See the previous response regarding counselor fees. Mortgage broker fees are allowed now under the HECM program only if the broker is engaged independently by the mortgagor and is paid from a source other than the mortgage proceeds. A broker's fee is prohibited if there is any financial interest between the broker and the mortgagee. The broker agreement must be submitted with the mortgage insurance application. Broker's fees can never be paid by the lender from HECM proceeds.

Comment: A commenter supported permitting disbursement of funds at closing to pay contractors who performed repairs required as a condition of closing.

Response: HUD supports this suggestion as long as the lender certifies that the work was done according to the appraiser's requirements based on HUD Handbook 4905.1 (Requirements for Existing Housing for One to Four Family Units) and in accordance with standard FHA requirements for repairs required by appraisers. The final rule includes this change.

3. Section 206.32—No Outstanding Unpaid Obligations

Comment: A commenter specifically supported this provision, and commented that it could provide important protection against unscrupulous home repair firms and others in addition to the estate planning service firms that are the main target of the rule.

Response: No response required.

Comment: A commenter supported § 206.32(b) forbidding use of initial HECM payments to pay estate planning service firms, but opposed § 206.32(a), which prohibits mortgagor obligations that are incurred in connection with the mortgage transaction but will not be paid off at closing (except for certain repairs or mortgage servicing charges). The commenter interpreted this as precluding later use of HECM proceeds to pay outstanding bills that may have been part of the impetus for obtaining the HECM.

Response: This section does not prevent HECM proceeds from being used to pay bills that were incurred without any connection with the mortgage transaction (for example, pre-existing medical bills), or prevent use of HECM proceeds to pay obligations incurred after the closing. The section targets only those who charge excessive fees in connection with obtaining the HECM.

Comment: Two commenters urged that § 206.32 be deleted in its entirety because of the difficulty for a lender to determine what homeowner obligations exist and ensure that they would be discharged at closing. One of the commenters said it would not object if a lender's obligation were limited to requesting information.

Response: Paragraph (a) of § 206.32 is similar to § 203.32 for ''forward'' mortgages. As with that requirement, the lender is expected to ask the borrower and may rely on the information provided by the borrower in the absence of other information indicating that the borrower's answer is inaccurate or incomplete. Paragraph (b) focusses on the specific concern of borrowers using the initial disbursement of HECM proceeds to pay unreasonable or excessive fees to estate service planning firms. Section 203.29 prevents direct disbursement to such firms, and paragraph (b) of § 203.32 provides the lender with further assurance that the borrower understands that the borrower cannot use cash disbursed to the borrower as part of the initial disbursement to pay such firms as a

means of getting around the direct disbursement prohibition. A lender can rely on information provided by the borrower in complying with this section; for example, the lender should ask whether the homeowner has a contract with an estate planning service firm (with an explanation of how to recognize such a firm) and it will be sufficient to annotate the application form noting a negative response. Lenders should note that under § 206.43(b)(1) a lender has to have to make ''sufficient inquiry'' of a borrower who is taking a large initial cash disbursement, in order to confirm that § 203.32(b) will not be violated.

4. Section 206.41—Additional Information To Be Provided by Counselors

Comment: Four commenters commented favorably on this provision, but one of them urged that it be expanded to address any obligation that homeowners may believe they have to pay for home repairs or annuities and not just services provided by the estate planning service firms. Another commenter also supported expansion to cover annuities, and urged use of a form disclosure about annuities.

Response: The Department is considering this suggestion, but is not making changes in the rule at this time.

5. Section 206.43(a)—Additional Information To Be Provided by Mortgagees

Comment: One commenter supported this provision as written while another urged that it be deleted. The latter commenter felt that a lender should not be responsible for disclosure of costs paid outside of closing, or if so, the lender should be able to rely exclusively on a borrower certification on the loan application.

Response: The lender is only required to ask the borrower for the additional information and note on the loan application that the borrower was asked.

6. Section 206.43(b)—Limitations on Lump Sum Disbursement by Mortgagees

Comment: Three commenters supported this provision; one commenter urged that it be deleted or modified so that the information covered should be handled through the loan application and also suggested an overlap with information provided by the counselor.

Response: HUD wanted to emphasize the importance of this rule, and to ensure that the lender has made every effort to ensure that the HECM proceeds were not going to a party ineligible to receive funds from the initial disbursement.

7. Other Comments.

a. Lack of Statutory Authority

Comments: A commenter argued that the proposed rule is beyond HUD's current statutory authority because Congress authorized a program to increase the number of reverse mortgages and the proposed rule would reduce the availability of reverse by eliminating ''a proven source of promotion of reverse mortgages.'' The commenter also argued that the rule was a ''subterfuge'' for regulating third parties even though HUD's regulatory authority is limited to lenders.

Response: Even before amendment, section 255 of the National Housing Act and section 7(d) of the Department of Housing and Urban Development Act contained ample authority for a regulation to protect elderly homeowners against special risks identified by HUD in connection with the HECM program (see, e.g, sections 255(c)(2), 255(f)(5) and 255(k)(2)(E) of the National Housing Act.) HUD believes that any doubt about the scope of HUD's authority to implement these measures to protect elderly homeowners was settled when Congress enacted legislation and specifically requiring HUD to proceed with this final rule.

b. There is no Need for the Rule

Comment: The commenter described the rule as arbitrary and irrational because there was no factual basis to conclude that any abuse of elderly homeowners existed.

Response: HUD received many complaints that senior homeowners were being charged excessive fees for services that HUD or mortgagees provide for little or no charge. In any event, Congress felt that past abuse and the potential for future abuse was so serious that it mandated action by HUD.

c. Simpler Proposal Needed

Comment: One commenter did not comment on any specific provision of the proposed rule, but stated that it is difficult to obtain information about the HECM and that the proposed rule would make it harder. The commenter suggested that publishing a book about reverse mortgages could violate the rule. The commenter suggested as an alternative approach limiting any information provider to $150 for any size mortgage.

Response: The rule only targets information providers that meet the definition of ''estate planning service firms''—primarily firms that charge excessive fees for information and services that one can receive for little or no charge and that are contingent on the elderly homeowner receiving a HECM loan. The rule should not interfere with book publishing, which can supplement HUD's own efforts to publicize the availability and benefits of HECMs. HUD's Homeownership Centers and field offices distribute housing information, including information on HECMs, in numerous homeownership fairs through the country. The American Association of Retired Persons (AARP), National Center for Home Equity Conversion (NCHEC), many lenders and other entities have publicized the HECM program through various means including newsletters and radio broadcasts. Articles have been published in senior community newspapers and seminars have been given in senior community centers. The Housing Clearinghouse's toll-free number is provided on the Internet's World Wide Web. HUD continually looks for ways to improve, update and increase its marketing of this program to the public, but it will not tolerate abuse of elderly homeowners in the guise of providing legitimate information and services.

d. Mortgage Broker Fees

Comment: A commenter urged an additional provision that would allow mortgage broker fees for HECMs only if the broker performs settlement services as defined by RESPA and if the sum of the mortgage broker fee plus the loan origination fee does not exceed the $1800 loan origination fee that may be financed through a HECM.

Response: HUD cannot consider this comment for the final rule because it is outside the scope of matters exposed to public comment in the proposed rule.

Changes Made in Final Rule

New paragraphs (e) and (f) are added to § 206.29 to permit (1) disbursement of an annuity premium at closing if the premium was disclosed under the Truth in Lending Act regulations for reverse mortgages, and (2) payment of contractors who performed repairs required as a condition of closing if the lender makes a certification in accordance with standard FHA requirements for repairs required by appraisers. Section 206.29 is also amended to clarify that it applies to the initial disbursement of funds at closing (if the 3-day rescission period under the Truth in Lending Act regulations does not apply because of, e.g., a waiver in accordance with those regulations) or after closing (in the usual case when the 3-day rescission period does apply so

that no funds are disbursed at closing). The final rule also contains minor language and formatting changes in § 206.43, and adds an express requirement for a clear statement of which charges are required and which are not as required by section 593(e)(1)(C) of P.L. 105–276.

Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements in §§ 206.32, 206.41 and 206.43 of this rule have been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). OMB has approved the submission and assinged the following control number: 2502–0534. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection request displays a valid control number.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (the RFA), the Secretary, by approval of this rule, certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule codifies HUD's policy regarding consumer protection which is consistent with current part 206 provisions and the National Housing Act requirements, as amended by section 539(e) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999. This rule is designed to protect homeowners in the HECM program from becoming liable for payment of excessive fees for third-party provided services of little or no value. This rule imposes no significant economic impact on law-abiding entities, small or large.

HUD's RFA provision in the March 16, 1998 proposed rule specifically invited small entities to comment on whether the proposed regulatory amendments would significantly affect them (see 63 FR 12930, at 12932). Only one commenter responded to this request. The commenter questioned HUD's assertion that the rule would not have a significant economic impact on a substantial number of small entities. Specifically, the commenter wrote that the rule might have an adverse impact on businesses that ''may'' be small entities within the meaning of the RFA. However, the commenter did not offer any data in support of its statement that the rule might potentially have a significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule is exempt from environmental review requirements under 24 CFR 50.19(c)(1). This rule amends an existing regulation by increasing the information available to mortgagors and by limiting the manner in which funds are disbursed.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, Regulatory Planning and Review as a significant regulatory action (but not economically significant).

Catalog. The Catalog of Federal Domestic Number for the HECM program is 14.183.

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, part 206 of the Code of Federal Regulations is amended as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

2. Section 206.3 is amended by adding a new definition of ''estate planning service firm'' to read as follows:

§ 206.3 Definitions.

* * * * *

Estate planning service firm means an individual or entity that is not a mortgagee approved under part 202 of this chapter or a housing counseling agency approved under § 206.41 and that charges a fee that is:

(1) Contingent on the homeowner obtaining a mortgage loan under this part, except the origination fee authorized by § 206.31 or a fee specifically authorized by the Secretary; or

(2) For information that homeowners must receive under § 206.41, except a fee by:

(i) A housing counseling agency approved under § 206.41; or

(ii) An individual or company, such as an attorney or accountant, in the *bona fide* business of generally providing tax or other legal or financial advice; or

(3) For other services that the provider of the services represents are, in whole or in part, for the purpose of improving an elderly homeowner's access to mortgages covered by this part, except where the fee is for services specifically authorized by the Secretary.

* * * * *

3. A new § 206.29 is added to read as follows:

§ 206.29 Initial disbursement of mortgage proceeds.

Mortgage proceeds may not be disbursed at the initial disbursement or after closing (upon expiration of the 3-day rescission period under 12 CFR part 226, if applicable) except:

(a) Disbursements to the mortgagor, a relative or legal representative of the mortgagor, or a trustee for benefit of the mortgagor;

(b) Disbursements for the initial MIP under § 206.105(a);

(c) Fees that the mortgagee is authorized to collect under § 206.31;

(d) Amounts required to discharge any existing liens on the property;

(e) An annuity premium, if the premium was disclosed as part of the total cost of the mortgage under the disclosures required by 12 CFR part 226; and

(f) Funds required to pay contractors who performed repairs as a condition of closing, in accordance with standard FHA requirements for repairs required by appraisers.

4. A new § 206.32 is added as follows:

§ 206.32 No outstanding unpaid obligations.

In order for a mortgage to be eligible under this part, a mortgagor must establish to the satisfaction of the mortgagee that:

(a) After the initial payment of loan proceeds under § 206.25(a), there will be no outstanding or unpaid obligations incurred by the mortgagor in connection with the mortgage transaction, except for repairs to the property required under § 206.47 and mortgage servicing charges permitted under § 206.207(b); and

(b) The initial payment will not be used for any payment to or on behalf of an estate planning service firm.

5. Section 206.41 is amended by revising paragraph (b) to read as follows:

§ 206.41 Counseling.

* * * * *

(b) *Information to be provided.* A counselor must discuss with the mortgagor:

(1) The information required by section 255(f) of the National Housing Act;

(2) Whether the mortgagor has signed a contract or agreement with an estate planning service firm that requires, or purports to require, the mortgagor to pay a fee on or after closing that may exceed amounts permitted by the Secretary or this part; and

(3) If such a contract has been signed under § 206.41(b)(2), the extent to which services under the contract may not be needed or may be available at nominal or no cost from other sources, including the mortgagee.

* * * * *

6. A new § 206.43 is added to read as follows:

§ 206.43 Information to mortgagor.

(a) *Disclosure of costs of obtaining mortgage.* The mortgagee must ensure that the mortgagor has received full disclosure of all costs of obtaining the mortgage. The mortgagee must ask the mortgagor about any costs or other obligations that the mortgagor has incurred to obtain the mortgage, as defined by the Secretary, in addition to providing the Good Faith Estimate required by § 3500.7 of this title. The mortgagee must clearly state to the mortgagor which charges are required to obtain the mortgage and which are not required to obtain the mortgage.

(b) *Lump sum disbursement.* (1) If the mortgagor requests that at least 25% of the principal limit amount (after deducting amounts excluded in the following sentence) be disbursed at closing to the mortgagor (or as otherwise permitted by § 206.29), the mortgagee must make sufficient inquiry at closing to confirm that the mortgagor will not use any part of the amount disbursed for payments to or on behalf of an estate planning service firm, with an explanation of § 206.32 as necessary or appropriate.

(2) This paragraph does not apply to any part of the principal limit used for the following:

(i) Initial MIP under § 206.105(a) or fees and charges allowed under § 206.31(a) paid by the mortgagee from mortgage proceeds instead of by the mortgagor in cash; and

(ii) Amounts set aside under § 206.47 for repairs, under § 206.205(f) for property charges, or § 206.207(b).

Dated: January 12, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–1084 Filed 1–15–99; 8:45 am]

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
5 Parts:			
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Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.