3–15–99
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federal register

Monday
March 15, 1999

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WASHINGTON, DC

WHEN: March 23, 1999 at 9:00 am.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–238–AD; Amendment 39–11052; AD 99–05–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 99–05–03 that was published in the **Federal Register** on March 1, 1999 (64 FR 9908). The typographical error resulted in an incorrect service bulletin reference in the applicability of the AD. This AD is applicable to certain Boeing Model 757–200 series airplanes. This AD requires replacement of the stringer clip(s) with a new stringer clip(s), and modification of the life raft support structure and/or life raft doors, as applicable.

EFFECTIVE DATE: Effective April 5, 1999.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 99–05–03, amendment 39–11052, applicable to certain Boeing Model 757–200 series airplanes, was published in the **Federal Register** on March 1, 1999 (64 FR 9908). That AD requires replacement of the stringer clip(s) with a new stringer clip(s), and modification of the life raft support structure and/or life raft doors, as applicable.

As published, the AD contained a typographical error in the applicability of the AD, which identifies Boeing Service Bulletin 747–25–0180, dated October 9, 1997, as the appropriate source of service information for identifying the affected airplanes. However, as referenced throughout the preamble and the body of the final rule, Boeing Service Bulletin 757–25–0180 is the correct source of service information.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains April 5, 1999.

§ 39.13 [Corrected]

On page 9909, in the third column, the applicability of the AD is corrected to read as follows:

* * * * *

Applicability: Model 757–200 series airplanes, as listed in Boeing Service Bulletin 757–25–0180, dated October 9, 1997, certificated in any category.

* * * * *

Issued in Renton, Washington, on March 9, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–6215 Filed 3–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 98–AWP–30]

RIN 2120–AA66

Revocation of Restricted Areas R–2531A and R–2531B, Establishment of Restricted Area R–2531, and Change of Using Agency, Tracy; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action eliminates the subdivision within an existing restricted area by removing Restricted Areas R–2531A and R–2531B, and establishing R–2531, Tracy, CA. This action also changes the using agency of this restricted area from the Department of Energy (DOE) San Francisco Operations Office to the Oakland Operations office.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Tracy, CA, test site was established in 1955 and is used primarily to formulate, fabricate and test high explosives. The DOE conducted a review of R–2531 restricted airspace operations and determined that there is no longer a requirement for subdivision of the R–2531 restricted area. Current outdoor testing can conceivably throw shrapnel to a distance of 4,000 feet in any direction and since the ceiling of R–2531A is 3,000 feet Mean Sea Level it no longer supports the DOE testing. The DOE requested the FAA combine the R–2531A & B into a single restricted area to be consistent with the Lawrence Livermore National Laboratory current operational requirements. A review of utilization data indicates both R–2531A and R–2531B are currently used simultaneously and removing the subdivision would not impact the public or airspace users.

The Rule

This amendment to 14 CFR part 73 revokes R–2531A, R–2531B, establishes R–2531, and changes the using agency from the DOE San Francisco office to the DOE Oakland Operations office. There are no changes to the boundaries, altitudes, time of designation or activities conducted within the restricted area. This action eliminates the subdivision within an existing restricted area. As the solicitation of comments would not offer any meaningful right or benefit to any segment of the public, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is a minor administrative change to revoke the subdivision of an existing Restricted Area. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' this action is categorically excluded.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 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.

§ 73.25 [Amended]

2. Section 73.25 is amended as follows:

* * * * *

R–2531 Tracy, CA [New]

Boundaries. Beginning at lat. 37°40′34″ N., long. 121°33′46″ W.; to lat. 37°40′45″ N., long. 121°31′33″ W.; to lat. 37°39′28″ N., long. 121°30′32″ W.; to lat. 37°38′50″ N., long. 121°31′09″ W.; to lat. 37°39′03″ N., long. 121°34′07″ W.; thence to the point of beginning.

Designated altitudes. Surface to but not including 4,000 feet MSL.

Time of designation. 1000 to 2050 local time, Monday-Friday and occasionally on Saturday and Sunday when activated by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Oakland ARTCC.

Using agency. Department of Energy, Oakland Operations Office, CA.

R–2531A Tracy, CA [Removed]

R–2531B Tracy, CA [Removed

* * * * *

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

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–6224 Filed 3–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 981229330–8330–01]

RIN 0694–AB77

Correction to Revisions and Clarifications to the Export Administration Regulations; Commerce Control List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On March 5, 1999, the Bureau of Export Administration (BXA) published a final rule (64 FR 10852) revising the Commerce Control List (CCL) by making certain revisions and clarifications and, in some cases, inserted material inadvertently omitted from the January 15, 1998 (63 FR 2452) interim rule that implemented the Wassenaar Arrangement list of dual-use items.

This regulation amends the CCL by correcting two inadvertent typographic errors in the Clarification regulation which appeared in the **Federal Register** on March 5, 1999.

DATES: This rule is effective March 15, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42767), August 13, 1997 (62 FR 43629) and August 13, 1998 (63 FR 44121).

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0086 and 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, (5 U.S.C. 553), requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade.

Accordingly, Part 774 of the Export Administration Regulations (15 CFR Parts 730–799) is amended as follows:

PART 774—[AMENDED]

1. The authority citation for 15 CFR Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O.

13020, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

PART 774—[CORRECTED]

Supplement No. 1 to part 774—the Commerce Control List—[Corrected]

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Numbers (ECCNs) 4D001 and 4E001 are amended by revising the License Requirements sections to read as follows:

4D001 "Software" Specially Designed or Modified for the "Development", "Production" or "Use" of Equipment or "Software" Controlled by 4A001 to 4A004, or 4D (Except 4D980, 4D993 or 4D994)

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country chart
NS applies to "software" for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1
MT applies to "software" for equipment controlled by 4A001 to 4A003 for MT reasons.	MT Column 1
CC applies to "software" for for computerized finger-print equipment controlled by 4A003 for CC reasons.	CC Column 1
AT applies to entire entry	AT Column 1

NP applies to "software" for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "software" for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

4E001 "Technology" According to the General Technology Note, for the "Development", "Production" or "Use" of Equipment or "Software" Controlled by 4A (Except 4A980, 4A993 or 4A994) or 4D (Except 4D980, 4D993, 4D994)

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country Chart
NS applies to "technology" for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1
MT applies to "technology" for items controlled by 4A001 to 4A003 4A101, 4D001, 4D102 or 4D002 for MT reasons.	MT Column 1
CC applies to "technology" for computerized finger-print equipment controlled by 4A003 for CC reasons.	CC Column 1
AT applies to entire entry	AT Column 1

NP applies to "technology" for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "technology" for computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

Dated: March 9, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–6269 Filed 3–12–99; 8:45 am]

BILLING CODE 3510–33–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in April 1999.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during April 1999.

For annuity benefits, the interest assumptions will be 5.60 percent for the first 20 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions represent an increase (from those in effect for March 1999) of 0.30 percent for the first 20 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The lump sum interest assumptions represent an increase (from those in effect for March 1999) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during April 1999, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 66 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * * , and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of it are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*	*	
April 1999	.0560	1–20	.0525	>20	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of y—n_1 years, interest rate i_1 shall apply for the following n1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y \leq n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of y—n_1—n_2 years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date	Immediate annuity rate (percent)		Deferred annuities (percent)				
		On or after	Before	i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
66	04–1–99	05–1–99	4.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 8th day of March 1999.

David M. Strauss

Executive Director

Pension Benefit Guaranty Corporation

[FR Doc. 99–6126 Filed 3–12–99; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–151]

RIN 2115–AE84

Regulated Navigation Area: Navigable Waters Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard amends the Regulated Navigation Area (RNA) within the navigable waters of the First Coast Guard District with respect to the provisions governing the positive control of barges. The Interim Rule allows the Captain of the Port (COTP) to authorize exemptions to the positive control provisions established in the Final Rule that became effective on January 29, 1999, and also reopens the docket for further comments on the positive control provisions and the effect of this Interim Rule on those provisions. The Interim Rule provides additional opportunities for small businesses affected by the RNA both to carry on their businesses and to submit comments on the impact of the RNA. The Interim Rule also allows the Coast Guard an additional opportunity to analyze the impact of the RNA on small business entities.

DATES: *Effective Date:* The Interim Rule is effective March 15, 1999.

Comment Date: Comments are due on or before June 14, 1999.

Publc Meeting Date: A public meeting will be held on April 16, 1999, from 10 a.m. to 2 p.m.

ADDRESSES: *Public Meeting:* The Coast Guard will conduct the public meeting at the U.S. Navy/Marine Corps Reserve Center, Classroom 5, 30 Woodward Ave., New Haven, Connecticut, 06512.

Comments: You may mail or deliver comments to Commander (m), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02210–3350. The Commander, First Coast Guard District, maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Rich Klein, c/o Commander (m), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02210–3350; telephone 617–223–8243.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in the rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–98–151) and the specific feature of the Rule to which each comment applies, and give a reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change the Rule in view of the comments.

After publication of the Final Rule, a few companies affected by the RNA notified the Coast Guard that, while they had failed to comment during the comment period for the RNA, they were concerned about the impact of the new rule, as they had entered into long-term contracts before promulgation of the new positive control operating requirements. The Coast Guard, therefore, is particularly interested in receiving comments about the impact of the positive control measures on small businesses. We would like to learn more about the number of small businesses affected by the RNA and the specific impacts of the measures on those businesses.

Public Meeting

Persons desiring to attend the public meeting should consult the location listed under **ADDRESSES.** The Coast Guard will conduct the meeting for the purpose of receiving oral opinions and presentations on the Interim Rule. Attendance is open to the public. Persons who are hearing-impaired may request sign translation by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting. Persons wishing to make oral presentations should also notify the person listed under **FOR FURTHER INFORMATION CONTACT** no later than two days before the meeting. Individuals may submit written material before, during, and after the meeting. Persons unable to attend the public meeting should submit written comments as explained previously under **ADDRESSES** and **SUPPLEMENTARY INFORMATION** by June 14, 1999.

Procedural Matters

The Coast Guard finds under 5 U.S.C. 553(b)(B) that there is good cause why a Notice of Proposed Rulemaking (NPRM) is unnecessary and contrary to the public interest in this instance. First, an NPRM on the RNA was published, before the Final Rule; second, the late information received about the potential impact of the RNA necessitates prompt relief in appropriate circumstances; third, the Interim Rule includes the opportunity for written and oral comment; and finally, the Coast Guard will hold a public meeting.

The Coast Guard finds under 5 U.S.C. 553(d)(1) good cause for making the Interim Rule effective immediately because the Rule provides an opportunity to temporarily relieve a restriction on the commercial opportunities of certain small businesses.

Regulatory History

On October 13, 1998, the Coast Guard published in the **Federal Register** (63 FR 54639) an NPRM entitled ''Regulated Navigation Area: Navigable Waters within the First Coast Guard District.'' On November 13, 1998, Congress enacted the Coast Guard Authorization Act of 1998 (Act). Section 311 of the Act required the Commandant, under authority delegated by the Secretary of Transportation, to promulgate regulations for the safety of towing vessels and tank barges. More specifically, section 311(b)(1)(B) of the Act required the Coast Guard to consider each recommendation from the report of Regional Risk Assessment Team (RRAT), a group comprised of operators of towing vessels and tank barges, environmental groups, state agencies, and Coast Guard officials. After the oil spill resulting from the Tank Barge NORTH CAPE grounding, members of the RRAT reviewed tug and barge operating procedures in the Northeast and recommended actions to minimize safety risks unique to the transportation of petroleum in waters of the First Coast Guard District. On December 30, 1998, the Coast Guard published a Final Rule, in the **Federal Register** (63 FR 71764), creating a Regulated Navigation Area that addressed unique risks that were within the District Commander's authority to regulate.

Background and Purpose

Currently, 33 CFR 1654.100(d)(1)(i) requires that, except for certain small barges in certain confined waters, every single-hull tank barge loaded with petroleum and operating in the navigable waters of the First Coast Guard District either be towed by a tug equipped with twin screws and two engines, or be escorted by a second tug. while the positive control provision in the RNA is necessary to address the unique hazards associated with operating single-hull tank barges with single screw tugs in First District waters, the current rule provides little flexibility to address, temporarily, special circumstances. The RRAT report, in fact, recommended that the Coast Guard establish a regulatory provision authorizing exemption in limited circumstances. Recognizing the need for flexibility to address special circumstances while companies make arrangements to come into compliance with the new rules, the Interim Rule amends the RNA by revising paragraph (d)(1)(ii) to provide a more general exemption provision.

The amended section allows COTPs to consider requests for exemptions. Upon the operator's demonstrating equivalent measures of safety, COTPs are authorized to grant relief that would permit the continued use of single-screw or single-engine tugs to tow loaded, single-hull tank barges without an escort tug, throughout the navigable waters of the First Coast Guard District. In determining whether to temporarily grant an exemption of the new positive control provisions, a COTP will consider a variety of factors including, but not limited to, the availability of on-call tug assistance, the time of transit, the route, the weather, environmental factors, the amount and grade of cargo, the existence and sufficiency of anchoring and retrieval equipment on manned barges, and the construction of the tank barge, as well as the operator's overall safety record.

Requests for exemptions shall be submitted in writing to each COTP whose zone the barge intend to operate in with a single-screw, single-engine tug. Requests shall be submitted in writing at least seven (7) days before the intended voyage and shall fully explain the equivalent measures that will ensure positive control of the barge. This exemption of the positive control provisions of the RNA will expire after June 30, 2000. The Interim Rule is designed to give affected companies ample time to complete their current contracts, obtain addition vessels that comply with 165.100(d)(1)(i), and submit comments to the docket.

Regulatory Assessment

The Interim Rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget (OMB) under that Order. It is not

significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 (February 26, 1979)). A Regulatory Assessment of the Final Rule under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Summary of Benefits and Costs

The principal benefits and costs of the Final Rule are discussed at 63 FR 71769–70. Issuance of the Interim Rule does not alter that analysis as the Rule provides a procedural mechanism for companies to demonstrate levels of safety, equivalent to the current requirements. As noted in **SUPPLEMENTARY INFORMATION**, however, the Coast Guard is interested in obtaining comments on the application of the alternatives in this Rule.

Small entities

Acting on the information then available, and on a lack of comments in the docket, the Coast Guard certified in the Final Rule that the Rule would not have a significant economic impact on a substantial number of small entities. Since the publication of that Rule, the Coast Guard has received several letters from businesses or their trade-organizations explaining the impact the RNA could have on them and asking for temporary relief. After receipt of these letters following the effective date of the Final Rule, the Commander, First Coast Guard District met with representatives of the governments of Rhode Island and Massachusetts together with spokespersons for a few of these businesses. At the meeting, the parties also asked the Coast Guard to consider granting exemptions in limited circumstances.

Since no NPRM is being issued for this Interim Rule, regulatory flexibility requirements do not apply. On the other hand, the purpose of regulatory flexibility analysis is to consider, and possibly reduce, impacts on small businesses. Recognizing that we may not have received sufficient information in response to an earlier NPRM, we will reopen the comment period to reassess the impacts of the positive control provisions in light of inquiries received in response to this Interim Rule. Further delay in alleviating the potential burden associated with immediate implementation of the positive control provisions of the RRAT, while issuing an NPRM and performing additional research and analysis might, in fact, harm small businesses. Therefore, we are applying the deferral for emergency provisions of section 4 of the Regulatory Flexibility Act (5 U.S.C. 608). Further compliance with that Act is deferred until additional comments have been obtained from small businesses about the impact of the measures for positive control of barges and about the provision for alternatives in the Interim Rule.

The Coast Guard is issuing the Interim Rule authorizing exemptions in limited circumstances to provide an additional mechanism for relieving restrictions on those businesses that had long-term contracts or other constraints as of the effective date of the Final Rule. The Interim Rule allows affected companies the opportunity to continue safe operations and additional time to make arrangements to come into compliance with the new rule. Protection of the environment remains of paramount concern. The new provision, therefore, is limited in time, and small businesses should not rely on its being extended.

Small businesses are defined by the Small Business Administration in 13 CFR part 121 by either the number of employees or the amount of receipts in dollars. Businesses engaged in the transportation of freight by sea, such as petroleum barge owners, are generally considered to be small businesses if they employ 500 people or less. Towing and tugboat services are considered to be small businesses if their annual receipts in dollars are $5 million or less. In addition to obtaining further information on the effect of the RNA on small entities operating in First District waters, answers to the following questions from these businesses would be particularly useful:

(1) What portions of the transits affected by the positive control measures are completed by either a towing vessel or a barge considered to be operated by a small business?

(2) What is the financial impact on small businesses of complying with the positive control measures?

(3) What is the ability of affected small businesses to pass along to customers the increased costs due to the positive control measures?

Assistance for Small Entities

In accordance with section 213(a) of the Small Businesses Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the Final Rule so that they could better evaluate its effects on them and participate in the rulemaking. Commander (m), First Coast Guard District, provided explanatory information to a number of individuals by telephone. If you need assistance understanding either the Final or Interim Rule, please call LT Rich Klein at 617–223–8243.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsmall will annually evaluate enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

The Interim Rule calls for no collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Interim Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. In the Final Rule, the Coast Guard determined that there would be some preemptive impacts on the Rhode Island Tank Vessel Safety Act, 46 R.I.G.L. § 12.6. See 63 FR 71770. For reasons discussed in that Rule, however, the Coast Guard determined that that Rule did not have sufficient implications federalism to warrant the preparation of a Federalism Assessment. The Interim rule only establishes procedures that do not alter in any meaningful way the previous Federalism analysis.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates.* A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This Interim Rule would not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraphs 34(g) and (i), Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A

''Determination of Categorical Exclusion'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

The new exemption provision in the Interim Rule rests on the premise that an equivalent level of safety exists to protect the environment. The Coast Guard invites comments on this point.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this Interim Rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This Rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This Rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This Rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This Rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

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

PART 165—[AMENDED]

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The citation of authority for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Revise § 165.100(d)(1)(iii) to read as follows:

§ 165.100 Regulated Navigation Area: Navigable Waters within the First Coast Guard District.

* * * * *

(d) * * *

(1) * * *

(iii) The cognizant Captain of the Port (COTP), upon written application, may authorize an exemption from the requirements of paragraph (d)(1)(i) of this section for—

(A) Any tank barge with a capacity of less than 25,000 barrels, operating in an area with limited depth or width such as a creek or small river; or

(B) Any tank barge operating on any waters within the COTP Zone, until July 1, 2000, provided the operator demonstrates to the satisfaction of the COTP that the barge employs an equivalent level of safety to that provided by the positive control provisions of this section. Each request for an exemption under this paragraph (d)(1)(iii)(B) must be submitted in writing to the cognizant COTP no later than 7 days before the intended transit.

* * * * *

Dated: March 10, 1999.

R.F. Duncan,

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

[FR Doc. 99–6330 Filed 3–12–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY108–9904a; FRL–6307–8]

Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted on August 27, 1998, by the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet. This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in Jefferson County, Kentucky, to require, beginning January 1, 2001, a check of the On Board Diagnostic (OBD) system of 1996 and newer cars and light duty trucks equipped with the system.

DATES: This final rule is effective May 14, 1999 without further notice, unless EPA receives adverse or critical comments by April 14, 1999. If adverse comment is received EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments on this action should be addressed to Dale Aspy at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file KY108–9904. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Dale Aspy, (404) 562-9041.

Kentucky Natural Resources and Environmental Protection Cabinet, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (505) 573–3382.

Jefferson County Air Pollution Control District, 850 Barret Avenue, Louisville, Kentucky. (502) 574–6000.

FOR FURTHER INFORMATION CONTACT: Dale Aspy at 404/562–9041.

SUPPLEMENTARY INFORMATION:

I. Background

On August 6, 1996, the U.S. Environmental Protection Agency (EPA) promulgated a final rule that established the minimum requirements for inspecting vehicles equipped with OBD systems. Additionally, the OBD test program component was to begin January 1, 1998. An approved OBD program is required for state and local Inspection/Maintenance (I/M) programs by section 203(m)(3) of the Clean Air Act (CAA). Section 182(a)(2)(B)(ii) of the CAA required a State Implementation Plan (SIP) submission by August 6, 1998, for I/M programs to implement an OBD system check. However, on May 4, 1998, EPA published a final rule that delayed until January 1, 2001, the date by which the OBD test component is required to begin. Although EPA delayed the OBD test component date by three years, the CAA requirement for submitting a SIP two years after promulgation of OBD requirements for vehicle manufacturers was not changed. Therefore, in the May 4, 1998, **Federal Register** preamble to the OBD regulation

revisions, EPA indicated it would accept a ''. . . brief SIP amendment which commits to implementing EPA approved OBD checks, as outlined in the I/M OBD rule, by January 1, 2001.'' The Kentucky submission meets the EPA requirements.

II. EPA's Analysis of Changes to the Louisville, Kentucky, Basic I/M Program

EPA's review of the submitted revisions indicates that the Jefferson County I/M program is in accordance with the requirements of the Act. Since Kentucky's OBD testing requirement meets the criteria of the EPA OBD rule, EPA is approving the Kentucky SIP revision for OBD testing in the Jefferson County, Kentucky, basic I/M program.

III. Final Action

EPA is approving this revision to the Kentucky SIP for a basic I/M program in Jefferson County. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse public comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 14, 1999 without further notice unless the Agency receives relevant adverse comments by April 14, 1999.

If EPA receives such comments, then EPA will publish a timely withdrawal of the final rule informing the public that the rule will not take effect. All public comments received will be discussed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 14, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 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. If the mandate is unfunded, EPA must 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, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 E.O. 12875 do not apply to this rule.

C. 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.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide 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 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Disclaimer Language Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law, Kentucky KRS 224.01–040, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken

herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

G. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 23, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(93) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(93) Modifications to the existing basic I/M program in Jefferson County to implement a check of a vehicle's On-Board Diagnostic system, for vehicles of model 1996 and newer that are so equipped, submitted by the Commonwealth of Kentucky on August 27, 1998.

(i) Incorporation by reference. Regulation 8.02, adopted on July 15, 1998.

(ii) Other material. None.

* * * * *

[FR Doc. 99–6253 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–61–7276; FRL–6307–5]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves the State implementation plan (SIP) revision submitted by the State of Oregon for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable moderate nonattainment area PM–10 SIP for the Oakridge, Oregon, PM–10 nonattainment area. The rationale for the approval is set out both in this action and in supporting technical information which is available at the address indicated. The final action to approve this plan would have the effect of making requirements adopted by the State of Oregon, federally enforceable by EPA.

DATES: This direct final rule is effective on May 14, 1999, without further notice, unless EPA receives adverse comment by April 14, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101. Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, EPA, Region 10 Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

The area within the Oakridge, Oregon, Urban Growth Boundary (UGB) was designated nonattainment for PM–10 and classified as moderate under section 107(d)(3) of the Clean Air Act (CAA),[1] on December 21, 1993. See 57 FR 43846 (September 22, 1992), 58 FR 67334 (December 21, 1993) and 40 CFR 81.338. The Oakridge designation became effective on January 20, 1994. The air quality planning requirements for moderate PM–10 nonattainment areas[2] are set out in Subparts 1 and 4 of Title I of the Act.[3] EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this document and the supporting rationale. In this rulemaking action for the PM–10 SIP for the Oakridge nonattainment area, EPA's action is consistent with its interpretations, discussed in the General Preamble, and takes into consideration the specific factual issues presented in the SIP. Additional information supporting EPA's action on this particular area is available for inspection at the address as indicated above.

A State containing a moderate PM–10 nonattainment area designated after the 1990 Amendments is required to submit, among other things, the following provisions within 18 months of the effective date of the designation (i.e., these provisions were due for the Oakridge area by July 20, 1995):

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than four years after designation (i.e., January 20, 1998);

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than the end of the sixth calendar year after the effective date of designation (i.e., December 31, 2000), or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which demonstrate reasonable further progress (RFP) toward the attainment date (i.e., December 31, 2000 for Oakridge). Since the SIP for a new nonattainment area is due 18 months after the area is designated as nonattainment, the first 3-year milestone is to be achieved 4½ years after nonattainment designation (i.e., July 20, 1998 for Oakridge) and the second milestone must be achieved three years after the first milestone or 7½ years after nonattainment designation (i.e., July 20, 2001);

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act; and

5. Contingency measures which consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon EPA's determination that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable deadline. See section 172(c)(9) of the Act.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The State of Oregon submitted the Oakridge PM–10 SIP on December 9, 1996. The Oakridge moderate area attainment plan includes, among other things, technical analyses, control measures to satisfy the RACM requirement, and a demonstration (including air quality modeling) that attainment and maintenance of the PM–10 NAAQS will be achieved by the required dates. In this final rulemaking, EPA announces its approval of those elements of the Oakridge PM–10 SIP which were due on July 20, 1995, and submitted on December 9, 1996.

In addition, EPA has determined that major sources of precursors of PM–10 do not contribute significantly to PM–10 levels in excess of the NAAQS in Oakridge.[4]

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[5] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The State of Oregon and the Lane Regional Air Pollution Authority (LRAPA) held a concurrent public hearing on the Oakridge attainment plan on July 18, 1996. As a result of the hearing, the plan was adopted by the LRAPA Board of Directors on August 13, 1996. The plan was subsequently adopted by the Oregon Environmental Quality Commission (OEQC) on October 11, 1996, and became state effective November 4, 1996.

2. Accurate Emission Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emission

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, et seq.

[2] The requirements which are the subject of this document arise under the pre-existing PM NAAQS. EPA promulgated a new PM NAAQS on July 18, 1997, which became effective on September 16, 1997.

[3] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's notice and supporting information.

[4] The consequences of this finding are to exclude these sources from the applicability of PM–10 nonattainment area control requirements. Note that EPA's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

[5] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

inventory also should include a comprehensive, accurate, and current inventory of allowable emissions in the area. See section 110(a)(2)(K). Because the submission of such inventories is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emission inventories must be received with the submission (see 57 FR 13539).

The base year for analysis was 1991. This year was chosen because the highest observed ambient PM–10 concentration occurred in 1991. There were nine exceedances of the 24-hour NAAQS with a high of 187 µg/m3. In addition to the base year inventory (1991), an interim year inventory (1997), a design year inventory (2000 attainment year), and a maintenance demonstration year inventory (2003) was developed.

The 1991 inventory identified that, on a 24-hour, worst case day, the major sources of PM–10 emissions are residential wood combustion (76.3%), paved roads (12.6%), unpaved roads (7.6%), winter road sanding (0.9%), transportation (1.9%), industrial point source (0.6%) and other (.3%) with total PM–10 emissions equaling 983.1 pounds per day.

After implementation of all control measures, LRAPA estimates that the 24-hour 2000 attainment year inventory will be as follows: residential wood combustion (72%), paved roads-including sanding (21%), unpaved roads (3.0%), transportation (3.0%), industrial point source (.01%), and other (less than .01%) with total PM–10 emissions equaling 655.1 pounds per day.

The emission inventory was originally reviewed and commented on by EPA in 1995 while in draft form. The issues raised by EPA during that time were resolved before the December 9, 1996, submittal.

EPA is approving the emission inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.[6]

The December 9, 1996, submittal also establishes an emission budget for the Oakridge nonattainment area, which is to be used for Federal conformity purposes. The PM–10 mobile source emission budget for 2000 is 175 pounds per day and for 2003 is 178.8 pounds per day.

3. RACM (Including RACT)

As noted, the moderate PM–10 nonattainment areas, designated after the 1990 Amendments, must submit provisions to assure that RACM (including RACT) are implemented no later than January 20, 1998 (see sections 172(c)(1) and 189(a)(1)(C)) of the Clean Air Act. The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561). In broad terms, the State should identify available control measures and evaluate them for their reasonableness in light of the feasibility of the controls and the attainment needs of the area. See 57 FR 13540–13544. A State may reject an available control measure if the measure is technologically infeasible or the cost of the control is unreasonable. In addition, RACM does not require controls on emissions from sources that are insignificant (i.e., de minimis) and does not require the implementation of all available control measures where an area demonstrates timely attainment and the implementation of additional controls would not expedite attainment. Thus, RACT does not require additional controls for the stationary sources in the Oakridge nonattainment area because point source emissions in the area are de minimis and additional control of such sources would not expedite attainment of the PM–10 NAAQS.

Based on the control measures adopted (described below), the SIP demonstrates attainment of the PM–10 NAAQS by December 31, 2000. The SIP also demonstrates continued maintenance of the PM–10 NAAQS between December 2000 and December 2003. Accordingly, the attainment demonstration does not include additional industrial controls beyond those currently required by the Oregon SIP. The Plan's attainment demonstration, contingency measures, and RFP are discussed in more detail later in this document.

Because the area has not violated the annual standard, LRAPA did not specifically develop or implement control measures designed to reduce annual emissions. However, reductions achieved on an annual basis as a result of the control measures designed to reduce 24-hour emissions, will assist in keeping the area in attainment with the annual NAAQS.

Attainment of the 24-hour PM–10 standard is based on the following: (1) woodstove replacement program, (2) voluntary wood burning curtailment program, (3) reduction in winter road sanding, and (4) road paving.

SUMMARY—ATTAINMENT STRATEGIES

Control Measures—2000	Credit requested (percent)	Emission reductions #per day
	24-Hour	24-Hour
Woodstove Removal	12	86
Voluntary Curtailment Program	25	157
Winter Road Sanding	75	7
Unpaved Roads	75	56
Total Reductions		306
Reductions Needed by 12/31/00		294
Excess Reductions		12

[6] EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM–10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the revised Act.

A. Woodstove Replacement Program

Oakridge's woodstove replacement program started in 1993 with funding from EPA, ODEQ, and LRAPA. The program was structured to provide up to $2,500 per low or moderate income households for installation of approved alternative heat sources, either as no interest loans or grants.

LRAPA estimates that on a worse-case day basis, 86 pounds per day of PM–10 will be removed from the airshed. These reductions were calculated based on the number of woodstoves replaced, and what type of heating system replaced them. As of July 1996, a total of 130 uncertified woodstoves had been replaced resulting in an estimated 12% reduction in emissions.

Of the first 115 uncertified stoves that were replaced, 42% opted for pellet stoves, 40% opted for EPA certified stoves, 11% opted for heat pumps or electric furnaces, 3% opted for propane gas furnaces, and 3% opted for oil furnaces.

Accordingly, EPA accepts LRAPA's 12% credit on a 24-hour basis and believes the woodstove removal program meets the RACM requirement.

B. Voluntary Woodstove Curtailment Program

A voluntary wood burning advisory program has provided daily wood burning advisories during the wood burning season in Oakridge since 1989. The program is operated by LRAPA, in cooperation with the City of Oakridge and local news media and utilizes a ''red-yellow-green'' system. In 1993, the public education component of the program was enhanced in an effort to keep the program a voluntary one.

Daily wood heating advisories are disseminated by LRAPA via local television and radio stations, an advisory information telephone line, and are published each day in the regional newspaper throughout November and February each winter season. LRAPA also maintains an advisory phone line. During the 1996/1997 season, over 480 60-second spots were aired on area radio stations between December 1 and January 31. These announcements covered topics such as clean burning, using seasoned wood, and the health affects of wood smoke.

In addition, LRAPA contracted with an Oakridge resident to carry out public education strategies such as, but not limited to, (1) manning a booth at Oakridge's Health Fair, (2) conducting door-to-door visitation to homes with smokey chimneys and, (3) conducting drive-by surveys during green, yellow and red days. A ''tarp giveaway'' campaign was also implemented. In exchange for participating in a short survey, residents were given tarps to cover their wood to keep it dry.

Woodburning curtailment advisories are made daily during the woodheating season (November 1 through February 28). The advisory is based on measured air quality, expressed as the standard Air Pollution Index (API) and forecast meteorological conditions. A forecast of either ''green'', ''yellow'', or ''red'' is determined and provided to radio stations between 12:00 and 4:00 p.m. and to the city for inclusion on a cable access station by 4:00 p.m. A green advisory is issued when NAAQS exceedances are unlikely and the API is less than 63. A yellow advisory is made when the API is greater than 63 but less than 75 and the forecast is for marginal smokie dispersion conditions. Under this advisory, residents are advised to burn wood sparingly, and only if alternatives are unavailable. A red advisory is make when the API is greater than 75, and the forecast is for marginal or poor smoke dispersion conditions. Under a red advisory, residents are requested not to burn wood unless they do not have an alternative heat source.

The Oakridge curtailment program includes a surveillance and tracking element. LRAPA's contractor conducts drive-by compliance surveys on green, yellow, and red days using established survey routes. But, since the program in voluntary and not mandatory, enforcement action is not taken against residents who do not comply with the advisories. However, in-home field visits are conducted when the contractor observes activities such as dense smoke being emitted from a chimney. The purpose of these visits is to educate the home owner in the proper use of a woodstove, (e.g. using clean, dry wood etc.).

Considering the above program elements, length of time the program has been in place (since 1989 with an enhanced program enacted in 1995), LRAPA's belief that the public is ''acceptive'' of the program demonstrated by home owner's response to a tarp give-away and in-home visits, EPA believes that the 25% credit on a 24-hour basis is achievable and is being achieved. EPA, therefore, accepts the credit claimed and has determined that the voluntary curtailment program is sufficient to meet RACM.

C. Winter Road Sanding

The second largest source of PM–10 emissions in the Oakridge nonattainment area is paved road dust of which winter road sanding is a contributor. Winter road sanding emissions peak during periods when temperatures drop below freezing and U.S. Highway 58 is icy or snowy. During these periods, the Highway Division of the Oregon Department of Transportation (the Highway Department) applies grit to aid traction along the heavily traveled 1.9 miles of U.S. Highway 58 that traverses the length of the nonattainment area. LRAPA estimated that on a worst case day in the 1991 base year, PM–10 emissions from the sanding practices accounted for 8.6 pounds.

The strategy developed to reduce road sanding emissions is for the Highway Department to use a chemical de-icing compound, calcium magnesium acetate (CMA) on Highway 58 instead of grit. The material is to be applied either in pellet form or dissolved in water. It effectively inhibits ice formation down to temperatures normally encountered in Oakridge and eventually is washed off the roadway without residual particulate. The use of CMA has been specified for use in Oakridge since 1995. The Highway Department is committed to using the anti-icing chemicals within the City of Oakridge into the future.

EPA accepts the above strategy as being RACM and grants the 75% emission reduction credit.

D. Road Paving

Prior to the 1991 base year, there were approximately 2.4 miles of unpaved roads within the nonattainment area. LRAPA estimated that emissions from unpaved roads accounted for 10.6 tons per year (74 pounds per day). Due to an ongoing paving program, between 1991 and 1995, virtually all of Oakridge's unpaved roads and numerous unpaved commercial driveways and parking lots have been paved.

LRAPA requests an estimated 75% net emission reduction credit from this strategy. Converting an unpaved road to a paved road will not reduce emission on a roadway 100%. This is because in time, materials from other activities such as track out, will become deposited on the recently paved surfaces resulting in an increase in paved road emissions. However, any resulting emissions are insignificant compared to the reduction in unpaved road emissions.

EPA accepts LRAPA's 75% net reduction credit as being conservative and approves this measure as being RACM.

RACM does not require additional controls on other area sources since the plan demonstrates attainment of the NAAQS and implementation of

additional controls would not further expedite attainment. However, the State of Oregon through their smoke management plan, has established a special protection zone (SPZ) around the nonattainment area. Prescribed burning in the SPZ is allowed only when the smoke management meteorologist believes there will be no measurable smoke impacts within the PM–10 nonattainment area. The SPZ encompasses the area within a twenty mile radius of the nonattainment area. Other burning restrictions apply on ''red'' advisory days. See Appendix VII of the Oakridge attainment plan for further details. LRAPA does not request credit for this measure but a revision to Oregon's Smoke Management Plan establishing the SPZ around Oakridge, is pending before EPA.

EPA has reviewed LRAPA's submittal and associated documentation and concluded that they adequately justify the control measures to be implemented. Implementation of the Oakridge PM–10 attainment plan control strategy will result in the attainment of the PM–10 NAAQS as expeditiously as practicable and no later than December 31, 2000. In addition, EPA believes it is reasonable and adequate to assume that protection of the 24-hour standard will be sufficient to protect the annual standard as well. By this document, EPA is approving LRAPA's control strategy as satisfying the RACM (including RACT) requirement.

4. Demonstration

As noted, moderate PM–10 nonattainment areas designated subsequent to enactment of the 1990 Amendments must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable, but no later than the end of the sixth calendar year after an area's designation to attainment (see section 188(c)(1) of the Act). In the case of Oakridge, this attainment deadline is December 31, 2000, or the State must show that attainment by December 31, 2000, is impracticable.

The attainment demonstration presented in the December 9, 1996, submittal indicates that the PM–10 NAAQS will be attained by 2000 in the Oakridge area. The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR 50.6). The annual PM–10 NAAQS is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$ (id.).

Generally, EPA recommends that attainment be demonstrated according to the PM–10 SIP Development Guideline (June 1987), which presents three methods. Federal regulations require demonstration of attainment ''by means of a proportional model or dispersion model or other procedure which is shown to be adequate and appropriate for such purposes'' (40 CFR 51.112). The preferred method is the use of both dispersion and receptor modeling in combination. The regulation and the guideline also allows the use of dispersion modeling alone, or the use of two receptor models in combination with proportional rollback.

In addition, EPA has developed a supplemental attainment demonstration policy for airsheds where receptor modeling, coupled with proportional (rollback) modeling, is adequate to identify source contributions and demonstrate attainment.[7] The policy states that:

> It is appropriate in certain situations to rely on a receptor mode (RM) demonstration (i.e., use of receptor modeling, emission inventories, design value obtained by air quality monitoring, and proportional modeling) as the basis for a control strategy demonstration.

It is EPA's Regional Offices' responsibility to decide whether or not that a receptor modeling demonstration is adequate to demonstrate attainment. In making its' decision, EPA must consider the following: (1) the spatial representativeness of the monitoring network and the spacial uniformity of emissions, (2) the temporal representativeness of the monitoring network, and (3) the impact of only a few, relatively well characterized source categories.

During development of the Oakridge moderate area PM–10 attainment plan, LRAPA did not use dispersion modeling to estimate the design values or in the attainment and maintenance demonstrations. Instead, LRAPA conducted an attainment demonstration based upon receptor modeling-proportional roll-back calculations to estimate the emission reductions required in 2000 to achieve the NAAQS. EPA reviewed LRAPA's demonstration in accordance with the above criteria and has determined the demonstration approach to be acceptable. See the technical support document for this action for more details.

LRAPA conducted PM–10 saturation studies in 1991 and 1994 to evaluate the location of the monitoring site near the Willamette Activities Center (WAC). These studies, in general, showed that although the WAC site was located near the area of highest concentrations, three other areas measured higher concentrations during the saturation studies. The site which measured the highest values is referred to as the Cline Street site. It was located in a neighborhood area west and a little south of the WAC site. Concentrations measured at the Cline Street site were about 20% higher than those measured at the WAC site. Even though the relationship between the WAC and Cline Street values is not linear, the 20% relationship does occur at the higher concentrations of interest. To account for this difference, the attainment year design value was adjusted upward.

LRAPA utilized EPA's ''table look-up'' method to estimate the 1991 baseline design concentration. This method allows the use of the fourth highest actual base year measured value to be used. The fourth highest measured concentration at the WAC site for the calendar years 1991, 1992, and 1993 was 178 $\mu g/m^3$. To account for the difference between the WAC site and the levels measured during the saturation studies at the Cline Street site, the table look-up value was increased by 20%. This resulted in an adjusted base year design value of 214 $\mu g/m^3$. (178 x 1.2 = 213.6).

Based on the above design values, LRAPA estimates that year 2000 worst case day emissions must be reduced by 30.6%, which equals 294.1 pounds per day. The previously discussed control measures are designed to reduce projected 2000 worst case day emissions by 306 pounds per day (11.9 pounds per day beyond the amount needed for attainment). According to the principle of proportional roll-back modeling, a reduction of 294.1 pounds from Oakridge's PM–10 emission sources will result in a year 2000 worst case day ambient concentration of 119.7 $\mu g/m^3$ at the WAC site, and 147.3 $\mu g/m^3$ at the Cline Street site. See the technical support document for this action for more details.

EPA is approving the attainment demonstration. It is EPA's opinion that the appropriate air quality model was used and all significant emission sources and impacts were considered. The attainment plan demonstrates that the area will attain the 24-hour PM–10

[7] July 5, 1990, memorandum entitled *PM–10 SIP Demonstrations for Small Isolated Areas With Spatially Uniform Emissions*, from Robert D Bauman, Chief, SO2/Particulate Matter Programs Branch (MD–14) and Joseph A. Tikvart, Chief, Source Receptor Analysis Branch (MD–14) to Chief, Air Branch, Regions I–X.

NAAQS by December 31, 2000. And, the annual standard which has never been exceeded, will continue to be maintained. EPA has also considered the fact that the area has not experienced an exceedance of the 24-hour NAAQS in the last five years (1993 through 1998).

5. PM–10 Precursors

The control requirements that are applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (57 FR 13539–13542).

LRAPA's technical analysis of potential candidate control measures indicated that emissions from industrial point sources were insignificant—approximately 5.5 pounds per day equaling 0.6% contribution on a 24-hour worst case day basis. Also, historical violations of the 24-hour standard have occurred during periods of extensive poor ventilation (stagnation conditions) and cold temperatures.

Therefore, EPA believes that sources of PM–10 precursors do not contribute significantly to PM–10 levels in excess of the NAAQS and hereby grants the exclusion from control requirements authorized under section 189(e) for major stationary sources of PM–10 precursors.

Note that, while EPA is making a general finding for the Oakridge area about precursor contribution to PM–10 NAAQS exceedances, this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

6. Quantitative Milestones and Reasonable Further Progress

The PM–10 nonattainment area plans demonstrating attainment must contain quantitative emission reduction milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress (RFP), as defined in section 171(1) of the Act, toward timely attainment. While section 189(c) plainly provides that quantitative milestones are to be achieved until an area is redesignated attainment, it is silent in indicating the starting point for counting the first three-year period or how many milestones must be initially addressed. In the General Preamble, EPA addressed this statutory gap indicating that the starting point would begin from the due date for the applicable implementation plan revision containing the control measures for the area (i.e., November 15, 1991 for initial moderate PM–10 nonattainment areas) and that at least two milestones must be initially addressed. See 57 FR 13539.

States containing moderate nonattainment areas designated subsequent to enactment of the 1990 Amendments are expected to initially submit two milestones. States are required to submit SIP's for these areas 18 months after their redesignation as nonattainment. The attainment date for new PM–10 nonattainment areas is ''as expeditiously as practicable'' but no later than the end of the sixth calendar year after the effective date of an area's designation as nonattainment. Oakridge was designated as nonattainment effective on January 24, 1994, therefore the attainment date for Oakridge is December 31, 2000.

Because the SIP revision, including the quantitative milestones element, for a new nonattainment area is due 18 months after the area is designated as nonattainment, the first 3-year milestone is to be achieved 4 ½ years after the nonattainment redesignation. Since Oakridge's redesignation became effective on January 20, 1994, the first 3-year milestone must be achieved by July 20, 1998 (i.e., 1½ years prior to the attainment deadline). The second quantitative milestone must be achieved three years after the first milestone or 7½ years after the nonattainment designation. For Oakridge, the second quantitative milestone must be achieved by July 20, 2001. The second quantitative milestone should provide for continued emission reduction progress toward attainment and should provide for continued maintenance of the NAAQS after the attainment date for the area.[8]

This SIP demonstrates attainment of the PM–10 NAAQS by December 31, 2000, and maintenance of the NAAQS through the year 2003, satisfying two milestones. In addition, all controls measures were implemented by August 1996. Therefore, EPA is approving the submittal as meeting the quantitative milestone requirement currently due. Finally, once a milestone date has passed, the State will have to demonstrate that the milestone was, in fact, achieved for the Oakridge area as provided in Section 189(c)(2) of the Act.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the LRAPA, ODEQ and EPA (see sections 172(c)(6), 110(a)(2)(A) of the Act and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP (see section 110(a)(2)(C) of the Act).

The particular control measures contained in the SIP were addressed above under the section headed ''RACM (including RACT)''. These control measures apply to each of the identified major sources of PM–10 emissions in the Oakridge area, including woodstoves and road dust. The SIP provides that the control measures apply throughout the entire nonattainment area. EPA has carefully reviewed the control measures for each of the major PM–10 sources and determined that the proposed SIP as a whole, provides for adequate control of these sources.

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. Even though this SIP revision does not contain additional point source controls to attain the standard, existing and federally approved point source emission limitations are relied upon to maintain and demonstrate attainment with the PM–10 NAAQS in the Oakridge area.

EPA determined that, because the five-day advance notice provision required by ORS 468.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval, as specified in Section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a PM–10 nonattainment area SIP revision.

[8] Section 189(c) of the Act provides that quantitative milestones are to be achieved ''until the area is redesignated attainment''. However, this endpoint for quantitative milestones is speculative because redesignation of an area as attainment is contingent upon several factors and future events. Therefore, EPA believes it is reasonable for States to initially address at least the first two milestones. Addressing two milestones will ensure that the State continues to maintain the NAAQS beyond the attainment date for at least some period during which an area could be redesignated attainment. However, in all instances, additional milestones must be addressed if an area is not redesignated attainment.

EPA notified Oregon of the deficiency. To correct the problem the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from federal approval or delegation. ODEQ responded to EPA's understanding of the application of 468.126(2)(e) and agreed that, if federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

Another enforcement issue is Oregon's audit privilege and immunity law. Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act Program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

In regard to a separate enforceability issue, the following is a summary of the state, city, and interagency commitments which EPA is approving as part of the SIP.

A. Voluntary Woodstove Curtailment Program. This program was adopted by LRAPA on July 18, 1996, and the State of Oregon on October 11, 1996. Details of the program are discussed in the TSD to this action and the SIP revision.

B. Winter Road Sanding Program, Oregon Department of Transportation Highway Division Commitment. Sanding and maintenance of U.S. Highway 58 through Oakridge is the responsibility of the Oregon Department of Transportation, Highway Division, Region 3. Since 1995, a chemical de-icing compound has been specified for use in Oakridge. The Highway Department is committed to and intends on using anti-icing chemicals within the City of Oakridge into the future.

The Governor of Oregon designated the Lane Regional Air Pollution Authority as lead organization for implementing, maintaining, and enforcing PM–10 control strategies in Lane County. The TSD contains a discussion of the personnel and funding intended to support effective implementation of the control strategy. Thus, EPA has determined that the control measures contained in the SIP revision for Oakridge are sufficient and the LRAPA has adequate enforcement capabilities to ensure compliance with those control measures.

8. Contingency Measures

The Clean Air Act requires each state containing PM–10 nonattainment areas to adopt contingency measures for such areas that will take effect without further action by the state or EPA's Administrator upon a determination by EPA that an area has failed to make reasonable further progress (RFP) or to attain the standards, as described in Section 172(c)(9) of the CAA. Pursuant to Section 172(b), the Administrator has determined that Oakridge shall include contingency measures with their Attainment Plan no later than July 20, 1995 (see 57 FR 13510–13512, 13543–13544, and 58 FR 67344–67341). EPA guidance recommends that the emission reductions expected from implementation of the contingency measures equal twenty-five percent of the total reduction in actual emissions in the plan's control strategy (57 FR 13544). However, the CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures (57 FR 13511). EPA believes that, consistent with the statutory scheme, contingency measures must at a minimum provide for continued progress toward the attainment goal in the interim period after an area fails to attain and while additional measures required as a result of being reclassified to serious are being adopted (57 FR 13511).

On August 15, 1996, the Oakridge City Council passed Ordinance No. 815. This ordinance granted the city the authority to implement a mandatory woodstove curtailment program. A mandatory program would be implemented if the city's voluntary program did achieve the necessary emission reductions needed to satisfy the attainment plan's first milestone, or if the area did not attain the 24-hour PM–10 NAAQS by the December 31, 2000 attainment.

EPA is approving the contingency measure for the Oakridge nonattainment area. The authority to implement the above measures will go into effect upon a determination by EPA that the area has failed to attain, or prior to the attainment date, if milestones for the area are not being met.

III. Implications of This Action

EPA is approving the December 9, 1996, PM–10 attainment plan for the Oakridge nonattainment area. Among other things, LRAPA has demonstrated that the Oakridge moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 2000. Note that EPA's action includes approval of the contingency measure for the Oakridge nonattainment area.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 14, 1999, without further notice unless the Agency receives adverse comments by April 14, 1999.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 14, 1999, and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, 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, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's 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 E.O. 12875 do not apply to this rule.

C. 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.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 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, E.O. 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, E.O. 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon

was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: February 20, 1999.

Chuck Findley,

Acting Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(127) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(127) December 9, 1996, letter from the Director, Oregon Department of Environmental Quality, to the Region 10 Regional Administrator, EPA, submitting the Attainment Plan for the Oakridge, Oregon PM–10 nonattainment area as a revision to its SIP.

(i) Incorporation by reference.

(A) State Implementation Plan for PM–10 in Oakridge, dated August 1996, and Appendices XII, XIII and XIV.

(ii) Additional Material: Appendix I through VI and VIII through XI of the State Implementation Plan for PM–10 in Oakridge dated August 1996.

[FR Doc. 99–6259 Filed 3–12–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX99–1–7389a; FRL–6239–5]

Approval and Promulgation of Implementation Plans; Texas; Reasonably Available Control Technology for Emissions of Volatile Organic Compounds (VOCs) From Wood Furniture Coating Operations and Ship Building and Repair Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We, the EPA, are taking direct final action to include rules in the Texas State Implementation Plan (SIP). These rules control emissions of VOCs from Wood Furniture Coating Operations and Ship Building and Repair Operations. Texas submitted these rules in a letter dated April 13, 1998, to meet the Federal Clean Air Act's (the Act) requirements for Reasonably Available Control Technology (RACT).

DATES: This direct final rule is effective on May 14, 1999 unless we receive adverse comments by April 14, 1999. If we receive such comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Dallas, 1445 Ross Avenue, Texas 75202–2733, telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–7242.

SUPPLEMENTARY INFORMATION:

What Action Is EPA Taking?

We are approving revisions to Texas rules for the control of VOC emissions from Wood Furniture Coating Operations and from Ship Building and Repair Operations. These facilities emit VOCs, primarily during painting and solvent clean up operations. Texas based these rules on the EPA Control Technique Guidelines (CTGs) for these source categories. The approval of these rules means that we agree Texas is implementing RACT on these source categories as required by section 182(b)(2)(A) and (C), and section 183 of the Act. Texas also is requiring that coating of offshore oil and gas platforms coated at shipbuilding/ship repair facilities meet the limits in the CTG. This approval will incorporate these rules into the Texas SIP. The authority for our approval of these rules is found in section 110, Part D and section 301 of the Act.

What Are the Clean Air Act's RACT Requirements?

Section 172 of the Act contains general requirements for States to implement RACT in areas that do not meet the National Ambient Air Quality Standard (NAAQS). Section 182(b)(2) of the Act contains more specific requirements for moderate and above ozone nonattainment areas. In particular, 182(b)(2)(A) requires States to implement RACT on each category of VOC source covered by a CTG issued after enactment of the 1990 Clean Air Act Amendments.

On April 27, 1996, we issued a CTG for ship building and repair operations. On May 20, 1996, we issued a CTG for Wood furniture manufacturing operations. The State of Texas was then required to implement RACT requirements in its moderate and above ozone nonattainment areas based on the information in these CTGs.

A related requirement of the Act in 182(b)(2)(C) calls for States to implement RACT on major sources of VOCs in ozone nonattainment area. The Act defines a major source as a facility that emits more than 100 tons/year in a marginal or moderate ozone nonattainment area, 50 tons/year in a serious ozone nonattainment area or 25 tons/year in a severe ozone nonattainment area. Texas submitted and we approved (61 FR 5589) declarations that, outside of the Houston ozone nonattainment area, there are no major shipbuilding and repair sources in ozone nonattainment areas. In the same **Federal Register**, we approved a declaration that, outside of the Dallas/Fort Worth nonattainment area, there were no major wood furniture manufacturing operations in ozone nonattainment areas in Texas.

A CTG, however, can call for control of sources that emit less than a major source level of emissions if control of smaller sources is technically and economically feasible. The wood furniture CTG indicates that sources emitting as little as 25 tons/year can be controlled at reasonable cost even in serious or moderate ozone nonattainment area. Thus, the Texas rule calls for the control of wood furniture manufacturing operations that emit more than 25 tons/year in all of the ozone nonattainment areas in Texas.

Texas has chosen to implement the shipbuilding and repair CTG in the

Beaumont/Port Arthur and Houston/Galveston areas because these operations would only be expected to occur in the coastal areas. The shipbuilding and repair CTG outlines reasonable controls based on the major source definition for a nonattainment area. Thus in the Beaumont/Port Arthur area, only facilities emitting more than 100 tons/year are required to implement controls. Texas chose to implement the rules in Beaumont, in spite of the previous declaration that there were no major source ship building and repair facilities. In Houston, ship building and repair facilities that emit as little as 25 tons/year must be controlled.

Why Regulate VOCs?

Oxygen in the atmosphere reacts with VOCs and Oxides of Nitrogen (NO_X) to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It also can worsen bronchitis and asthma. Exposure to ozone can also reduce lung capacity in healthy adults.

What Is a SIP?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by the EPA. These ambient standards are established under section 109 of the Act and they address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is a Control Technique Guideline?

A CTG is a document issued by EPA that includes information regarding technology and costs of various emissions control techniques that States can use to establish RACT. Each CTG contains a ''presumptive norm'' for RACT for a specific source category. Where applicable, States should adopt rules consistent with the presumptive norm. If a State adopts rules consistent with the presumptive norm, we will approve the rules as RACT. States may choose to develop their own RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source. If we agree with the State's technical and economic analysis for a particular source, we can approve source specific RACT requirements that differ from the presumptive norm in the CTG.

Section 183 of the Clean Air Act Amendments called for EPA to issue 11 CTGs. One of these CTGs was the Wood Furniture CTG. In addition, section 183(b)(4) specifically directed EPA to issue a CTG for the control of emissions from ship building and repair operations.

What Do the State's Rules Require?

Texas generally followed the presumptive norm in the CTGs. The requirements for ship building and repair and wood furniture coating can be found in the TNRCC's rules for Surface Coating Processes located at 30 TAC 115.420–115.429. These rules establish limits for the amount of VOCs that marine coatings and wood furniture coatings can contain when applied which are identical to those contained in the CTGs.

The rules for wood furniture coating also establish new work practices as recommended by the CTG. For wood furniture coating operations, the rules generally prohibit the use of conventional air spray guns. Instead facilities must use, where possible, paint application equipment that will result in a lower percentage of paint over spray. Less over spray will result in lower emissions of VOCs.

We reviewed the State's requirements against the recommendations in the CTGs and agree that RACT is being implemented for wood furniture operations and ship building. For further information regarding our review, please see the Technical Support Document located in the docket for this action.

Do These State Rules, Which EPA Is Now Approving, Apply to Me?

These rules are intended to reduce VOC emissions in areas that do not meet NAAQS for ozone. Consequently, these rules apply to facilities located in the Dallas/Fort Worth (moderate), El Paso (serious), Beaumont/Port Arthur (moderate) and Houston/Galveston (severe) ozone nonattainment areas.

Specifically, these rules apply to you if you are an owner or operator of a wood furniture coating operation that emits, when uncontrolled, more than 25 tons/year of VOCs, and you are located in Dallas, Denton, Tarrant, Collin, Hardin, Jefferson, Orange, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller or El Paso Counties. If you emit less than 25 tons/year VOCs when uncontrolled, you will need to continue to comply with Texas' existing rules for wood furniture coating contained at 115.421(a)(13).

These rules apply to you if you are the owner or operator of a ship building operation or ship repair operation that emits more than 100 tons/year of VOC, when uncontrolled, in Hardin, Jefferson or Orange counties. Also, these rules apply to you if you are the owner or operator of a ship building operation or ship repair operation that emits, when uncontrolled, more than 25 tons/year in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, or Waller Counties.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the State regulation before and after it is incorporated into the federally approved SIP is primarily a state function. However, once the regulation is federally approved, the EPA and the public may take enforcement action against violators of these regulations if the state fails to do so.

What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the federally enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State may submit the adopted provisions to us and request that these provisions be included in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If adverse comments are received, we must address them prior to a final action.

All State regulations and supporting information approved by the EPA under section 110 of the Act are incorporated into the federally approved SIP. Records of these SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations which were approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

What Is the Process for EPA's Approval of This SIP Revision?

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 14, 1999 without further notice unless we receive adverse comment by April 14, 1999. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP will be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Regulatory Flexibility

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 14, 1999.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under E.O. 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, E.O. 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, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 E.O. 12875 do not apply to this rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 the EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 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. This action does not involve or impose any new requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

G. 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.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 1, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation of part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(117) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(117) Revisions to the Texas State Implementation Plan submitted to the EPA in a letter dated April 13, 1998. These revisions address Reasonably Available Control Technology for Wood Furniture coating operations and Ship Building and Repair. The revisions also address coating of oil and gas platforms at ship building and repair facilities.

(i) Incorporation by Reference.

(A) Revisions to Regulation V, as adopted by the Commission on March 18, 1998, effective April 7, 1998, sections 115.10. Definitions—Introductory Paragraph, 115.420 Surface Coating Definitions, 115.420(a) General Surface Coating Definitions, 114.420(a)(1)–115.420(a)(10), 115.420(b) Specific surface coating definitions—Introductory Paragraph, 115.420(b)(1), 115.420(b)(2), 115.420(b)(2)(A), 115.420(b)(2)(B), 115.420(b)(3)–115.420(b)(9), 115.420(b)(10), 115.420(b)(10)(A)–115.420(b)(10)(E), 115.420(b)(10)(F), 115.420(b)(10)(F)(i)–115.420(b)(10)(F)(vii), 115.420(b)(10)(G), 115.420(b)(11), 115.420(b)(12), 115.420(b)(12)(A)–115.420(b)(12)(FF), 115.420(b)(13), 115.420(b)(13)(A), 115.420(b)(13)(A)(i), 115.420(b)(13)(A)(ii), 115.420(b)(13)(B), 115.420(b)(13)(B)(i)–115.420(b)(13)(B)(ix), 115.420(b)(14), 115.420(b)(15), 115.420(15)(A), 115.420(15)(A)(i)–115.420(15)(A)(xi), 115.420(15)(B), 115.420(15)(B)(i)–115.420(15)(B)(xix), 115.421(a), 115.421(a)(8), 115.421(a)(8)(B), 115.421(a)(8)(B)(i)–115.421(a)(8)(B)(ix), 115.421(a)(13), 115.421(a)(13)(A), 115.421(a)(13)(A)(i)–115.421(a)(13)(A)(vii), 115.421(a)(13)(A)(viii), 115.421(a)(13)(A)(ix), 115.421(a)(14), 115.421(a)(14)(A), 115.421(a)(14)(A)(i), 115.421(a)(14)(A)(ii), 115.421(a)(14)(A)(iii), 115.421(a)(14)(A)(iii)(I)–115.421(a)(14)(A)(iii)(III), 115.421(a)(14)(A)(iv)–115.421(a)(14)(A)(vi), 115.421(a)(14)(B), 115.421(a)(15), 115.421(a)(15)(A),115.421(a)(15)(B), 115.421(a)(15)(B)(i), 115.421(a)(15)(B)(ii), 115.421(b), 115.422. Control Requirements—Introductory Paragraph, 115.422(2), 115.422(3), 115.422(3)(A), 115.422(3)(B), 115.422(3)(C), 115.422(3)(C)(i), 115.422(3)(C)(ii), 115.422(3)(C)(ii)(I), 115.422(3)(C)(ii)(II), 115.422(3)(C)(iii)–115.422(3)(C)(v), 115.422(3)(C)(vi), 115.422(3)(C)(vi)(I), 115.422(3)(vi)(II), 115.422(3)(D), 115.422(3)(E), 115.422(3)(E)(i), 115.422(3)(E)(ii), 115.422(4), 115.422(4)(A)–115.422(4)(C), 115.422(5), 115.422(5)(A), 115.422(5)(B), 115.423(a), 115.423(a)(1), 115.423(a)(2), 115.423(b), 115.423(b)(1), 115.423(b)(2), 115.426(a), 115.426(a)(1), 115.426(a)(1)(B), 115.426(a)(1)(B)(i), 115.426(a)(1)(B)(ii), 115.426(a)(2), 115.426(a)(2)(A), 115.426(a)(2)(A)(i), 115.426(b), 115.426(b)(1), 115.426(b)(1)(B), 115.426(b)(2), 115.426(b)(2)(A), 115.426(b)(2)(A)(i), 115.427(a), 115.427(a)(1), 115.427(a)(1)(B), 115.427(a)(1)(C), 115.427(a)(3), 115.427(a)(3)(A), 115.427(a)(3)(B), 115.427(a)(3)(D)–115.427(a)(3)(I), 115.427(b), 115.427(b)(4), 115.429(a), and 115.429(b).

(B) Certification Dated March 18, 1998 that these are true and correct copies of revisions to 30 TAC Chapter 115 and the SIP.

[FR Doc. 99–6254 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6236–9]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The California Air Resources Board (CARB) requested approval, under Section 112(l) of the Clean Air Act (the Act), to implement and enforce California's ''Hexavalent Chromium Airborne Toxic Control Measure for Chrome Plating and Chromic Acid Anodizing Operations'' (Chrome ATCM) in place of the ''National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks'' (Chrome NESHAP). EPA has reviewed this request and has found that it satisfies all of the

requirements necessary to qualify for approval. Thus, EPA is hereby granting California the authority to implement and enforce its Chrome ATCM in place of the Chrome NESHAP.

DATES: This action is effective on April 14, 1999.

ADDRESSES: Copies of CARB's request for approval are available for public inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, California 94105–3901. (docket #A–96–25)

California Air Resources Board, Emissions Assessment Branch, Stationary Source Division, 2020 ''L'' Street, P.O. Box 2815, Sacramento, California 95812–2815.

FOR FURTHER INFORMATION CONTACT: Ken Bigos, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1240.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 1995, EPA promulgated the National Emission Standard for Hazardous Air Pollutants (NESHAP) for chromium electroplating facilities (*see* 60 FR 4963), which was codified in 40 CFR Part 63, Subpart N, ''National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks'' (Chrome NESHAP). On July 17, 1998, EPA received the California Air Resources Board's (CARB's) request for approval to implement and enforce Section 93102 of Title 17 of the California Code of Regulations, ''Hexavalent Chromium Airborne Toxic Control Measure for Chrome Plating and Chromic Acid Anodizing Operations'' (Chrome ATCM), in place of the Chrome NESHAP as the Federally-enforceable standard in California.

On December 16, 1998, EPA proposed approval of CARB's request in the **Federal Register** (see 63 FR 69251) and announced the availability for the public to comment on CARB's application. EPA received no comments on the proposed approval.

II. EPA Action

A. California's Chrome ATCM

California's Chrome ATCM differs in many ways from the Federal Chrome NESHAP. Several differences were discussed in the December 16, 1998, proposed rulemaking and the public was afforded an opportunity to comment on the significance of these differences. By today's action, the Chrome ATCM will be fully approved as a substitute for the Chrome NESHAP. The following discussions, however, are being provided for the purpose of clarifying potentially ambiguous or unclear requirements.

1. Title V Requirements

The Chrome ATCM requires the owner or operator of a major source subject to the Chrome ATCM to obtain a Title V permit (*see* § 93102(a)(5)). While the Chrome NESHAP includes this requirement, it also provides that all nonmajor sources, except for those sources referred to in 40 CFR 63.340(e)(1), are subject to Title V permitting requirements. While the applicable Title V permitting authority may defer certain qualifying nonmajor sources from the Title V permitting requirements until December 9, 1999, currently all sources receiving such deferrals are required to submit Title V permit applications by December 9, 2000 (*see* 40 CFR 63.340(e)(2) and 61 FR 27785).

In addition, both the Chrome NESHAP and the Chrome ATCM require major sources to submit ongoing compliance status reports (*see* § 93102(i)(3) and 40 CFR 63.347(g)). However, the Chrome ATCM requires these reports to be submitted annually, while the Chrome NESHAP requires these reports to be submitted semi-annually (quarterly where the applicable emission limit is being exceeded). Because Section 504(a) of the Act requires major sources that have Title V permits to submit such reports no less often than every six months, EPA cannot approve this provision of the Chrome ATCM to operate in lieu of the comparable provision of the Chrome NESHAP. Major sources must comply with the Title V semi-annual reporting requirement as stated in 40 CFR 63.347(g).

2. Emission Limits for Hard Chromium Electroplating

Both the Chrome NESHAP and the Chrome ATCM allow facilities with a maximum cumulative potential rectifier capacity of greater than 60 million ampere-hours per year to be considered small (or medium in the case of the Chrome ATCM) by accepting a limit on the maximum cumulative potential rectifier usage (*see* § 93102(h)(7)(B) and 40 CFR 63.342(c)(2)). EPA wishes to clarify that it considers all such usage limits in non-Title V operating permits as Federally-enforceable for purpose of this substitution of the Chrome ATCM for the Chrome NESHAP.

3. Malfunctions

Both the Chrome NESHAP and the Chrome ATCM provide that the emission limits apply during tank operations, including periods of startup and shutdown, but do not apply during periods of malfunction, which the Chrome ATCM refers to as periods of ''breakdown'' (*see* § 93102(a)(4) and (b)(7), and 40 CFR 63.2 and 63.342(b)(1)). The Chrome ATCM both defines the term ''breakdown'' and states that the emission limits ''do not apply during periods of equipment breakdown, provided the provisions of the permitting agency's breakdown rule are met.* * *'' This means that an event does not constitute a breakdown unless both of the following conditions are met: (1) the event meets the characteristics of a breakdown as defined in the Chrome ATCM, and (2) the provisions of the applicable permitting agency's (i.e., district's) breakdown rule are met. This two-step analysis is important because it is the Chrome ATCM definition of ''breakdown'' that first determines what constitutes a breakdown, not the provisions of the applicable district's breakdown rule.

Under the Chrome ATCM, the districts' breakdown rules serve only one function: to establish the reporting requirements that must be followed when a breakdown occurs (*see* § 93102(i)(4)). These rules do not override or supplant the other breakdown or excess emission requirements of the Chrome ATCM, including the requirements to revise the operation and maintenance plan to minimize breakdowns (*see* § 93102(g)(4)), to maintain the specified records of all breakdowns and excess emissions (*see* § 93102(h)(5) and (6)), and to include as part of the ongoing compliance status report a summary of any excess emissions (*see* § 93102(h)(6), (i)(3)(B), and Appendix 3). And, the districts' breakdown rules neither expand the scope nor extend the time-frame of a breakdown beyond the definition in Section 93102(b)(7) of the Chrome ATCM. In other words, while the emission limits do not apply during a breakdown, what constitutes a breakdown is determined by the Chrome ATCM's, not a particular district's, definition of ''breakdown.''

As a supplement to its application, CARB submitted copies of the districts' breakdown rules, which are referenced in Appendix 6 of the Chrome ATCM. EPA is making several points of clarification regarding these breakdown rules. First, only those district breakdown rules that were submitted to

EPA as part of CARB's Chrome ATCM application are approved as a matter of Federal law. A source cannot rely on revisions to a district's breakdown rule until such revisions receive EPA's approval under Section 112(l) of the Act.

Second, the approval of the districts' breakdown rules, which are incorporated by reference into the Chrome ATCM, is strictly limited to the context of approval of the Chrome ATCM under Section 112(l) of the Act. While the use of these rules may be appropriate in lieu of the Chrome NESHAP reporting requirements, the use of these rules in other contexts may be inappropriate (e.g., with regard to other NESHAPs or State Implementation Plans). Thus, it is possible that a district's breakdown rule can be Federally-approved as part of the Chrome ATCM but not Federally-approved as part of the California State Implementation Plan.

Third, some of the districts' breakdown rules use the term ''malfunction'' rather than ''breakdown.'' For the purpose of the Chrome ATCM, EPA interprets these terms as interchangeable, provided that it is understood that the Chrome ATCM definition of ''breakdown'' is controlling, not the districts' definitions of ''breakdown'' or ''malfunction.''

Fourth, some of the districts' breakdown rules include provisions regarding the district's authority to determine whether a breakdown has occurred, authority to grant emergency variances, or authority to decide to take no enforcement action. Like the districts' definitions of ''breakdown'' or ''malfunction,'' the above-listed provisions go beyond the function of the districts' breakdown rules in the context of the Chrome ATCM (such function being limited to establishing the reporting requirements that must be followed when a breakdown occurs). Thus, EPA's approval of the Chrome ATCM under Section 112(l) of the Act does not include such provisions of the districts' breakdown rules since these provisions go beyond the scope of the Chrome ATCM.

Fifth, some of the districts' breakdown rules require written breakdown reports only if requested by the district. However, for the purpose of approval of the Chrome ATCM, EPA will interpret such rules as requiring the submission of written breakdown reports to the district even if the district has not formally requested the source to provide such reports.

Sixth, some of the districts' breakdown rules do not specify the reporting time period, but merely state that notification shall be ''immediate'' or the written breakdown report shall be filed ''subsequently.'' With respect to such rules, EPA will interpret such terms by reference to the comparable Chrome NESHAP reporting deadlines in 40 CFR 63.342(f)(3)(iv).

4. Performance Test Requirements

The Chrome ATCM allows the use of CARB Method 425, dated July 28, 1997, and South Coast Air Quality Management District (SCAQMD) Method 205.1, dated August 1991, for determining chromium emissions. By approving the Chrome ATCM, these methods are approved only as prescribed by the Chrome ATCM and only to determine compliance with the Chrome ATCM. EPA approval of the Chrome ATCM does not result in approval of these methods as general alternatives to EPA Method 306.

In addition, the owner or operator of an affected source cannot rely on provisions in CARB Method 425 or SCAQMD Method 205.1 allowing for approval of alternatives, modifications, or variations from the test method. Any such alternatives, modifications, or variations to the test methods must be approved under the procedures in § 93102(k) of the Chrome ATCM.

5. HEPA Filters, Chrome Tank Covers, and Polyballs

Unlike the Chrome NESHAP, the Chrome ATCM specifically includes requirements for the following alternative emission control technologies: high efficiency particulate air (HEPA) filters, chrome tank covers, and polyballs. In approving the Chrome ATCM under Section 112(l) of the Act, EPA is approving these alternative technologies for use in California according to the requirements of the Chrome ATCM. However, affected sources using these alternative technologies would still be required to demonstrate, through compliance testing and ongoing compliance monitoring, that the emission standards in § 93102(c) are being achieved.

6. Compliance With the Chrome NESHAP

Under Federal law, until EPA approves the Chrome ATCM (i.e., the approval becomes effective), all sources subject to the Chrome NESHAP and located in California must be in compliance with the applicable requirements of the Chrome NESHAP. Even after such approval becomes effective, sources remain subject to Federal enforcement for violation of any Chrome NESHAP provision that the source was required to be in compliance with prior to the effective date of the Chrome ATCM approval. Such Chrome NESHAP provisions include, but are not limited to, the requirements to prepare operation and maintenance plans under 40 CFR 63.342(f)(3), to comply with initial notification deadlines under 40 CFR 63.347(c) and (i)(1), and to comply with the new and reconstructed source provisions under 40 CFR 63.5 and 63.345.

7. Changes in Source Status

Unlike the Chrome NESHAP, the Chrome ATCM is not as explicit regarding compliance deadlines relating to certain changes to a source's status, such as (1) a change from an area source to a major source; (2) a change from either a very small, small, medium, or less than 60 million ampere-hours hard chrome plater to a different size category; and (3) a change from a decorative chrome plater using a trivalent chrome bath that incorporates a wetting agent to one that ceases to use this process. Since the Chrome ATCM does not explicitly state the compliance deadlines for the changes, EPA interprets the Chrome ATCM to require immediate compliance with the standard that applies to the source's new status.

8. Circumvention

Under the Chrome NESHAP, no owner or operator shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard (see 40 CFR 63.4(b)). CARB believes that this provision is not necessary, presumably because CARB interprets the Chrome ATCM as implicitly not allowing such activities.

9. Notification of New and Modified Sources

Section 93102(j)(2) of the Chrome ATCM allows facilities to fulfill the notification of construction or modification requirements in § 93102(j)(1) by complying with the applicable district's new source review rule or policy, provided similar information is obtained. Thus, the district's new source review rules or policy merely serve the purpose of obviating the need for duplicative reporting. Such rules or policies, however, do not change the underlying requirement that such notification must exist and must be generated at least within the time frame established by § 93102(j)(1). Furthermore, the burden of proof of compliance rests upon the source to prove that it provided notice of construction or reconstruction on

time and that such notice includes at least all of the information included in Appendix 4 of the Chrome ATCM.

B. EPA Action

After reviewing the request for approval of California's Chrome ATCM, EPA has determined that this request meets all the requirements necessary to qualify for approval under Section 112(l) of the Act and 40 CFR 63.91 and 63.93. Accordingly, EPA is hereby approving the Chrome ATCM as the Federally-enforceable standard for sources in California. Upon the effective date of this action, the Chrome ATCM will be enforceable by the EPA and citizens under the Act. Although the local air pollution control districts in California will have primary implementation and enforcement responsibility, EPA retains the right, pursuant to Section 112(l)(7) of the Act, to enforce any applicable emission standard or requirement under Section 112 of the Act.

C. California's Authorities To Implement and Enforce Section 112 Standards

1. Penalty Authorities

Previously, CARB submitted a finding by California's Attorney General stating that ''State law provides civil and criminal enforcement authority consistent with [40 CFR] 63.91(b)(1)(i), 63.91(b)(6)(i), and 70.11, including authority to recover penalties and fines in a maximum amount of not less than $10,000 per day *per violation* * * *'' (emphasis added) (*see* 61 FR 25397). In accordance with this finding, EPA understands that the California Attorney General interprets Section 39674 and the applicable sections of Division 26, Part 4, Chapter 4, Article 3 (''Penalties'') of the California Health and Safety Code as allowing the collection of penalties for multiple violations per day. In addition, EPA also understands that the California Attorney General interprets Section 42400(c)(2) of the California Health and Safety Code as allowing for, among other things, criminal penalties for knowingly rendering inaccurate any monitoring *method* required by a toxic air contaminant rule, regulation, or permit.

As stated in section II.B above, EPA retains the right, pursuant to Section 112(l)(7) of the Act, to enforce any applicable emission standard or requirement under Section 112 of the Act, including the authority to seek civil and criminal penalties up to the maximum amounts specified in Section 113 of the Act.

2. Variances

Division 26, Part 4, Chapter 4, Articles 2 and 2.5 of the California Health and Safety Code provide for the granting of variances under certain circumstances. EPA regards these provisions as wholly external to CARB's request for approval to implement and enforce a Section 112 program or rule and, consequently, is proposing to take no action on these provisions of state or local law. EPA does not recognize the ability of a state or local agency who has received delegation of a Section 112 program or rule to grant relief from the duty to comply with such Federally-enforceable program or rule, except where such relief is granted in accordance with procedures allowed under Section 112 of the Act. As stated above, EPA retains the right, pursuant to Section 112(l)(7) of the Act, and citizens retain the right, pursuant to Section 304 of the Act, to enforce any applicable emission standard or requirement under Section 112 of the Act.

Similarly, Section 39666(f) of the California Health and Safety Code allows local agencies to approve alternative methods from those required in the ATCMs, but only as long as such approvals are consistent with the Act. A source seeking permission to use an alternative means of emission limitation under Section 112 of the Act must also receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with Section 112 of the Act.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 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. If the mandate is unfunded, EPA must 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, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

C. 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.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide 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, E.O. 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This final rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.93 do not create any new requirements, but simply approve requirements that the state or local agency is already imposing. Therefore, because this approval does not impose any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: February 17, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(5)(ii)(E), to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(5) * * *

(ii) * * *

(E) The material incorporated in Chapter 5 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (California Code of Regulations, Title 17, section 93102) pertains to the chromium electroplating and anodizing source category in the State of California, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart N—National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(1) Title V requirements. Subpart N affected sources remain subject to both the Title V permitting requirements of § 63.340(e)(2) and, for major sources, the semi-annual submission of the ongoing compliance status reports as required by § 63.347(g).

(2) Limits on maximum cumulative potential rectifier usage. Section 93102(h)(7)(B) of the California Airborne Toxic Control Measure allows facilities with a maximum cumulative potential rectifier capacity of greater than 60 million ampere-hours per year to be considered small or medium by accepting a limit on the maximum cumulative potential rectifier usage. All such usage limits in non-Title V operating permits are federally-enforceable for the purpose of this rule substitution.

(3) Permitting Agencies' breakdown/malfunction rules. Section 93102(i)(4) of the California Airborne Toxic Control Measure provides that the owner or operator shall report breakdowns as required by the permitting agency's breakdown rule. Under this rule substitution, the permitting agencies' breakdown rules do not override or supplant the requirements of section 93102(g)(4), (h)(5), (h)(6), (i)(3)(B), or Appendix 3; neither expand the scope nor extend the time-frame of a breakdown beyond the definition of section 93102(b)(7); and do not grant the permitting agencies the authority to determine whether a breakdown has occurred, to grant emergency variances, or to decide to take no enforcement action. Owners or operators must submit written breakdown reports even if the permitting agency has not formally requested such reports.

(4) Performance Test Requirements. Section 93102(d)(3)(A) of the California Airborne Toxic Control Measure allows the use of California Air Resources Board Method 425, dated July 28, 1997, and South Coast Air Quality

Management District Method 205.1, dated August 1991, for determining chromium emissions. Any alternatives, modifications, or variations to these test methods must be approved under the procedures in section 93102(k) of the California Airborne Toxic Control Measure.

* * * * *

[FR Doc. 99–6258 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–134; RM–8817]

TV Broadcasting Services; Kansas City, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes UHF television Channel 29 for UHF Channel 32 at Kansas City, Missouri, and modifies the construction permit for Station KCWB–TV to specify operation on Channel 29 at Kansas City, Missouri. *See* 61 FR 34406, July 2, 1996. The reference coordinates for Channel 29 at Kansas City, Missouri, are 39–05–01 and 94–30–57. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM docket No. 96–134, adopted February 24, 1999, and released February 26, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc.,(202) 857–3805, 1231 M Street, NW, Washington, DC 30036.

List of Subjects in 47 CFR Part 73

TV 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.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Missouri, is amended by removing Channel 32 and adding Channel 29 at Kansas City.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6230 Filed 3–12–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 030899C]

Fisheries of the Exclusive Economic Zone Off Alaska; Closures of Specified Groundfish Fisheries in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing specified groundfish fisheries in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the directed fishing allowances specified for the 1999 total allowable catch (TAC) amounts for the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 8, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(d)(1)(i), if the Administrator, Alaska Region, NMFS (Regional Administrator), determines that the amount of a target species or ''other species'' category apportioned to a fishery or, with respect to pollock and Pacific cod, to an inshore or offshore component allocation, will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA Regulatory Area or district (§ 697.20(d)(1)(iii)).

NMFS will publish final 1999 harvest specifications for these groundfish fisheries in the **Federal Register**. The Regional Administrator has determined that the following TAC amounts are necessary as incidental catch to support other anticipated groundfish fisheries for the 1999 fishing year:

Thornyhead rockfish: entire GOA 1,990 mt

Atka mackerel: entire GOA 600 mt

Sablefish: trawl apportionment, entire GOA 1,747 mt

''Other rockfish'': Western Regulatory area 20 mt

Central Regulatory area 650 mt

Shortraker/rougheye rockfish: entire GOA 1,590 mt

Pollock: inshore component, Statistical Area 610 6,936 mt

inshore component, Statistical Area 620 11,652 mt

inshore component, Statistical Area 630 9,156 mt

Pollock: offshore component, entire GOA 0 mt

Pacific cod: offshore component

Western Regulatory Area 1,890 mt

Eastern Regulatory Area 102 mt

Deep-water flatfish: Western Regulatory Area 240 mt

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed allowances for the above species or species groups as 0 mt.

Therefore, in accordance with § 679.20(d)(1)(iii) NMFS is prohibiting directed fishing for these species in the specified areas. These closures will be in effect from the date of filing of the final 1999 harvest specifications with the Office of the Federal Register until 12 midnight, Alaska local time, December 31, 1999.

Under authority of the interim 1999 specifications (64 FR 46, January 4, 1999), pollock fishing opened on January 1, 1999, for amounts specified in that notice. NMFS has since closed Statistical Area 610 to directed fishing for pollock effective 1200 hrs, A.l.t., January 26, 1998 (64 FR 5198, February 3, 1999); Statistical Area 620 to directed fishing for pollock effective 1200 hrs, A.l.t., February 17, 1998 (64 FR 8529, February 22, 1999); Statistical Area 630 to directed fishing for pollock effective

1200 hrs, A.l.t., February 2, 1998 (64 FR 4790, February 1, 1999); the Central Regulatory Area to directed fishing for Pacific cod, effective 1200 hrs A.l.t., February 25, 1999 (64 FR 9937); and the Eastern Regulatory Area to directed fishing for pollock, effective 1200 hrs, March 6, 1999; and the Western Regulatory Area to directed fishing for Pacific cod for processing by the inshore component, effective 1200 hrs A.l.t., March 8, 1999. The closures for Statistical Areas 610 and 630 will remain in effect until 1200 hrs, A.l.t., June 1, 1999.

These closures supersede the closures announced in the interim 1999 harvest specifications (64 FR 46, January 4, 1999). While these closures are in effect, the maximum retainable bycatch amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. Refer to § 679.2 for definitions of areas. The definitions of GOA deep-water flatfish and ''Other rockfish'' species categories are provided in the **Federal Register** publication of the Final 1999 Harvest Specifications.

NMFS may implement other closures during the 1999 fishing year, as necessary for effective conservation and management.

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

This action responds to the TAC limitations and other restrictions on the fisheries established in the final 1999 harvest specifications for groundfish for the GOA. It must be implemented immediately to prevent overharvesting the 1999 TACs for several groundfish species in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet is currently harvesting groundfish, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

Dated: March 9, 1999.

Gary C. Matlock,

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

[FR Doc. 99–6162 Filed 3–10–99; 9:02 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 030999B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the final specification for Pacific cod by vessels catching Pacific cod for processing by the inshore component in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 8, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Nick Hindman, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications, which were filed on March 8, 1999, and will be published in the **Federal Register** on March 11, 1999, established the final specification of Pacific cod total allowable catch (TAC) for processing by the inshore component of the Western Regulatory Area as 17,014 metric tons (mt) in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the 1999 final specification of Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 16,714 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the final TAC limitations and other restrictions on the fisheries established in the final 1999 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the 1999 final TAC for Pacific cod allocated for processing by the inshore component in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: March 9, 1999 .

Bruce C. Morehead,

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

[FR Doc. 99–6163 Filed 3–10–99; 9:02 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 49
Monday, March 15, 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.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1301

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Proposed rule; notice of hearing.

SUMMARY: The Northeast Dairy Compact Commission proposes to extend the exemption from the over-order obligation for fluid milk sold in eight-ounce containers distributed by handlers under open and competitive bid contracts and sold by School Food Authorities in New England through the operation of the Over-order Price Regulation. The present regulation authorizing the school milk exemption will expire at the conclusion of the 1998–1999 school year.

DATES: A public hearing will be held on April 7, 1999 at 9:00 a.m. Sworn and notarized written testimony, comments and exhibits may be submitted until 5:00 p.m. on April 21, 1999.

ADDRESSES: The public hearing will be held at Tuck Library, Chubb Auditorium, 30 Park Street, Concord, New Hampshire. Mail, or deliver, sworn and notarized testimony, comments and exhibits to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Dairy Compact Commission (''Commission'') was established under authority of the Northeast Interstate Dairy Compact (''Compact''). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation, including the adoption of the school milk exemption regulation and the establishment of a reserve account for reimbursement to School Food Authorities.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII. The school milk exemption is codified at 7 CFR § 1301.13(e).

The Commission proposes to extend the exemption of school milk sold by School Food Authorities in eight-ounce containers through the operation of the Over-order Price Regulation. As with the exemption for the 1998–1999 school year, the extension would be implemented through a memorandum of understanding between the Commission and the appropriate state agencies. Continuation of the memorandum of understanding process would allow the Commission and the state agencies to make any improvements in the implementation of the reimbursement program based on the experience of the current year.

Official Notice of Technical, Scientific or Other Matters

Pursuant to the Commission regulations, 7 CFR 1361.5(g)(5), the Commission hereby gives public notice that it may take official notice, at the public hearing March 3, 1999, or afterward, of relevant facts, statistics, data, conclusions, and other information provided by or through the United States Department of Agriculture, including, but not limited to, matters reported by the National Agricultural Statistics Service, the Market Administrators, the Economic Research Service, the Agricultural Marketing Service and information, data and statistics developed and maintained by the Departments of Agriculture of the States or Commonwealth within the Compact regulated area.

Public Participation in Rulemaking Proceedings

The Commission seeks and encourages oral and written testimony and comments from all interested persons regarding these proposed rules. The Commission continues to benefit from the valuable insights and active participation of all segments of the affected community including consumers, processors and producers in the development and administration of the Over-order Price Regulation. The Commission especially encourages comments from School Food Authorities and the handlers who supply school milk.

Date, Time and Location of the Public Hearing

The Northeast Dairy Compact Commission will hold a public hearing at 9:00 a.m. on April 7, 1999 at the Tuck Library, Chubb Auditorium, 30 Park Street, Concord, New Hampshire.

Request for Pre-filed Testimony and Written Comments

Pursuant to the Commission rules, 7 CFR 1361.4, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments or exhibits to the Commission. Comments and exhibits may be submitted at any time before 5:00 p.m. on April 21, 1999.

Please note: Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn and notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 p.m. deadline, but the original must then be sent by ordinary mail.

[1] 62 FR 29626 (May 30, 1997).
[2] 62 FR 62810 (Nov. 25, 1997).
[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).

The Commission is requesting pre-filed testimony from any interested person. Pre-filed testimony must include the name, address and occupation of the witness and a sworn notarized statement indicating that the testimony is presented based upon the author's personal knowledge and belief. Pre-filed testimony must be received in the Commission office no later than 5:00 p.m. March 29, 1999 to insure distribution to Commission members prior to the public hearing.

Pre-filed testimony, comments and exhibits should be sent to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602 or by facsimile to (802) 229–2028.

List of Subjects in 7 CFR Part 1301

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission proposes to amend 7 CFR Part 1301 as follows:

PART 1301—DEFINITIONS

1. The authority citation for Part 1301 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1301.13 is amended by revising paragraph (e) to read as follows:

§ 1301.13 Exempt milk.

* * * * *

(e) All fluid milk distributed by handlers in eight-ounce containers under open and competitive bid contracts for the school milk contract year with School Food Authorities in New England, as defined by 7 CFR 210.2, to the extent that the school authorities can demonstrate and document that the costs of such milk have been increased by operation of the Compact over-order obligation. In no event shall such increase exceed the amount of the Compact over-order obligation. Documentation of increased costs shall be in accordance with a memorandum of understanding entered into between the Compact Commission and the appropriate state agencies for the school milk contract year. The memorandum of understanding shall include provisions for certification by supplying vendor/processors that their bid and contract cost structures do in fact incorporate the over-order obligation, in whole or in part, and provisions for defining the components of cost structure to be provided in support of such certification. The memorandum shall also establish the procedure for providing reimbursement to the school food authorities, including the scheduling of payments and the amount to be escrowed by the Commission to account for such payments.

Dated: March 9, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–6213 Filed 3–12–99; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–15]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT8D–200 series turbofan engines, that currently requires installation of high pressure turbine (HPT) containment hardware. This action proposes the removal of low pressure turbine (LPT)-to-exhaust case bolts and nuts and replacement with improved LPT-to-exhaust case bolts and nuts, and installation of improved HPT containment hardware. This proposal is prompted by uncontained HPT events resulting from HPT shaft fractures and LPT flange separations resulting from LPT blade failures. The actions specified by the proposed AD are intended to prevent damage to the aircraft resulting from uncontained engine debris following an HPT shaft fracture or an LPT blade failure.

DATE: Comments must be received by May 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 92–ANE–15, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152, fax (781) 238–7199.

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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 92–ANE–15.'' 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, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 92–ANE–15, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On November 19, 1993, the Federal Aviation Administration (FAA) issued airworthiness directive AD 93–23–10, Amendment 39–8746 (57 FR 57705, December 17, 1993), applicable to certain Pratt & Whitney JT8D–200 series turbofan engines, to require installation of high pressure turbine (HPT) containment hardware. That action was prompted by reports of HPT shaft fractures, which caused uncontained HPT failures. That condition, if not corrected, could result in damage to the aircraft resulting from uncontained engine debris following an HPT shaft fracture.

Since the issuance of that AD, the FAA has received reports of two uncontained HPT events in PW JT8D–219 engines. Liberated blade debris deflected off, and escaped forward of, the leading edge of the containment hardware. These events were caused by HPT shaft fractures, which resulted from oil fires in the No. 4/5 bearing compartment. Any PW JT8D–209, –217, –217A, –217C and –219 engine produced prior to issuance of Alert Service Bulletin (ASB) No. 6053 could have the previous version of the containment shield installed in accordance with AD 93–23–10; those engines produced after ASB 6053 was issued have containment shields as shipped from Pratt & Whitney.

The FAA has also received reports of uncontained low pressure turbine (LPT) failures caused by worn 3rd and 4th stage turbine shrouds which resulted in fatigue cracking and subsequent LPT blade failures. The impact of failed blades caused separation of the LPT and turbine exhaust case flange allowing uncontained failures to occur. The FAA has determined that only –217C and –219 models are in danger of uncontained failures from HPT shaft fractures but all –209, –217, –217A, –217C and –219 model engines are in danger of uncontained failures due to LPT blade failures.

The FAA has reviewed and approved the technical contents of PW JT8D Alert Service Bulletin (ASB) No. A6346, dated September 10, 1998, that describes procedures for installing improved HPT containment hardware, and PW Service Bulletin (SB) No. 6149, dated January 19, 1994, that describes procedures for installation of improved LPT to turbine exhaust case bolts and nuts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93–23–10 to require, for PW Model JT8D–217C and –219 engines, installation of improved HPT containment hardware. This proposed AD would also require, for PW Model JT8D–209, –217, –217A, –217C and –219 engines, installation of improved LPT to turbine exhaust case bolts and nuts.

There are approximately 2,727 engines of the affected design in the worldwide fleet. The FAA estimates that 1,473 engines installed on aircraft of U.S. registry would be affected by this proposed AD, and that it would take no additional work hours per engine to accomplish the proposed actions since they should take place when an engine is already sufficiently disassembled for normal maintenance on those parts. Required parts would cost approximately $19,911 per engine (hardware supplied by Pratt & Whitney free of charge for engines with current HPT containment hardware) for the 560 engines requiring improved (over AD 93–23–10) containment hardware, and $3,275 for 1,473 engines requiring improved bolts and nuts. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,974,235. However, since Pratt and Whitney may provide HPT containment hardware free of charge, the actual cost to operators may be substantially reduced.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8746 (57 FR 57705, December 17, 1993) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 92–ANE–15. Supersedes AD 93–23–10, Amendment 39–8746.

Applicability: Pratt & Whitney (PW) Model JT8D–209, –217, –217A, –217C, and –219 turbofan engines, installed on but not limited to McDonnell Douglas MD–80 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aircraft resulting from uncontained engine debris following a high pressure turbine (HPT) shaft fracture or a low pressure turbine (LPT) blade failure, accomplish the following:

(a) For PW Model JT8D–217C and –219 engines, install improved HPT containment hardware at the next shop visit after the effective date of this AD but no later than December 31, 2004, in accordance with PW JT8D Alert Service Bulletin (ASB) No. A6346, dated September 10, 1998.

(b) For PW Model JT8D–209, –217, –217A, –217C and –219 engines, install improved LPT to turbine exhaust case bolts and nuts at the next shop visit after the effective date of this AD but no later than December 31, 2004, in accordance with paragraph 2.A.(1) and 2.B.(1) of PW Service Bulletin (SB) No. 6149, dated January 19, 1994.

(c) For the purpose of this AD, an engine shop visit is defined as engine maintenance that entails the separation of the J and K flanges.

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

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

Issued in Burlington, Massachusetts, on March 8, 1999.

David A. Downey,

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

[FR Doc. 99–6214 Filed 3–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–328–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require modification of the electrical wiring of the flight warning computer (FWC), and installation of upgraded computer software into the FWC. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent certain nuisance alerts generated by the FWC and to ensure annunciation of certain flight alerts by the FWC during initial climb. Such nuisance alerts or failures to annunciate certain alerts could result in an improper response by the flight crew and consequent reduced controllability of the airplane.

DATES: Comments must be received by April 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–328–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–328–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–328–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 0070 and 0100 series airplanes. The RLD advises that in-service experience has indicated that certain nuisance flight alerts may be generated by the flight warning computer (FWC) during critical flight phases. Investigation revealed that the nuisance flight alerts are a result of certain conditions established in an earlier version of the computer software of the FWC, which allows a flight-phase transitional delay (in some cases up to 8 seconds) between the moment all relevant input conditions are met and the moment the actual flight-phase switching occurs. Such nuisance flight alerts could prompt the flight crew to unnecessarily abort takeoffs at high speeds.

The RLD also advises that annunciation of the REVERSER ENG 1(2) alerts is suppressed during initial climb between 400 and 1,000 feet off the ground. During this flight phase, there is no warning to the flight crew enabling them to distinguish between a perceived autothrottle malfunction and an actual thrust reverser deployment.

These conditions (nuisance alerts and failures to annunciate flight alerts), if not corrected, could result in an improper response by the flight crew and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Fokker Service Bulletin SBF100–31–047, Revision 1, dated March 21, 1997, which describes, among other things, procedures for modification of the electrical wiring of the FWC. The modification involves removing the FWC and installing additional electrical wiring to accommodate the revised configuration of the FWC.

Fokker also has issued Service Bulletin SBF100–31–051, dated August 15, 1998, which describes procedures for installation of an upgraded computer software version (V11.45) into the FWC. (Fokker Service Bulletin SBF100–31–051 refers to AlliedSignal Grimes Aerospace Service Bulletin 80–0610–31–0031, dated May 14, 1998, as an additional source of service information for installation of the upgraded computer software version into the FWC.)

Accomplishment of the actions specified in the Fokker service bulletins described above is intended to

adequately address the identified unsafe condition. The RLD classified these service bulletins as mandatory and issued Dutch airworthiness directive BLA 1998–110, dated August 31, 1998, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed AD and Relevant Service Information

Operators should note that Fokker Service Bulletin SBF100–31–047, Revision 1, recommends, in addition to the procedures described previously, the installation of computer software version V10.40 into the FWC. However, the only procedure of that service bulletin proposed by this AD is modification of the electrical wiring of the FWC. In developing the appropriate requirements for this proposed AD, the FAA has determined that it is not necessary to install computer software version V10.40, since the later version V11.45 is available and is required to be installed by this proposed AD.

Cost Impact

The FAA estimates that 129 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 6 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $93 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $58,437, or $453 per airplane.

It also would take approximately 1 work hour per airplane to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,500 per airplane. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $201,240, or $1,560 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket 98–NM–328–AD.

Applicability: All Model F.28 Mark 0070 and 0100 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 certain nuisance alerts generated by the flight warning computer (FWC) and to ensure annunciation of certain flight alerts by the FWC during initial climb, which could result in an improper response by the flight crew and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the electrical wiring of the FWC in accordance with Part 1 or 2, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin SBF100–31–047, Revision 1, dated March 21, 1997.

Note 2: It is not necessary to install computer software version V10.40 into the FWC, since a later version is available and is required to be installed by this AD.

(b) Concurrent with the accomplishment of the requirements of paragraph (a) of this AD, install upgraded computer software version V11.45 into the FWC in accordance with Fokker Service Bulletin SBF100–31–051, dated August 15, 1998.

Note 3: AlliedSignal Grimes Aerospace has issued Service Bulletin 80–0610–31–0031, dated May 14, 1998, as an additional source of service information for installation of the upgraded computer software version into the FWC.

(c) As of the effective date of this AD, no person shall install on any airplane a flight warning computer, unless it has been modified in accordance with 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, 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 4: 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.

Note 5: The subject of this AD is addressed in Dutch airworthiness directive BLA 1998–110, dated August 31, 1998.

Issued in Renton, Washington, on March 9, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–6210 Filed 3–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 864, 866, 868, 870, 872, 874, 876, 878, 884, 886, and 888

[Docket No. 99N–0035]

Medical Devices; Reclassification of 38 Preamendments Class III Devices into Class II

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify 38 preamendments class III devices into class II (special controls). FDA is also identifying the proposed special controls that the agency believes will reasonably ensure the safety and effectiveness of the devices. This reclassification is being proposed on the agency's own initiative based on new information. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Safe Medical Devices Act of 1990 (the SMDA) and the FDA Modernization Act of 1997 (FDAMA). The agency is also proposing that the identification of six of the devices subject to this proposal be modified to more accurately reflect the characteristics of devices actually being marketed.

DATES: Written comments by June 14, 1999. See section X of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Documents Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The act, as amended by the 1976 Medical Device Amendments (the amendments) (Pub. L. 94–295), the SMDA (Pub. L. 101–629), and FDAMA (Pub. L. 105–115), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendment devices, are classified automatically by statute (section 513(f) of the act (21 U.S.C. 360c(f)) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act (21 U.S.C. 360c(i)), to a predicate device that does not require premarket approval, or reclassifies the device under 513(f). The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed, by means of premarket notification (510(k)) procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

The SMDA added section 515(i) (21 U.S.C. 360e(i)) to the act. This section requires FDA to issue an order to manufacturers of preamendment class III devices and substantially equivalent postamendments devices for which no final regulation requiring the submission of PMA's has been issued. This order requires such manufacturers to submit to the agency a summary of, and a citation to, any information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information that has not been submitted under section 519 of the act (21 U.S.C. 360i), which requires manufacturers, importers, distributors, and device user facilities to submit adverse event reports of certain device-related events and reports of certain corrective actions taken. Section 515(i) of the act (21 U.S.C. 360e) also directs FDA to either revise the classification of the device into class I or class II or require the device to remain in class III and establish a schedule for the issuance of a rule requiring the submission of PMA's for those devices remaining in class III.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA announced the availability of a document setting forth its strategy for implementing section 515(i) of the act. Under this plan, the agency divided preamendment class III devices into the following three groups: Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness, but are no longer used or are in very limited use; Group 2 devices are devices that FDA believes have a high potential for being reclassified; and Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. FDA also announced its intention to call for submission of PMA's for the 15 highest priority devices in Group 3, and for all Group 1 devices. The agency also announced its intention to issue an order under section 515(i) of the act for the remaining Group 3 devices and for all Group 2 devices.

In the **Federal Register** of August 14, 1995 (60 FR 41984 and 41986), FDA published two orders for certain class III devices, requiring the submission of safety and effectiveness information in accordance with the preamendments class III strategy for implementing

section 515(i) of the act. FDA published two updated orders in the **Federal Register** of June 13, 1997 (62 FR 32352 and 32355). The orders described in detail the format for submitting the type of information required by section 515(i) of the act so that the information submitted would clearly support reclassification or indicate that a device should be retained in class III. The orders also scheduled the required submissions in groups, at 6-month intervals, beginning on August 14, 1996.

Reclassification of classified preamendments devices is governed by section 513(e) of the act (21 U.S.C. 360c(e)). This section provides that FDA may, by rulemaking, reclassify a device based upon ''new information.'' The reclassification can be initiated by FDA or by the petition of an interested person. The term ''new information,'' as used in section 513(e) of the act (21 U.S.C. 360c(e)), includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of changes in ''medical science.,'' (see *Upjohn* v. *Finch*, supra, 422 F.2d at 951), or in light of newly available regulatory controls (cf. *Ethicon, Inc.* v. *FDA*, 762 F. Supp. 382, 388–389 (D.D.C. 1991)), such as special controls or design controls. However, regardless of whether data before the agency are past or new data, the ''new information'' on which any reclassification is based is required to consist of ''valid scientific evidence,'' as defined in section 513(a)(3) of the act (21 U.S.C. 360c(a)(3)) and § 860.7(c)(2) (21 CFR 860.7(c)(2)). FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices.

II. Regulatory History of the Devices

The 38 devices subject to this proposal were classified by final rules published in the **Federal Register** in parts 864, 866, 868, 870, 872, 874, 876, 878, 884, 886, and 888 (21 CFR parts 864, 866, 868, 870, 872, 874, 876, 878, 884, 886, and 888). In the proposed rules upon which the final rules were based, FDA considered the recommendations of the device classification advisory panels regarding the classification of preamendments medical devices. Subsequently, FDA classified the devices subject to this proposal into class III, because there was insufficient information to determine that class I or class II controls could provide reasonable assurance of the safety and effectiveness of these devices. The **Federal Register** citations and publication dates for the proposed and final rules classifying the devices subject to this proposal are provided in Table 1. as follows:

TABLE 1.—PUBLICATION DATES FOR THE PROPOSAL AND FINAL RULES CLASSIFYING THE DEVICES SUBJECT TO THIS PROPOSAL

21 CFR Part and Device	Proposed Rule	Final Rule
Part 864, Hematology/Pathology	September 11, 1979, 44 FR 52950	September 12, 1980, 45 FR 60576
Part 866, Immunology/Microbiology	April 22, 1980, 45 FR 27204	November 9, 1982, 47 FR 50283
Part 868, Anesthesiology	November 2, 1979, 44 FR 63292	July 16, 1982, 47 FR 31130
Part 870, Cardiovascular	March 9, 1979, 44 FR 13284	February 5, 1980, 45 FR 7904
Part 872, Dental	December 30, 1980, 45 FR 85962	August 12, 1987, 52 FR 30082
Part 874, Ear, Nose, and Throat	January 22, 1982, 47 FR 3280	November 6, 1986, 51 FR 40389
Part 876, Gastroenterology/Urology	January 23, 1981, 46 FR 7562	November 23, 1983, 48 FR 53012
Part 878, General and Plastic Surgery	January 19, 1982, 47 FR 2810	June 24, 1988, 53 FR 23856
Part 884, Obstetrical and Gynecological	April 3, 1979, 44 FR 19894	February 26, 1980, 45 FR 12682
Part 886, Ophthalmic	January 26, 1982, 47 FR 3694	September 2, 1987, 52 FR 33346
Part 888, Orthopedic	July 2, 1982, 47 FR 29052	September 4, 1987, 52 FR 33686

In accordance with section 513(e) of the act and § 860.130 (21 CFR 860.130), based upon new information received or otherwise available to the agency with respect to the devices subject to this proposal, FDA, on its own initiative, is proposing to reclassify 38 preamendments class III devices to class II. Consistent with the act and the regulation, FDA did not refer the proposed reclassifications to the panels for their recommendations on the requested change in classifications.

III. Proposed Changes to Device Names and Identifications

Since initial classification of the 38 devices subject to this proposal, there have been many advances in the medical device industry. These advances have led to many changes, including the use of alternative materials, and/or modifications of the intended uses for some devices. Because the changes have been of sufficiently low impact on safety and effectiveness, FDA determined that the modified devices were substantially equivalent to the respective predicate devices. In some cases, however, the substantially equivalent device differs slightly from the device description found in the agency's regulations. In order to more accurately reflect the characteristics of the actual marketed devices subject to this proposal, the agency is proposing certain technical amendments be made to six device identifications, as listed in section III of this document. The agency stresses that these amendments are not intended to impose any additional restrictions on the marketed devices; rather, they are intended to accurately reflect the characteristics of marketed devices. The following changes in device identifications are being proposed.

A. Section 876.5860—High Permeability Hemodialysis System

A high permeability hemodialysis system is a device intended for use as an artificial kidney system for the treatment of patients with renal failure, fluid overload, or toxemic conditions by performing such therapies as hemodialysis, hemofiltration, and hemoconcentration. Using a hemodialyzer with a semipermeable membrane that is more permeable to water than the semipermeable membrane of the conventional hemodialysis system described in § 876.5820, the high permeability hemodialysis system removes toxins or excess fluid from the patient's blood

using the principles of convection (via a high ultrafiltration rate) and/or diffusion (via a concentration gradient in dialysate). During treatment, blood from the patient is circulated through the hemodialyzer's blood compartment, while the dialysate solution flows countercurrent through the dialysate compartment. In this process, toxins and/or fluid are transferred across the membrane from the blood to the dialysate compartment. The hemodialysis delivery machine controls and monitors the parameters related to this processing, including the rate at which blood and dialysate are pumped through the system, and the rate at which fluid is removed from the patient. The high permeability hemodialysis system consists of the following devices:

(1) The hemodialyzer consists of a semipermeable membrane with an in vitro ultrafiltration coefficient (Kuf) greater than 12 milliliters per hour per millimeters of mercury (mL/h/mmHg), and is used with either an automated ultrafiltration controller or another method of ultrafiltration control to prevent fluid imbalance.

(2) The hemodialysis delivery machine is similar to the extracorporeal blood system and dialysate delivery system of the hemodialysis system and accessories (§ 876.5820), with the addition of an ultrafiltration controller and mechanisms that monitor and/or control such parameters as fluid balance, dialysate composition, and patient treatment parameters (e.g., blood pressure, hematocrit, urea, etc.).

(3) The high permeability hemodialysis system accessories include, but are not limited to, tubing lines and various treatment related monitors (e.g., dialysate pH, blood pressure, hematocrit, and blood recirculation monitors).

B. Section 878.3610—Esophageal Prosthesis

An esophageal prosthesis is a rigid, flexible, or expandable tubular device constructed of a plastic, metal, or polymeric material that is intended to be implanted to restore the structure and/or function of the esophagus. The metal esophageal prosthesis may be uncovered or covered with a polymeric material. This device may also include a device delivery system.

C. Section 878.3720—Tracheal Prosthesis

A tracheal prosthesis is a rigid, flexible, or expandable tubular device constructed of a silicone, metal, or polymeric material that is intended to be implanted to restore the structure and/or function of the trachea or tracheal-bronchial tree. It may be unbranched or contain one or two branches. The metal tracheal prosthesis may be uncovered or covered with a polymeric material. This device may also include a device delivery system.

D. Section 886.3400—Keratoprosthesis

A keratoprosthesis is a device intended to provide a transparent optical pathway through an opacified cornea, either intraoperatively or permanently, in an eye which is not a reasonable candidate for a corneal transplant.

This identification recognizes the temporary use of the device intraoperatively, and removes the description of the device as being made of only plastic material.

E. Section 886.3920—Aqueous Shunt (previously ''Eye valve implant'')

An aqueous shunt is a one-way, pressure sensitive device intended to be implanted to normalize intraocular pressure. The device is intended to treat neurovascular glaucoma or glaucomas where medical and conventional surgical treatment have failed

The agency is proposing that the name of this device be ''aqueous shunt'' rather than ''eye valve implant,'' because certain marketed devices, which have been determined to be substantially equivalent to the eye valve implant, do not contain a valve or a valve-like component.

The agency is also proposing to modify the identification of this device to more accurately reflect the device's actual use. Because the identified use of ''treatment of glaucoma'' is unnecessarily broad, the agency proposes that the identification state that the device may be used for the treatment of neovascular glaucoma or glaucomas where medical and conventional surgical treatment have failed.

F. Section 888.3150—Elbow Joint Metal/Polymer Constrained Cemented Prosthesis

An elbow joint metal/polymer constrained cemented prosthesis is a device intended to be implanted made of alloys such as cobalt-chromium-molybdenum and of an ultra-high molecular weight polyethylene bushing, and used to replace an elbow joint. The device presents dislocation in more than one anatomic plane and consists of two components which are linked together. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

The agency is proposing that the name and identification of the elbow joint metal/metal or metal/polymer constrained cemented prosthesis be modified to remove reference to the metal/metal prosthesis, because no metal/metal constrained cemented elbow prosthesis has ever been marketed.

IV. Proposed Reclassification

FDA is proposing that the devices subject to this proposal be reclassified from class III to class II. FDA believes that the identified special controls would provide reasonable assurance of safety and effectiveness. Therefore, in accordance with sections 513(e) and 515(i) of the act and § 860.130, based on new information with respect to the devices, FDA, on its own initiative, is proposing to reclassify these 38 preamendments class III devices into class II. The agency has identified special controls that would provide reasonable assurance of their safety and effectiveness. The agency does not intend to exempt these proposed class II devices from premarket notification (510(k)) submissions as provided for under section 510(m) of the act (21 U.S.C. 360(m)).

V. Proposed Special Controls.

Because several of the special controls identified in this proposal apply to 2 or more of the 38 devices addressed by this proposal, the agency has determined that it would be inefficient and redundant to individually identify, for each device, shared risks to health and corresponding special controls to address the risks to health. Instead, this document focuses on the special controls, explains the types of risks to health addressed by the special controls, and identifies the devices to which the special controls apply. For ease of review, Table 1 is included in section VI of this document following the discussion of special controls. The summary table identifies each device by name and Code of Federal Regulations (CFR) citation section number, the citation for the final rule which classified the preamendments device into Class III, and the proposed special controls applicable to the device. The special controls identified in this proposal are of four general types: FDA guidance documents, consensus standards, device specific labeling, and design and performance testing.

A. FDA Guidance Documents

Based on its premarket and postmarket experience and the published literature, the agency has developed the guidance documents in section V.A of this document that are designed to inform manufacturers of

how the agency evaluates the safety and effectiveness of devices and reaches determinations of substantial equivalence. The guidance documents are also intended for use by FDA reviewers to ensure consistency of premarket reviews. Some FDA guidance documents are generic guidances applicable to many different devices, while others are applicable to a few related devices, or a specific device. The generic guidance documents may be referenced, and thereby incorporated into, other guidances.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). When FDA issues a final rule based on this proposal, all of the guidance documents identified as special controls will have been issued in accordance with GGP's.

Persons interested in obtaining a copy of a guidance may do so using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. The CDRH home page may be accessed at http://www.fda.gov/cdrh. Guidance documents are also available from the Division of Small Manufacturers' Assistance (HFZ–220), Food and Drug Administration, Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850.

FDA guidances are periodically updated as new information becomes available. When an FDA guidance that has been identified as a special control is revised, a notice of availability of the revised guidance will be published in the **Federal Register**, as well as a proposal to amend the special control(s) for the relevant device(s) to include the revised guidance. The following is a list and description of guidance documents that FDA proposes to use as special controls:

1. Use of International Standard ISO 10993, ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing'' (biocompatibility guidance)

During the classification of the preamendments devices, the device classification panels (the panels) identified potential adverse tissue reactions as a risk to health common to devices that contact the body. These adverse tissue reactions were identified generally, or more specifically according to the type of tissue reaction (e.g., sensitization, pyrogen reaction, hemolysis, etc.). The agency believes that the information contained in this biocompatibility guidance is adequate to control the risks to health related to adverse tissue reaction.

Therefore, the agency is proposing that the biocompability guidance be a special control applied to the following 27 devices: Indwelling blood carbon dioxide partial pressure (P_{CO2}) analyzer (§ 868.1150), indwelling blood hydrogen ion concentration (pH) analyzer (§ 868.1170), indwelling blood oxygen partial pressure (P_{O2}) analyzer (§ 868.1200), cardiovascular intravascular filter (§ 870.3375), vascular graft prosthesis of less than 6-millimeters diameter (§ 870.3450), pacemaker lead adaptor (§ 870.3620), annuloplasty ring (§ 870.3800), cardiopulmonary bypass defoamer (§ 870.4230), cardiopulmonary bypass arterial line blood filter (§ 870.4260), cardiopulmonary bypass oxygenator (§ 870.4350), OTC (over-the-counter) denture cushion or pad (§ 872.3540), OTC denture reliner (§ 872.3560), OTC denture repair kit (§ 872.3570), partially fabricated denture kit (§ 872.3600), high permeability hemodialysis system (§ 876.5860), peritoneo-venous shunt (§ 876.5955), endometrial aspirator (§ 884.1060), endometrial brush (§ 884.1100), endometrial washer (§ 884.1185), endoscopic electrocautery and accessories (§ 884.4100), bipolar endoscopic coagulator-cutter and accessories (§ 884.4150), keratoprosthesis (§ 886.3400), aqueous shunt (§ 886.3920), elbow joint metal/polymer constrained cemented prosthesis (§ 888.3150), knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis (§ 888.3540), shoulder joint metal/polymer nonconstrained cemented prosthesis (§ 888.3650), and shoulder joint metal/polymer semi-constrained cemented prosthesis (§ 888.3660).

2. ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1 (Sterility Guidance)''

During the classification of the preamendments devices, the panels identified potential infection as a risk to health common to the use of many devices. The potential risk of infection would be minimized if the device were properly sterilized prior to use and appropriately labeled. Since classification of the devices subject to this proposal, the agency has developed the sterility guidance. It provides information about the use and application of national and international sterility consensus standards for devices to be labeled as ''sterile.'' The agency believes that the information contained in this guidance document is adequate to control for the potential risks to health related to infection.

Therefore, the agency is proposing that the sterility guidance be a special control for the following 23 devices: Indwelling blood carbon dioxide partial pressure (P_{CO2}) analyzer (§ 868.1150), indwelling blood hydrogen ion concentration (pH) analyzer (§ 868.1170), indwelling blood oxygen partial pressure (P_{O2}) analyzer (§ 868.1200), cardiovascular intravascular filter (§ 870.3375), vascular graft prosthesis of less than 6-millimeters diameter (§ 870.3450), pacemaker lead adaptor (§ 870.3620), annuloplasty ring (§ 870.3800), cardiopulmonary bypass defoamer (§ 870.4230), cardiopulmonary bypass arterial line blood filter (§ 870.4260), cardiopulmonary bypass oxygenator (§ 870.4350), electrohydraulic lithotriptor (§ 876.4480), peritoneo-venous shunt (§ 876.5955), endometrial aspirator (§ 884.1060), endometrial brush (§ 884.1100), endometrial washer (§ 884.1185), endoscopic electrocautery and accessories (§ 884.4100), bipolar endoscopic coagulator-cutter and accessories (§ 884.4150), keratoprosthesis (§ 886.3400), eye valve implant (§ 886.3920), elbow joint metal/polymer constrained cemented prosthesis (§ 888.3150), knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis (§ 888.3540), shoulder joint metal/polymer nonconstrained cemented prosthesis (§ 888.3650), and shoulder joint metal/polymer semi-constrained cemented prosthesis (§ 888.3660).

3. ''Guidance Document for the Submission of Erythropoietin Assay Premarket Notification (510(k))''

During the classification of the preamendments devices, the Hematology and Pathology Devices Classification Panel identified as risks to health, complications associated with misdiagnosis of a disease state. Since classification of this device, the agency has developed a guidance document describing its present conclusions regarding the materials, labeling, and testing controls for erythropoietin assay devices. Because the agency believes that the information contained in this guidance document is adequate to control for the identified risks to health, the agency is proposing that the ''Guidance Document for the Submission of Erythropoietin Assay Premarket Notification (510(k))'' be a special control for the erythropoietin assay (§ 864.7250).

4. ''Guidance Document for the Submission of Fibrin Monomer Paracoagulation Test Premarket Notification (510(k))''

During the classification of the preamendments devices, the Hematology and Pathology Devices Classification Panel identified as risks to health associated with the use of this device, complications associated with misdiagnosis of a disease state. Since classification of this device, the agency has developed a guidance document describing its present conclusions regarding the materials, labeling, and testing controls for fibrin monomer paracoagulation test devices. Because the agency believes that the information contained in this guidance document is adequate to control for the identified risks to health, the agency is proposing that the ''Guidance Document for the Submission of Fibrin Monomer Paracoagulation Test Premarket Notifications (510(k))'' be a special control for the fibrin monomer paracoagulation test (§ 864.7300).

5. ''Reviewer Guidance for Clinical Studies and Labeling for Indwelling Blood Gas Analyzers''

During the classification of the preamendments devices, the Anesthesiology and Respiratory Therapy Device Classification Panel identified as a risk to health common to indwelling blood gas analyzers, the potential for inaccurate measurement which would lead to inappropriate therapy. Since their classification, the agency has developed a guidance document describing its present conclusions regarding the appropriate clinical testing to ensure that indwelling blood gas analyzers function properly, and labeling which would ensure that the devices would be used properly, thus minimizing the risk of inaccurate measurement of blood gasses. Because the agency believes that the information contained in this guidance document, in combination with the guidances described below, is adequate to address the risks to health, the agency is proposing that the ''Reviewer Guidance for Clinical Studies and Labeling for Indwelling Blood Gas Analyzers'' be a special control for the following three devices: Indwelling blood carbon dioxide partial pressure (P_{CO2}) analyzer (§ 868.1150), indwelling blood hydrogen ion concentration (pH) analyzer (§ 868.1170), and indwelling blood oxygen partial pressure (P_{O2}) analyzer (§ 868.1200).

To further minimize the risk of inaccurate measurement by indwelling blood gas analyzers, the agency is proposing that the ''Reviewer Guidance for Computer Controlled Medical Devices Undergoing 510(k) Review and the Reviewer Guidance for Format and Content of Premarket Notifications (510(k) Submissions), Labeling, Performance and Environmental Testing for Electronic Devices'' be special controls for the following three devices: Indwelling blood carbon dioxide partial pressure (P_{CO2}) analyzer (§ 868.1150), indwelling blood hydrogen ion concentration (pH) analyzer (§ 868.1170), and indwelling blood oxygen partial pressure (P_{O2}) analyzer (§ 868.1200). These guidance documents provide more details about the agency's present conclusions regarding testing, labeling, and manufacturing information which would be required for premarket notifications (510(k)) for these device. The agency believes that these guidance documents are adequate to address the identified risk to health.

6. ''Guidance Document for the Submission of 510(k) Premarket Notifications for Cardiovascular Intravascular Filters''

During the classification of the preamendments devices, the Circulatory System Devices Classification Panel identified as risks to health the following potential complications associated with the use of the cardiovascular intravascular filter: Pulmonary thromboembolism when anticoagulants are contraindicated, failure of anticoagulant therapy in thromboembolic diseases, chronic recurrent pulmonary embolism where anticoagulant therapy has failed or is contraindicated. Since classification of this device, the agency has developed a guidance document describing its present conclusions regarding the labeling, biocompatibility testing, mechanical testing, sterilization procedures and labeling, and clinical data controls that would ensure the safety and effectiveness of cardiovascular intravascular filters seeking 510(k) clearance. Because the agency believes that the information contained in this guidance document is adequate to control for the identified risks to health, the agency is proposing that the ''Guidance Document for the Submission of 510(k) Premarket Notifications for Cardiovascular Intravascular Filters'' be a special control for the cardiovascular intravascular filter (§ 870.3375).

7. ''Document for Special Controls for Vascular Prostheses''

During the classification of the preamendments devices, the Circulatory System Devices Classification Panel identified as risks to health associated with the use of the vascular prosthesis, the potentials for: Thrombosis, embolism, occlusion stenosis, leakage, graft disruption, seroma, pseudoaneurisms, aneurisms, dilation, infection, and device failure. Since classification of this device, the agency has established certain labeling, testing, and manufacturing controls to minimize the potential of the identified risks to health. These controls are discussed in this guidance document. Because the agency believes that the information contained in this guidance document is adequate to address the identified risks to health, the agency is proposing that the ''Document for Special Controls for Vascular Prostheses'' be a special control for the vascular graft prosthesis of less than 6-millimeters diameter (§ 870.3450).

8. ''Document for Special Controls for Annuloplasty Rings''

During the classification of the preamendments devices, the Circulatory System Devices Classification Panel identified as a risk to health associated with the use of the annuloplasty ring, the potentials for: Stenosis, thrombosis, thromboembolism, regurgitation, ring fracture, obstruction, low cardiac output, ring dehiscence, endocarditis, bleeding, blockage, and suture injury. Since classification of this device, the agency has established certain labeling, testing, and manufacturing controls to minimize the potential of the identified risks to health. These controls are discussed in this guidance document. Because the agency believes that the information contained in this guidance document is adequate to address the identified risks to health, the agency is proposing that the ''Document for Special Controls for Annuloplasty Rings'' be a special control for the annuloplasty ring (§ 870.3800).

9. ''Document for Special Controls for the Cardiopulmonary Bypass Defoamer''

During the classification of the preamendments devices, the Circulatory System Devices Classification Panel identified as risks to health associated with the use of the cardiopulmonary bypass defoamer, the potentials for: Blood damage, gaseous embolism, thromboembolism, blood incompatibility, and inadequate blood flow. Since classification of this device, the agency has established labeling, testing, and manufacturing controls to minimize the potential of the identified risks to health. These controls are discussed in this guidance document. Because the agency believes that the information contained in this guidance document is adequate to control for the identified risks to health, the agency is proposing that the ''Document for Special Controls for the Cardiopulmonary Bypass Defoamer'' be a special control for the cardiopulmonary bypass defoamer (§ 870.4230).

10. ''Document for Special Controls for the Cardiopulmonary Bypass Arterial Filter''

During the classification of the preamendments devices, the Circulatory System Devices Classification Panel identified as risks to health associated with the use of the cardiopulmonary bypass arterial filter, the potentials for: Gaseous embolism, thromboembolism, blood incompatibility, and inadequate blood flow. Since classification of this device, the agency has established certain labeling, testing, and manufacturing controls to minimize the potential of the identified risks to health. These controls are discussed in this guidance document. Because the agency believes that the information contained in this guidance document is adequate to control for the identified risks to health, the agency is proposing that the ''Document for Special Controls for the Cardiopulmonary Bypass Arterial Filter'' be a special control for the cardiopulmonary bypass arterial line blood filter (§ 870.4260).

11. ''Information for Manufacturers Seeking Marketing Clearance for Blood–Gas Exchangers (Oxygenators) Used in Cardiopulmonary Bypass''

During the classification of the preamendments devices, the Circulatory System Devices Classification Panel identified as risks to health associated with the use of the cardiopulmonary bypass oxygenator, the potentials for: Failure, improper gas transfer function, hemolysis, destruction of platelets and white blood cells, sludging, leaking, and emboli formation. Since classification of this device, the agency has developed a guidance document describing its present conclusions regarding the testing, labeling, and manufacturing controls that would be necessary to ensure the safety and effectiveness of the cardiopulmonary bypass oxygenator. The controls are discussed in this guidance document. Because the agency believes that the information contained in this guidance document is adequate to control for the identified risks to health, the agency is proposing that the ''Information for Manufacturers Seeking Marketing Clearance for Blood–Gas Exchangers'' be a special control for the cardiopulmonary bypass oxygenator (§ 870.4350).

12. ''Guidance Document for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads''

During the classification of the preamendments devices, the Circulatory System Devices Classification Panel identified as risks to health associated with the use of the pacemaker lead adaptor, improper pacing, failure to pace, and tissue damage. Since classification of this device, the agency has developed a guidance document describing its present conclusions regarding the research and marketing information which should be submitted to the agency to support 510(k) clearance for pacemaker lead adaptors. Because the agency believes that the information contained in this guidance document is adequate to control for the identified risk to health, the agency is proposing that the ''Guidance Document for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads'' be a special control for the pacemaker lead adaptor (§ 870.3620).

13. ''OTC Denture Reliners, Repair Kits, and Partially Fabricated Denture Kits''

During the classification of the preamendments devices, the Dental Product Classification Panel identified as risks to health common to the use of certain denture accessories, complications resulting from an alteration of the vertical dimension of a patient's jaw and irritation of oral tissues. Since classification of these devices, the agency has developed a guidance document describing its present conclusions regarding procedures to minimize the risk of such complications. Because the agency believes that the information contained in this guidance document is adequate to control for the identified risks to health, the agency is proposing that the ''OTC Denture Reliners, Repair Kits, and Partially Fabricated Denture Kits'' be a special control for the following four devices: OTC denture cushion or pad (§ 872.3540), OTC denture reliner (§ 872.3560), OTC denture repair kit (§ 872.3570), and partially fabricated denture kit (§ 872.3600).

14. ''Tympanostomy Tubes, Submission Guidance for a 510(k) Premarket Notification''

During the classification of the preamendments devices, the Ear, Nose, and Throat Devices Classification Panel identified as risks to health associated with the use of the tympanostomy tube with semipermeable membrane, the potentials for hearing loss or premature extrusion. Since classification of this device, the agency has developed a guidance document describing its present conclusions regarding the labeling, testing, and manufacturing information which should be submitted to the agency to support 510(k) clearance for tympanostomy tubes. Because the agency believes that the information contained in this guidance document is adequate to control for the identified risks to health, the agency is proposing that the document titled ''Tympanostomy Tubes, Submission Guidance for a 510(k) Premarket Notification'' be a special control for the tympanostomy tube with semipermeable membrane (§ 874.3930).

15. ''Guidance for the Content of Premarket Notifications for Intracorporal Lithotripters''

During the classification of the preamendments devices, the Gastroenterology–Urology Devices Classification Panel identified as risks to health associated with the use of the electrohydraulic lithotripter, potential: Infection, tissue damage, failure, breakage, bleeding, pain, renal damage, and the formation of new stones. Since classification of this device, the agency has developed a guidance document describing its present conclusions regarding the labeling, testing, and manufacturing information which should be submitted to the agency to support 510(k) clearance for lithotripters. Because the agency believes that the information contained in the guidance document, when coupled with the guidance document described below, is adequate to control for the identified risks to health, the agency is proposing that the ''Guidance for the Content of Premarket Notifications for Intracorporeal Lithotripters'' be a special control for the electrohydraulic lithotripter (§ 876.4480).

To further minimize the potential risk of infection associated with the reuse of electrohydraulic lithotripters, the agency believes that certain labeling regarding the reuse of the device is appropriate. The agency has developed a guidance document describing its present conclusions regarding the labeling for certain reusable devices. FDA is also proposing that the guidance document entitled ''Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance'' be a special control for the electrohydraulic lithotripter (§ 876.4480).

16. ''Guidance for the Content of 510(k)s for Conventional and High Permeability Hemodialyzers, Guidance for Industry and CDRH Reviewers on the Content of Premarket Notifications for Hemodialysis Delivery Systems, Guidance for the Content of Premarket Notifications for Water Purification Components and Systems for Hemodialysis, and Guidance for Hemodialyzer Reuse Labeling''

During the classification of the preamendments devices, the Gastroenterology–Urology Devices Classification Panel identified as risks to health associated with the use of the high permeability hemodialysis system,

potential infection, electrical injury, adverse tissue reaction, pyrogen reaction, hemolysis, electrolyte imbalance, hypovolemic shock, air embolisms, loss of protein, and blood loss. Since classification of this device, the agency has developed four guidance documents describing its present conclusions regarding the labeling, testing, and manufacturing information which should be submitted to the agency to support 510(k) clearance for hemodialysis devices and accessories. Because the agency believes that the information contained in the guidance documents is adequate to control for the identified risks to health, the agency is proposing that these four guidance documents be applied as special controls for the high permeability hemodialysis system (§ 876.5860).

17. ''Guidance for the Content of Premarket Notification Submissions for Esophageal and Tracheal Prostheses''

During the classification of the preamendments devices, the General and Plastic Surgery Devices Classification Panel and the Ear, Nose, and Throat Devices Classification Panel identified as potential risks to health common to the use of the esophageal prosthesis and the tracheal prosthesis, certain complications resulting from migration, obstruction, or placement of the devices, and potential gastric reflux associated with the use of the esophageal prosthesis. Since classification of these devices, the agency has developed a guidance document describing its present conclusions regarding the labeling, biocompatibility testing, mechanical testing, sterilization procedures and labeling, and clinical data controls for esophageal or tracheal prostheses seeking 510(k) clearance. Because the agency believes that the information contained in this guidance document is adequate to control for the identified risks to health, the agency is proposing that the ''Guidance for the Content of Premarket Notification Submissions for Esophageal and Tracheal Prostheses'' be a special control for the following two devices: Esophageal prosthesis (§ 878.3610) and tracheal prosthesis (§ 878.3720).

18. ''Guidance for Evaluation of Laproscopic Bipolar and Thermal Coagulators (and Accessories)''

During the classification of the preamendments devices, the Obstetrical and Gynecological Devices Classification Panel identified potential complications from use in pregnant women as a risk to health associated with the use of endoscopic electrocautery. Since classification of these devices, the agency has developed a document which provides information for the evaluation of laproscopic and bipolar thermal coagulators. Among the information contained in this document, is a discussion of the agency's present conclusions regarding the labeling, testing, and manufacturing of such devices. Because the agency believes that the information contained in the document is adequate to control for the identified risk to health, the agency is proposing that the ''Guidance for Evaluation of Laproscopic Bipolar and Thermal Coagulators (and Accessories)'' be a special control for the endoscopic electrocautery and accessories (§ 884.4100) and the bipolar endoscopic coagulator-cutter and accessories (§ 884.4150).

19. ''Keratoprosthesis Guidance Document''

During the classification of the preamendments devices, the Ophthalmic Devices Classification Panel identified as risks to health associated with keratoprostheses, potentials for extrusion, infection, adverse tissue reaction, glaucoma, retinal detachment, and development of a retroprosthetic membrane. Since classification of this device, the agency has developed a guidance document describing its present conclusions regarding the labeling, testing, and manufacturing information which should be submitted to the agency to support 510(k) clearance for keratoprosthesis devices. Because the agency believes that the information contained in the guidance document is adequate to control for the identified risks to health, the agency is proposing that the ''Keratoprosthesis Guidance Document'' be a special control for the keratoprosthesis (§ 886.3400).

20. ''Aqueous Shunt–510(k) Submission''

During the classification of the preamendments devices, the Ophthalmic Devices Classification Panel identified as risks to health associated with aqueous shunts, the potentials for hypotony, extrusion, infection, adverse tissue reaction, misplacement, migration, and failure to filter. Since classification of these devices, the agency has developed a guidance document describing its present conclusions regarding the labeling, testing, and manufacturing information to be submitted to the agency to support 510(k) clearance for aqueous shunts. Because the agency believes that the information contained in the guidance document is adequate to control for the identified risks to health, the agency is proposing that the ''Aqueous Shunt–510(k) Submission'' be a special control for the eye valve implant (§ 886.3920).

21. ''Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement, Guidance Document for Testing Non-articulating, Mechanically Locked' Modular Implant Components and Guidance Document for the Preparation of Premarket Notification (510(k) Applications for Orthopedic Devices''

During the classification of the preamendments devices, the Orthopedic and Rehabilitation Devices Classification Panel identified as risks to health common to the use of certain orthopedic implants, the potential for: Pain, loss of joint function, adverse tissue reaction, infection, and device failure. Since classification of these devices, the agency has provided more information about the agency's present conclusions regarding the labeling, testing, and manufacturing information required for 510(k) clearance of orthopedic devices, the agency has also developed the guidance document titled ''Guidance Document for the Preparation of Premarket Notification (510(k)) Application for Orthopedic Devices.'' Because the information contained in these guidance documents will help minimize the risks to health, the agency is proposing that these guidances be applied as a special control for the following four devices: Elbow joint metal/polymer constrained cemented prosthesis (§ 888.3150), knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis (§ 888.3540), shoulder joint metal/polymer nonconstrained cemented prosthesis (§ 888.3650), and shoulder joint metal/polymer semi-constrained cemented prosthesis (§ 888.3660).

B. Consensus Standards

FDA has a long history of participating in the development of consensus standards relating to the safety and effectiveness of medical devices. These consensus standards are developed by independent standards organizations based upon discussions among experts from industry, the agency, and other interested parties, and after a series of ballots on draft and final documents. Consensus standards define terminology, describe test methods, and set performance limits for a given product or products. The agency believes that conformity with a consensus standard helps to ensure acceptable quality and performance of the device to which the standard is applied. The use of standards helps to ensure the safety and effectiveness of the devices to which the consensus standards apply, and it helps to

minimize the potential risks to health associated with the use of these devices.

Section 204 of FDAMA amended section 514 of the act (21 U.S.C. 360d) to allow the agency to recognize consensus standards established by international and national standards development organizations for use in certain regulatory decision making concerning devices. On February 25, 1998 (63 FR 9561), FDA issued a notice of availability of a guidance entitled ''Guidance on the Recognition and Use of Consensus Standards'' and also published in that document a list of the consensus standards that FDA was recognizing for use in the premarket review process. FDA will update this list at least annually.

Consensus standards are periodically updated as new information becomes available. When a consensus standard that has been identified as a special control is revised, the agency will publish in the **Federal Register** a proposal to amend the special controls for the relevant devices to include the revised consensus standard.

Accordingly, the agency is proposing that the following consensus standards be adopted as special controls for the devices identified:

1. American Society for Testing and Materials (ASTM) Standards

These standards may be obtained from ASTM Customer Services, 100 Barr Harbor Dr., West Conshohocken, PA 19428 (Telephone 610–832–9585). ASTM also maintains a site on the WWW at the address ''http://www.astm.org''.

a. The following standard is proposed as a special control for the cutaneous oxygen monitor (21 CFR 868.2500) ASTM F984–86: ''Specification for Cutaneous Gas Monitoring Devices for Oxygen and Carbon Dioxide.''

b. The following seven standards are proposed as special controls for the elbow joint metal/polymer constrained cemented prosthesis (§ 888.3150), the knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis (§ 888.3540), the shoulder joint metal/polymer nonconstrained cemented prosthesis (§ 888.3650), and the shoulder joint metal/polymer semi-constrained cemented prosthesis (§ 888.3660):

(1) ASTM F75–92 ''Specification for Cast Cobalt–Chromium–Molybdenum Alloy for Surgical Implant Material,''

(2) STM F799–96 ''Specification for Cobalt–28 Chromium–6 Molybdenum Alloy Forgings for Surgical Implants,''

(3) ASTM F1108–97 ''Specification for Ti6Al4V Alloy Castings for Surgical Implants,''

(4) ASTM F648–96 ''Specification for Ultra–High–Molecular–Weight Polyethylene Powder and Fabricated Form for Surgical Implants,''

(5) ASTM F1537–94 ''Specification for Wrought Cobalt–Chromium–Molybdenum Alloy for Surgical Implants,''

(6) ASTM 1044 ''Test Method for Shear Testing of Porous Metal Coatings,'' and

(7) ASTM 1147 ''Test Method for Tension Testing of Porous Metal Coatings.''

c. The following standards are proposed as special controls for the knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis (§ 888.3540):

(1) ASTM F370–94 ''Specification for Proximal Femoral Prosthesis,''

(2) ASTM F1672–95 ''Specification for Resurfacing Patellar Prosthesis,'' and

(3) ASTM F1223–96 ''Test Method for Determination of Total Knee Replacement Constraint.''

d. The following standard is proposed as a special control for the elbow joint metal/polymer constrained cemented prosthesis (§ 888.3150) ASTM 981: ''Practice for Assessment of Compatibility of Biomaterials for Surgical Implant with Respect to Effect of Material on Muscle and Bone.''

e. The following standard is proposed as a special control for the shoulder joint metal/polymer nonconstrained cemented prosthesis (§ 888.3650), and the shoulder joint metal/polymer semi-constrained cemented prosthesis (§ 888.3660) ASTM 1378: ''Specification for Shoulder Prosthesis.''

2. American National Standards Institute/American Association for Medical Instrumentation (ANSI/AAMI)

These standards may be obtained from ANSI/AAMI, 11 West 42d St., New York, NY 10036. ANSI also maintains a site on the world wide web at ''http://www.ansi.org''. FDA proposes the following ANSI/AAMI standards as special controls for the identified devices:

a. ANSI/AAMI DF2 ''Cardiac Defibrillator Devices'' as applied to the external transcutaneous cardiac pacemaker (noninvasive) (21 CFR 870.5550);

b. ANSI/AAMI/ISO 11135 ''Medical Devices–Validation and Routine Control of Ethylene Oxide Sterilization'' as applied to the peritoneo-venous shunt (§ 876.5955); and

c. ANSI/AAMI HF–18 ''Electrosurgical Devices'' as applied to the endoscopic electrocautery and accessories (§ 884.4100), the bipolar endoscopic coagulator-cutter and accessories (§ 884.4150), and the electrohydraulic lithotriptor (§ 876.4480).

3. International Standards Organization (ISO).

These standards may be obtained from International Organization for Standardization, Case Postale, Geneva, Switzerland, CH–1121. ISO also maintains a site on the world wide web at ''http://www.iso.org''.

a. FDA proposes the following ISO standards as special controls for the elbow joint metal/polymer constrained cemented prosthesis (§ 888.3150), the knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis (§ 888.3540), the shoulder joint metal/polymer nonconstrained cemented prosthesis (§ 888.3650), and the shoulder joint metal/polymer semi-constrained cemented prosthesis (§ 888.3660):

(1) ISO 5832 ''Implants for Surgery–Metallic Materials;''

(2) ISO 5833 ''Implants for Surgery–Acrylic Resin Cements;'' and

(3) ISO 5834 ''Implants for Surgery–Ultra High Molecular Weight Polyethylene;''

(4) ISO 9001 ''Quality Systems–Model for Quality Assurance in Design/Development, Production, Installation, and Servicing;'' and

(5) ISO 6018 ''General Requirements for Marketing, Packaging, and Labeling.''

b. The following ISO standard is proposed as a special control for the elbow joint metal/polymer constrained cemented prosthesis (§ 888.3150): ISO 14630 ''Non-active Surgical Implants–General Requirements.''

c. The following ISO standard is proposed as a special control for the knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis (§ 888.3540): ISO 7207 ''Implants for Surgery–Femoral and Tibial Components for Partial and Total Knee Joint Prostheses.''

4. National Committee for Clinical Laboratory Standards (NCCLS)

Copies of these standards may be obtained from NCCLS Executive Offices, 940 West Valley Rd., suite 1400, Wayne, PA 19087 (Telephone 610–688–0100). NCCLS also maintains a site on the WWW at ''http://www.nccls.org''.

a. FDA proposes the following NCCLS standards as special controls for the rubella virus serological reagents (§ 866.3510):

(1) NCCLS I/LA6 ''Evaluation and Performance Criteria for Multiple Component Test Products Intended for the Detection and Quantitation of Rubella IgG Antibody,''

(2) NCCLS D13 ''Agglutination Characteristics, Methodology, Limitations, and Clinical Validation,''

(3) NCCLS I/LA18 ''Specifications for Immunological Testing for Infectious Diseases,''

(4) NCCLS EP5 ''Evaluation of Precision Performance of Clinical Chemistry Devices,'' and

(5) NCCLS EP10 ''Preliminary Evaluation of Quantitative Clinical Laboratory Methods–Second edition, 1993.''

b. FDA proposes the following NCCLS standards as special controls for the indwelling blood carbon dioxide partial pressure (P_{CO2}) analyzer (§ 868.1150), the indwelling blood hydrogen ion concentration (pH) analyzer (§ 868.1170), and the indwelling blood oxygen partial pressure (P_{O2}) analyzer (§ 868.1200):

(1) NCCLS EP5 ''Evaluation of Precision Performance of Clinical Chemistry Devices,''

(2) NCCLS EP6 ''Evaluation of the Linearity of Quantitive Analytical Methods,''

(3) NCCLS EP7 ''Interference Testing in Clinical Chemistry''(P_{O2}) analyzer (21 CFR 868.1200),

(4) NCCLS EP9 ''User Comparison of Quantitative Clinical Laboratory Methods Using Patient Samples,'' and

(5) NCCLS EP10 ''Preliminary Evaluation of Quantitative Clinical Laboratory Methods–Second edition, 1993.''

5. International Electrotechnical Commission (IEC)

Copies of these standards may be obtained from IEC, AT3, Rue de Varembe, P.O. Box 131, Geneva, Switzerland, ch–1211. IEC also maintains a site on the WWW at ''http://www.iec.ch''.

a. FDA proposes the following IEC standard as special controls for the indwelling blood carbon dioxide partial pressure (P_{CO2}) analyzer (§ 868.1150), the indwelling blood hydrogen ion concentration (pH) analyzer (§ 868.1170), the indwelling blood oxygen partial pressure (P_{O2}) analyzer (§ 868.1200), the electrohydraulic lithotripter (§ 876.4480), the endoscopic electrocautery and accessories (§ 884.4100), and the bipolar endoscopic coagulator-cutter and accessories (§ 884.4150): IEC 60601 ''Electrical Safety Standard.''

b. FDA also proposes the following IEC standard as a special control for the cutaneous oxygen monitor (§ 868.2500), and the airbrush (§ 872.6080): IEC 601 ''Medical Device Electrical Standard.''

6. Underwriters Laboratory (UL)

These standards may be obtained from Underwriters Laboratories, Inc., 333 Pfingsten Rd., Northbrook, IL 60062 (Telephone 847–272–8800). UL also maintains a site on the WWW at ''http://www.ul.com''.

FDA proposes the following standard as a special control for the cutaneous oxygen monitor (§ 868.2500): UL 2601–1 ''Standard for Safety, Medical Electrical Equipment, Part 1: General Requirements for Safety.''

7. The International Federation of Clinical Chemistry (IFCC)

These standards may be obtained from IFCC through their site on the WWW at ''http://www.leeds.ac.uk/ifcc''.

FDA proposes the following standard as a special control for the cutaneous oxygen monitor (§ 868.2500): ''IFCC Guidelines for Transcutaneous P_{O2} and P_{CO2} Measurement.''

8. Centers for Disease Control and Prevention (CDC)

CDC has developed standards associated with the detection or prevention of disease. These standards may be obtained from the Center for Disease Control and Prevention, Mail Stop G18, 1600 Clifton Rd., NE., Atlanta, GA 30333.

FDA proposes the following CDC standards as special controls for the rubella virus serological reagents (§ 866.3510):

(1) ''CDC Low Titer Rubella Standard'' as applied to

(2) ''CDC Reference Panel of Well Characterized Rubella Sera.''

9. World Health Organization International (WHO)

WHO has also developed standards associated with the detection or prevention of disease. These standards may be obtained from the World Health Organization International, Laboratory for Biological Standards, Statens Seruminstitut, Center for Prevention and Control of Infectious Diseases and Congenital Disorders, 5. Artillerivej, DK–2300 Copenhagen S, Denmark. FDA proposes the following as a special control for the identified device proposed for reclassification: ''WHO Rubella Standard'' as applied to rubella virus serological reagents (§ 866.3510).

C. Device-specific Labeling

When considering the preamendments devices, the panels identified certain risks to health which would result from the improper use of a device, or use in improper circumstances. The agency believes that general labeling controls such as adequate directions for use, as required by section 502(f) of the act (21 U.S.C. 352(f)), and the labeling requirements for medical devices in 21 CFR part 801, and for in vitro diagnostic products at 21 CFR 809.10 minimize the potential for most identified risks to health.

However, the agency recognizes that, for certain devices, the general labeling requirements are not sufficiently specific to adequately address and minimize specifically identified risks to health. These risks may be addressed by a more specific labeling regulation (e.g., 21 CFR part 801, subpart H), by guidance, or by issuing specific labeling as a special control. Indeed, several of the FDA guidance documents, which have been identified in this proposal as special controls, contain a section on device labeling. For other devices, no device-specific labeling is addressed in regulations or FDA guidance, although the agency believes that device-specific labeling would be an appropriate special control. Labeling is being proposed as a special control for the following devices:

1. Tinnitus masker (§ 874.3400)

The agency is proposing that the professional labeling of this device contain patient information that describes the risks, benefits, warnings for safe use, and technical specifications of the device in terminology understandable to the average layman. Patient information would also include recommending that the patient seek medical consultation to determine the cause of tinnitus, fitting of the device, and followup care by a hearing health care professional.

2. Tympanostomy tube with semipermeable membrane (§ 874.3930)

The agency is proposing that the labeling for this device describe the risk of clogging, and state that the device is intended for use only in ears that have been evacuated.

3. Endometrial aspirator (§ 884.1060), endometrial brush (§ 884.1100), and endometrial washer (§ 884.1185)

The agency is proposing that the labeling for these devices state that the device is only intended as an adjunctive tool to evaluate the endometrium, and that it is contraindicated in cases of pregnancy, history of uterine perforation, and recent cesarean section. Furthermore, the agency is proposing that the labeling of the endometrial washer (§ 884.1185) also contain a statement warning that the device should not be attached to wall or any external suction.

4. Endoscopic electrocautery and accessories (§ 884.4100) and bipolar endoscopic coagulator-cutter and accessories (§ 884.4150)

The agency is proposing that the labeling of these devices: Contain an indication for use statement: ''for female tubal sterilization,'' contain instructions for use that recommend destruction of at least 2 cm of the fallopian tube, use of a ''cut'' (or undamped sinusoidal)

waveform, and use of minimum power of 25 watts. For devices that have ammeters, the labeling must state that activation of electrode is recommended for 4 to 5 seconds after the visual endpoint is reached or current flow ceases, to achieve complete destruction of tissue.

D. Design and Performance Testing.

The agency has often relied upon consensus standards for the establishment of design specifications for medical devices. For certain devices for which neither consensus standards nor FDA guidances are available to address critical design or performance criteria, the agency believes it is appropriate to identify design specifications and performance testing as a special control. Accordingly, design specifications and performance testing are proposed as special controls for the following devices:

1. External transcutaneous cardiac pacemaker (noninvasive) (§ 870.5550)

The agency is proposing that this device shall not have the capability of delivering pulses in excess of 200 microamperes with a width less than or equal to 50 milliseconds.

2. Tympanostomy tube with semipermeable membrane (§ 874.3930)

The agency is proposing that the membrane material be polytetrafluoroethylene (PTFE) sheeting with no more than a 1-micron pore size and 0.003-inch thickness. Furthermore, the agency is proposing to require functional testing of these devices to verify air passage.

3. Peritoneo-venous shunt (§ 876.5955)

The agency is proposing that these devices provide a specification for backflow that ensures against excessive reflux of blood into the shunt. Furthermore, the agency is proposing that these devices undergo pyrogenicity testing using either the U.S. Pharmacopeia (USP) Rabbit Pyrogen Test or USP Bacterial Endotoxins Test.

4. Endometrial aspirator (§ 884.1060), endometrial brush (§ 884.1100), and endometrial washer (§ 884.1185)

The agency is proposing that these devices be designed such that the sampling part of the device is covered while entering and leaving the vagina. Furthermore, the agency is proposing that the endometrial brush (§ 884.1100) be tested to demonstrate adequate adherence of bristles and brush head, and the endometrial washer (§ 884.1185) undergo testing to demonstrate that maximum intrauterine pressure does not exceed 50 millimeters of mercury.

VI. Summary of Special Controls

TABLE 2.—SUMMARY OF SPECIAL CONTROLS LISTED BY DEVICE[1]

CFR Section	Device Name	FDA Sterility Review Guidance	FDA Biocompatibility Guidance	Other FDA Guidance[1]	Labeling	Standards	Design Controls, Performance Testing
864.7250	Erythropoietin assay			1			
864.7300	Fibrin monomer paracoagulation test			2			
866.3510	Rubella virus serological reagents					NCCLS[2] 1/LA6; 1/LA18; D13; EP5; EP10; CDC[3] Low Titer Rubella Standard; WHO[4] Rubella Standard; CDC Reference Panel of Well Characterized Rubella Sera	
868.1150	Indwelling blood carbon dioxide partial pressure (P_{CO2}) analyzer	X	X	3, 4, 5		NCCLS standards, EP5, EP6, EP7, EP9, EP10, IEC[5] 60601	
868.1170	Indwelling blood hydrogen ion concentration (pH) analyzer	X	X	3, 4, 5		NCCLS standards, EP5, EP6, EP7, EP9, EP10, IEC 60601	
868.1200	Indwelling blood oxygen partial pressure (P_{O2}) analyzer	X	X	3, 4, 5		NCCLS standards, EP5, EP6, EP7, EP9, EP10, IEC 60601	
868.2500(b)	Cutaneous oxygen monitor					ASTM[6] F984–86, IEC 601, UL[7] 2601–1, IFCC[8] Guidelines for Transcutaneous P_{O2} and P_{CO2} Measurement	
870.3375	Cardiovascular intravascular filter	X	X	6			
870.3450	Vascular graft prosthesis of less than 6 millimeters diameter	X	X	7			
870.3620	Pacemaker lead adaptor	X	X	8			
870.3800	Annuloplasty ring	X	X	9			

870.4230	Cardiopulmonary bypass defoamer	X	X	10			
870.4260	Cardiopulmonary bypass arterial line blood filter	X	X	11			
870.4350	Cardiopulmonary bypass oxygenator	X	X	12			
870.5550	External transcutaneous cardiac pacemaker (noninvasive)					ANSI/AAMI[9] DF–2	Shall not have capability of delivering pulses in excess of 200 milliamperes with a width less than or equal to 50 milliseconds
872.3540	OTC denture cushion or pad		X	13			
872.3560	OTC denture reliner		X	13			
872.3570	OTC denture repair kit		X	13			
872.3600	Partially fabricated denture kit		X	13			
872.6080	Airbrush					IEC–601	
874.3400	Tinnitus masker				Patient labeling re: medical consultation, fitting and follow-up care by a hearing health care professional, risks, benefits, warnings for safe use, and technical specifications		
874.3930	Tympanostomy tube with semipermeable membrane			14	Risk of clogging described, Only for use in ears that have been evacuated		Functional testing to verify air passage. Membrane material: PTFE[10] sheeting; 1.0 micron pore size; 0.003 inch thickness
876.4480	Electrohydraulic lithotriptor	X		15, 16		ANSI/AAMI HF–18 IEC 60601	
876.5860	High permeability hemodialysis system		X	17, 18, 19, 20			
876.5955	Peritoneo-venous shunt	X	X			Sterilization validation per ANSI/AAMI/ISO[11] 11135	Pyrogeni-city testing per USP Rabbit Pyrogen Test or USP Bacterial Endotoxins Test, Backflow specifications that ensure against excessive reflux of blood into the shunt
878.3610	Esophageal prosthesis			21			
878.3720	Tracheal prosthesis			21			

TABLE 2.—SUMMARY OF SPECIAL CONTROLS LISTED BY DEVICE[1]—Continued

CFR Section	Device Name	FDA Sterility Review Guidance	FDA Biocompatibility Guidance	Other FDA Guidance[1]	Labeling	Standards	Design Controls, Performance Testing
884.1060	Endometrial aspirator	X	X		Only for use as an adjunctive tool to evaluate the endometrium; Contraindications: pregnancy, history of uterine perforation, and recent cesarean section		Device design to ensure that the sampling part is covered while entering and leaving vagina
884.1100	Endometrial brush	X	X		Only for use as an adjunctive tool to evaluate the endometrium; Contraindication: pregnancy, history of uterine perforation, and recent cesarean section		Device design so that the sampling part is covered within the vagina, Testing to demonstrate adequate adherence of bristles and brush head
884.1185	Endometrial washer	X	X		Only for use as an adjunctive tool to evaluate the endometrium; Device should not be attached to wall or any external suction; Contraindications: Pregnancy, history of uterine perforation, and recent cesarean section		Testing to demonstrate that maximum intrauterine pressure should not exceed 50 millimeters of mercury; Device design so that the sampling part is covered within vagina
884.4100	Endoscopic electrocautery and accessories	X		22	Indication: female tubal sterilization; Treatment instructions: “destruction of at least 2 cm of tube,’’; use of a cut’ (or undamped sinusoidal) waveform, and minimum power of 25 watts; For devices with ammeters: activation of electrode for 4 to 5 seconds	IEC 60601 ANSI/AAMI HF–18	

884.4150	Bipolar endoscopic coagulator-cutter	X		22	Indication: female tubal sterilization; Treatment instructions: "destruction of at least 2 centimeters of tube,"; use of a cut' (or undamped sinusoidal) waveform, and minimum power of 25 watts; For devices with ammeters: activation of electrode for 4 to 5 seconds		IEC 60601 or ANSI/AAMI HF–18
886.3400	Keratoprosthesis	X	X	23			
886.3920	Eye valve implant	X	X	24			
888.3150	Elbow joint metal/polymer constrained cemented prosthesis	X	X	25, 26, 27		ASTM F75–92, F799–96, F1108–97, F648–96, F1537–94, F981, F1044, F1147; ISO 5832, 5833, 5834, 14630, 10993, 9001, 6018	
888.3540	Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis	X	X	25, 26, 27			ASTM F75–92, F799–96, F1108–97, F648–96, F1537–94, F1044, F1147, F1223–96, F370–94; F1672–95 ISO 5832, 5833, 5834, 6018, 7207, 9001
888.3650	Shoulder joint metal/polymer non-constrained cemented prosthesis	X	X	25, 26, 27			ASTM F75–92, F799–96, F1108–97, F648–96, F1537–94, F1044, F1147, F1378; ISO 5832, 5833, 5834, 6018, 9001
888.3660	Shoulder joint metal/polymer semi-constrained cemented prosthesis	X	X	25, 26, 27		ASTM F75–92, F799–96, F1108–97, F648–96, F1537–94, F1044, F1147, F1378; ISO 5832, 5833, 5834, 6018, 9001	

[1] The following is a list of guidances FDA has developed to inform manufactures of how the agency evaluates the safety and effectiveness of devices and reaches determination of substantial equivalency:

(1) "Guidance Document for the Submission of Erythropoietin Assay Premarket Notification (510(k))."
(2) "Guidance Document for the Submission of Fibrin Monomer Paracoagulation Test Premarket Notification (510(k))."
(3)"Reviewer Guidance for Clinical Studies and Labeling for Indwelling Blood Gas Analyzers."
(4) "Reviewer Guidance for Computer Controlled Medical Devices Undergoing 510(k) Review."
(5) "Reviewer Guidance for Format and Content of Premarket Notifications (510(k) Submissions): Labeling, Performance and Environmental Testing for Electronic Devices."
(6) "Guidance Document for the Submission of 510(k) Premarket Notifications for Cardiovascular Intravascular Filters."
(7) "Document for Special Controls for Vascular Prostheses."

(8) ''Guidance Document for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads,''
(9) ''Document for Special Controls for the Cardiopulmonary Bypass Defoamer,''
(10) ''Document for Special Controls for the Cardiopulmonary Bypass Arterial Filter,''
(11) ''Information for Manufacturers Seeking Marketing Clearance for Blood–Gas Exchangers (Oxygenators) Used in Cardiopulmonary Bypass,''
(12) ''Document for Special Controls for Annuloplasty Rings,''
(13) ''OTC Denture Reliners, Repair Kits, and Partially Fabricated Denture Kits,''
(14) ''Tympanostomy Tubes, Submission Guidance for a 510(k) Premarket Notification,''
(15) ''Guidance for the Content of Premarket Notifications for Intracorporal Lithotripters,''
(16) ''Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance,''
(17) ''Guidance for the Content of 510(k)s for Conventional and High Permeability Hemodialyzers,''
(18) ''Guidance for Industry and CDRH Reviewers on the Content of Premarket Notifications for Hemodialysis Delivery Systems,''
(19) ''Guidance for the Content of Premarket Notifications for Water Purification Components and Systems for Hemodialysis,''
(20) ''Guidance for Hemodialyzer Reuse Labeling,''
(21) ''Guidance for the Content of Premarket Notification Submissions for Esophageal and Tracheal Prostheses,''
(22) ''Guidance for Evaluation of Laproscopic Bipolar and Thermal Coagulators (and Accessories),''
(23) ''Keratoprosthesis Guidance Document,''
(24) ''Aqueous Shunt–510(k) Submission,''
(25) ''Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement,''
(26) ''Guidance Document for Testing Non-articulating, Mechanically Locked' Modular Implant Components,'' and
(27) ''Guidance Document for the Preparation of Premarket Notification (510(k) Applications for Orthopedic Devices.''

[2] National Committee for Clinical Laboratory Standards.
[3] Centers for Disease Control and Prevention.
[4] World Health Organization.
[5] International Electrotechnical Commission.
[6] American National Standards Institute.
[7] Underwriters Laboratories.
[8] International Federation of Clinical Chemistry.
[9] Association for the Advancement of Medical Instrumentation.
[10] Polytetrafluoroethylene.
[11] International Standards Organization.

VII. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed classification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages distributive impacts and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act. Moreover, compliance with special controls proposed for these devices will not impose significant new costs on affected manufacturers as most of these devices already comply with the proposed special controls. Because reclassification will reduce regulatory costs with respect to these devices, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed 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.

X. Submission of Comments and Proposed Effective Dates

Interested persons may, on or before June 14, 1999 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA proposes that any final regulation that may issue based on this proposal becomes effective 30 days after its date of publication in the **Federal Register**.

List of Subjects

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Parts 868, 870, 872, 874, 876, 878, 884, and 888

Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 864, 866, 868, 870, 872, 874, 876, 878, 884, 886, and 888 be amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

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

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

2. Section 864.7250 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 864.7250 Erythropoietin assay.

* * * * *

(b) *Classification*. Class II. The special control for this device is FDA's ''Guidance Document for Submission of Erythropoietin Assay Premarket Notification (510(k)).''

3. Section 864.7300 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 864.7300 Fibrin monomer paracoagulation test.

* * * * *

(b) *Classification*. Class II. The special control for this device is FDA's ''Guidance Document for Submission of Fibrin Monomer Paracoagulation Test Premarket Notification (510(k)).''

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

4. The authority citation for 21 CFR part 866 continues to read as follows:

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

5. Section 866.3510 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 866.3510 Rubella virus serological reagents.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) National Committee for Clinical Laboratory Standards':

(i) I/LA6 ''Evaluation and Performance Criteria for Multiple Component Test Products Intended for the Detection and Quantitation of Rubella IgG Antibody,''

(ii) 1/LA18 ''Specifications for Immunological Testing for Infectious Diseases,''

(iii) D13 ''Agglutination Characteristics, Methodology, Limitations, and Clinical Validation,''

(iv) EP5 ''Evaluation of Precision Performance of Clinical Chemistry Devices,'' and

(v) EP10 ''Evaluation of the Linearity of Quantitive Analytical Methods,''

(2) Centers for Disease Control's:

(i) Low Titer Rubella Standard,

(ii) Reference Panel of Well Characterized Rubella Sera, and

(3) World Health Organization's International Rubella Standard.

PART 868—ANESTHESIOLOGY DEVICES

6. The authority citation for 21 CFR part 868 continues to read as follows:

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

7. Section 868.1150 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 868.1150 Indwelling blood carbon dioxide partial pressure (P_{CO2}) analyzer.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''

(ii) ''Reviewer Guidance for Computer Controlled Medical Devices Undergoing 510(k) Review,''

(iii) ''Reviewer Guidance for Clinical Studies for Indwelling Blood Gas Analyzers,'' and

(iv) ''Reviewer Guidance for Format and Content of Premarket Notifications (510(k) Submissions), Labeling, Performance and Environmental Testing for Electronic Devices,''

(3) National Committee for Clinical Laboratory Standards':

(i) EP5 ''Evaluation of Precision Performance of Clinical Chemistry Devices,''

(ii) EP6 ''Evaluation of the Linearity of Quantitive Analytical Methods,''

(iii) EP7 ''Interference Testing in Clinical Chemistry,''

(iv) EP9 ''User Comparison of Quantitative Clinical Laboratory Methods Using Patient Samples,'' and

(v) EP10 ''Preliminary Evaluation of Quantitative Clinical Laboratory Methods—Second edition, 1993,'' and

(4) International Electrotechnical Commission's 60601 ''Electrical Safety Standard.''

8. Section 868.1170 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 868.1170 Indwelling blood hydrogen ion concentration (pH) analyzer.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''

(ii) ''FDA Reviewer Guidance for Computer Controlled Medical Devices Undergoing 510(k) Review,''

(iii) ''Reviewer Guidance for Clinical Studies for Indwelling Blood Gas Analyzers,'' and

(iv) ''Reviewer Guidance for Format and Content of Premarket Notifications (510(k) Submissions), Labeling, Performance and Environmental Testing for Electronic Devices,''

(3) National Committee for Clinical Laboratory Standards':

(i) EP5 ''Evaluation of Precision Performance of Clinical Chemistry Devices,''

(ii) EP6 ''Evaluation of the Linearity of Quantitive Analytical Methods,''

(iii) EP7 ''Interference Testing in Clinical Chemistry,''

(iv) EP9 ''User Comparison of Quantitative Clinical Laboratory Methods Using Patient Samples,'' and

(v) EP10 ''Preliminary Evaluation of Quantitative Clinical Laboratory Methods—Second edition, 1993,'' and

(4) International Electrotechnical Commission's 60601 ''Electrical Safety Standard.''

9. Section 868.1200 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 868.1200 Indwelling blood oxygen partial pressure (P_{O2}) analyzer.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) FDA's:

(i) ''Reviewer Guidance for Computer Controlled Medical Devices Undergoing 510(k),''

(ii) ''Reviewer Guidance for Clinical Studies for Indwelling Blood Gas Analyzers,''

(iii) ''Reviewer Guidance for Format and Content of Premarket Notifications (510(k) Submissions), Labeling, Performance and Environmental Testing for Electronic Devices,'' and

(iv) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–10,''

(2) National Committee for Clinical Laboratory Standards':

(i) EP5 ''Evaluation of Precision Performance of Clinical Chemistry Devices,''

(ii) EP6 ''Evaluation of the Linearity of Quantitive Analytical Methods,''

(iii) EP7 ''Interference Testing in Clinical Chemistry,''

(iv) EP9 ''User Comparison of Quantitative Clinical Laboratory Methods Using Patient Samples,'' and

(v) EP10 ''Preliminary Evaluation of Quantitative Clinical Laboratory Methods—Second edition, 1993,''

(3) International Electrotechnical Commission's 60601 ''Electrical Safety Standard,'' and

(4) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing.''

10. Section 868.2500 is amended by revising paragraph (b)(2) and by removing paragraph (c) to read as follows:

§ 868.2500 Cutaneous oxygen monitor.

* * * * *

(b) * * *

(2) *Classification*. Class II. The special controls for this device are:

(i) American Society for Testing and Materials' F984–86 ''Specification for Cutaneous Gas Monitoring Devices for Oxygen and Carbon Dioxide,''

(ii) International Electrotechnical Commission's IEC 601 ''Medical Device Electrical Standard,''

(iii) Underwriters Laboratory's ''Medical Electrical Equipment (UL 2601–1),'' and

(iv) The International Federation of Clinical Chemistry's ''Guidelines for Transcutaneous P_{O2} and P_{CO2} Measurement.''

PART 870—CARDIOVASCULAR DEVICES

11. The authority citation for 21 CFR part 870 continues to read as follows:

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

12. Section 870.3375 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.3375 Cardiovascular intravascular filter.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,'' and

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–10,'' and

(ii) ''Guidance Document for the Submission of 510(k) Premarket Notifications for Cardiovascular Intravascular Filters.''

13. Section 870.3450 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.3450 Vascular graft prosthesis of less than 6 millimeters diameter.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,'' and

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–10,'' and

(ii) ''Document on Special Controls for Vascular Prostheses.''

14. Section 870.3620 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.3620 Pacemaker lead adaptor.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,'' and

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,'' and

(ii) ''Guidance Document for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads.''

15. Section 870.3800 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.3800 Annuloplasty rings.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,'' and

(ii) ''Document for Special Controls for Annuloplasty Rings,'' and

(2) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing.''

16. Section 870.4230 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.4230 Cardiopulmonary bypass defoamer.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) FDA's:

(i) ''Bluebook Guidance for Sterility, K90–1,''

(ii) ''Document for Special Controls for Cardiopulmonary Bypass Defoamer,'' and

(2) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing.''

17. Section 870.4260 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.4260 Cardiopulmonary bypass arterial line blood filter.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) FDA's:

(i) ''Bluebook Guidance for Sterility, K90–1,'' and

(ii) ''Document for Special Controls for Cardiopulmonary Bypass Arterial Filters,'' and

(2) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing.''

18. Section 870.4350 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.4350 Cardiopulmonary bypass oxygenator.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,'' and

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,'' and

(ii) ''Information for Manufacturers Seeking Marketing Clearance for Blood Gas Exchangers (Oxygenators) Used in Cardiopulmonary Bypass.''

19. Section 870.5550 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.5550 External transcutaneous cardiac pacemaker (noninvasive).

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) ''American National Standards Institute/American Association for Medical Instrumentation's DF–2,'' and

(2) The device shall not have capability of delivering pulses in excess of 200 milliamperes with a width less than or equal to 50 milliseconds.

PART 872—DENTAL DEVICES

20. The authority citation for 21 CFR part 872 continues to read as follows:

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

21. Section 872.3540 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 872.3540 OTC denture cushion or pad.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,'' and

(2) FDA's ''OTC Denture Reliners, Repair Kits, and Partially Fabricated Denture Kits.''

22. Section 872.3560 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 872.3560 OTC denture reliner.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,'' and

(2) FDA's ''OTC Denture Reliners, Repair Kits, and Partially Fabricated Denture Kits.''

23. Section 872.3570 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 872.3570 OTC denture repair kit.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,'' and

(2) FDA's ''OTC Denture Reliners, Repair Kits, Partially Fabricated Denture Kits.''

24. Section 872.3600 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 872.3600 Partially fabricated denture kit.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,'' and

(2) FDA's ''OTC Denture Reliners, Repair Kits, Partially Fabricated Denture Kits.''

25. Section 872.6080 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 872.6080 Airbrush.

* * * * *

(b) *Classification*. Class II. The special control for this device is International Electrotechnical Commission's IEC–601 ''Medical Device Electrical Standard.''

PART 874—EAR, NOSE, AND THROAT DEVICES

26. The authority citation for 21 CFR part 874 continues to read as follows:

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

27. Section 874.3400 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 874.3400 Tinnitus masker.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) Patient labeling to include information about:

(i) Risks,

(ii) Benefits,

(iii) Warnings for safe use, and

(iv) Technical specifications, and

(2) Medical consultation for:

(i) Determination of the cause of tinnitus,

(ii) Fitting of the device, and

(iii) Followup care by a hearing health care professional.

28. Section 874.3930 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 874.3930 Tympanostomy tube with semipermeable membrane.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) FDA's ''Tympanostomy Tubes, Submission Guidance for a 510(k),''

(2) Functional testing to verify air passage,

(3) Use of polytetrafluoroethylene sheeting with 1.0 micron pore size and 0.003 inch thickness as membrane material, and

(4) Labeling to:

(i) Describe risk of clogging, and

(ii) State that device is only for use in ears that have been evacuated.

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

29. The authority citation for 21 CFR part 876 continues to read as follows:

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

30. Section 876.4480 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 876.4480 Electrohydraulic lithotriptor.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''

(ii) ''Guidance for the Content of Premarket Notifications for Intracorporeal Lithotripters,'' and

(iii) ''Labeling Reusable Medical Devices for Reprocessing in Health Care Facilities: FDA Reviewer Guidance,''

(2) American National Standards Institute/American Association for Medical Instrumentation's HF–18 ''Electrosurgical Devices,'' and

(3) International Electrotechnical Commission's IEC 60601 ''Electrical Safety Standard.''

31. Section 876.5860 is amended by revising paragraphs (a) and (b) and by removing paragraph (c) to read as follows:

§ 876.5860 High permeability hemodialysis system.

(a) *Identification*. A high permeability hemodialysis system is a device intended for use as an artificial kidney system for the treatment of patients with renal failure, fluid overload, or toxemic conditions by performing such therapies as hemodialysis, hemofiltration, and hemoconcentration. Using a hemodialyzer with a semipermeable membrane that is more permeable to water than the semipermeable membrane of the conventional hemodialysis system described in § 876.5820, the high permeability hemodialysis system removes toxins or excess fluid from the patient's blood using the principles of convection (via a high ultrafiltration rate) and/or diffusion (via a concentration gradient in dialysate). During treatment, blood is circulated from the patient through the hemodialyzer's blood compartment, while the dialysate solution flows countercurrent through the dialysate compartment. In this process, toxins and/or fluid are transferred across the membrane from the blood to the dialysate compartment. The hemodialysis delivery machine controls and monitors the parameters related to this processing, including the rate at which blood and dialysate are pumped through the system, and the rate at which fluid is removed from the patient. The high permeability hemodialysis system consists of the following devices:

(1) The hemodialyzer consists of a semipermeable membrane with an in vitro ultrafiltration coefficient (K_{uf}) greater than 12 milliliters per hour per conventional millimeter of mercury, and is used with either an automated ultrafiltration controller or another method of ultrafiltration control to prevent fluid imbalance.

(2) The hemodialysis delivery machine is similar to the extracorporeal blood system and dialysate delivery system of the hemodialysis system and accessories (§ 876.5820), with the addition of an ultrafiltration controller and mechanisms that monitor and/or control such parameters as fluid balance, dialysate composition, and patient treatment parameters (e.g., blood pressure, hematocrit, urea, etc.).

(3) The high permeability hemodialysis system accessories include, but are not limited to, tubing lines and various treatment related monitors (e.g., dialysate pH, blood pressure, hematocrit, and blood recirculation monitors).

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,'' and

(2) FDA's:

(i) ''Guidance for the Content of 510(k)s for Conventional and High Permeability Hemodialyzers,''

(ii) ''Guidance for Industry and CDRH Reviewers on the Content of Premarket Notifications for Hemodialysis Delivery Systems,''

(iii) ''Guidance for the Content of Premarket Notifications for Water Purification Components and Systems for Hemodialysis,'' and

(iv) ''Guidance for Hemodialyzer Reuse Labeling.''

32. Section 876.5955 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 876.5955 Peritoneo-venous shunt.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(2) FDA's ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''

(3) ''Pyrogenicity Testing per USP Rabbit Pyrogen Test or USP Bacterial Endotoxins Test,''

(4) American National Standards Institute/American Association for Medical Instrumentation's ANSI/AAMI/ISO 11135 ''Medical Devices—Validation and Routine Control of Ethylene Oxide Sterilization,'' and

(5) Specification for backflow that ensures against excessive reflux of blood into the shunt.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

33. The authority citation for 21 CFR part 878 continues to read as follows:

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

34. Section 878.3610 is amended by revising paragraphs (a) and (b) and by removing paragraph (c) to read as follows:

§ 878.3610 Esophageal prosthesis.

(a) *Identification*. An esophageal prosthesis is a rigid, flexible, or expandable tubular device constructed of a plastic, metal, or polymeric material that is intended to be implanted to restore the structure and/or function of the esophagus. The metal esophageal prosthesis may be uncovered or covered with a polymeric material. This device may also include a device delivery system.

(b) *Classification*. Class II. The special control for this device is FDA's ''Guidance for the Content of Premarket

Notification Submissions for Esophageal and Tracheal Prostheses.''

35. Section 878.3720 is amended by revising paragraphs (a) and (b) and by removing paragraph (c) to read as follows:

§ 878.3720 Tracheal prosthesis.

(a) *Identification*. The tracheal prosthesis is a rigid, flexible, or expandable tubular device constructed of a silicone, metal, or polymeric material that is intended to be implanted to restore the structure and/or function of the trachea or trachealbronchial tree. It may be unbranched or contain one or two branches. The metal tracheal prosthesis may be uncovered or covered with a polymeric material. This device may also include a device delivery system.

(b) *Classification*. Class II. The special control for this device is FDA's ''Guidance for the Content of Premarket Notification Submissions for Esophageal and Tracheal Prostheses.''

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

36. The authority citation for 21 CFR part 884 continues to read as follows:

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

37. Section 884.1060 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 884.1060 Endometrial aspirator.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(2) FDA's ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''

(3) Device design so that sampling part is covered while entering or leaving vagina, and

(4) Labeling to state that the device is only an adjunctive tool to evaluate the endometrium and to contraindicate use of device in pregnant patients and patients with a history of uterus perforation or recent cesarean section.

38. Section 884.1100 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 884.1100 Endometrial brush.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(2) FDA's ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''

(3) Device design so that sampling part is covered while entering or leaving vagina,

(4) Testing to demonstrate adequate adherence of bristles and brush head, and

(5) Labeling to state that the device is only an adjunctive tool to evaluate the endometrium and to contraindicate use of device in pregnant patients and patients with a history of uterus perforation or recent cesarean section.

39. Section 884.1185 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 884.1185 Endometrial washer.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(2) FDA's ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''

(3) Device design so that sampling part is covered while entering or leaving vagina,

(4) Intrauterine pressure not to exceed 50 conventional millimeters of mercury, and

(5) Labeling to:

(i) Contraindicate use of the device in pregnant patients and patients with a history of uterus perforation or recent cesarean section,

(ii) Warn that the device should not be attached to wall or any other external source of suction, and

(iii) State that the device is only an adjunctive tool to evaluate the endometrium.

40. Section 884.4100 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 884.4100 Endoscopic electrocautery and accessories.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(2) FDA's ''Guidelines for Evaluation of Laproscopic Bipolar and Thermal Coagulators,''

(3) International Electrotechnical Commission's IEC 60601 ''Electrical Safety Standard,''

(4) American National Standards Institute/American Association for Medical Instrumentation's HF–18 ''Electrosurgical Devices,''

(5) Labeling: an indication for female tubal sterilization,

(6) Treatment instructions to:

(i) Destroy at least 2 centimeters of a tube,

(ii) Use a cut or undampened sinusoidal waveform, and

(iii) Use a minimum power of 25 watts, and

(7) Labeling of devices with ammeters to activate the electrode for 4 to 5 seconds after the visual endpoint is reached or current flow ceases for complete destruction of tissue.

41. Section 884.4150 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 884.4150 Bipolar endoscopic coagulator-cutter and accessories.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(2) FDA's ''Guidance for Evaluation of Laproscopic Bipolar and Thermal Coagulators (and Accessories),''

(3) International Electrotechnical Commission's IEC 60601 ''Electrical Safety Standard,''

(4) American National Standards Institute/American Association for Medical Instrumentation's HF–18 ''Electrosurgical Devices,''

(5) Labeling: An indication for female tubal sterilization,

(6) Treatment instructions to:

(i) Destroy at least 2 centimeters of a tube,

(ii) Use a cut or undampened sinusoidal waveform, and

(iii) Use a minimum power of 25 watts, and

(7) Labeling of devices with ammeters to activate the electrode for 4 to 5 seconds after the visual endpoint is reached or current flow ceases for complete destruction of tissue.

PART 886—OPHTHALMIC DEVICES

42. The authority citation for 21 CFR part 886 continues to read as follows:

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

43. Section 886.3400 is amended by revising paragraphs (a) and (b) and by removing paragraph (c) to read as follows:

§ 886.3400 Keratoprosthesis.

(a) *Identification*. A keratoprosthesis is a device intended to provide a

transparent optical pathway through an opacified cornea, either intraoperatively or permanently, in an eye which is not a reasonable candidate for a corneal transplant.

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,'' and

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,'' and

(ii) ''Keratoprosthesis Guidance Document.''

44. Section 886.3920 is amended by revising the section heading and paragraphs (a) and (b) and by removing paragraph (c) to read as follows:

§ 886.3920 Aqueous shunt.

(a) *Identification*. An aqueous shunt is a one-way, pressure sensitive device intended to be implanted to normalize intraocular pressure. The device is intended to treat neovascular glaucoma or glaucomas where medical and conventional surgical treatment have failed.

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,'' and

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,'' and

(ii) ''Aqueous Shunts—510(k) Submissions.''

PART 888—ORTHOPEDIC DEVICES

45. The authority citation for 21 CFR part 888 continues to read as follows:

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

46. Section 888.3150 is revised to read as follows:

§ 888.3150 Elbow joint metal/polymer constrained cemented prosthesis.

(a) *Identification*. An elbow joint metal/polymer constrained cemented prosthesis is a device intended to be implanted to replace an elbow joint. It is made exclusively of alloys, such as cobalt-chromium-molybdenum, or of these alloys and of an ultra-high molecular weight polyethylene bushing. The device prevents dislocation in more than one anatomic plane and consists of two components which are linked together. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(i) ISO 5832 ''Implants for Surgery—Metallic Materials,''

(ii) ISO 5833 ''Implants for Surgery—Acrylic Resin Cements,''

(iii) ISO 5834 ''Implants for Surgery—Ultra High Molecular Weight Polyethylene,''

(iv) ISO 14630 ''Non-active Surgical Implants—General Requirements,''

(v) ISO 10993 ''Biocompatibility Test Methods,''

(vi) ISO 9001 ''Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation, and Servicing,'' and

(vii) ISO 6018 ''General Requirements for Marketing, Packaging, and Labeling.''

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''

(ii) ''Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement,''

(iii) ''Guidance Document for the Preparation of Premarket Notification (510(k)) Application for Orthopedic Devices,'' and

(iv) ''Guidance Document for Testing Non-articulating, 'Mechanically Locked' Modular Implant Components,'' and

(3) American Society for Testing and Materials':

(i) F75–92 ''Specification for Cast Cobalt-Chromium-Molybdenum Alloy for Surgical Implant Material,''

(ii) F799–96 ''Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants,''

(iii) F1108–97 ''Specification for Ti6Al4V Alloy Castings for Surgical Implants,''

(iv) F648–96 ''Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants,''

(v) F1537–94 ''Specification for Wrought Cobalt-Chromium-Molybdenum Alloy for Surgical Implants,''

(vi) F981 ''Practice for Assessment of Compatibility of Biomaterials (Nonporous) for Surgical Implant with Respect to Effect of Material on Muscle and Bone,''

(vii) F1044 ''Test Method for Shear Testing of Porous Metal Coatings,'' and

(viii) F1147 ''Test Method for Tension Testing of Porous Metal Coatings.''

47. Section 888.3540 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 888.3540 Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(i) ISO 5832 ''Implants for Surgery—Metallic Materials,''

(ii) ISO 5833 ''Implants for Surgery—Acrylic Resin Cements,''

(iii) ISO 5834 ''Implants for Surgery—Ultra High Molecular Weight Polyethylene,''

(iv) ISO 9001 ''Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation, and Servicing,''

(v) ISO 7207 ''Implants for Surgery—Femoral and Tibial Components for Partial and Total Knee Joint Prostheses,'' and

(vi) ISO 6018 ''General Requirements for Marketing, Packaging, and Labeling.''

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''

(ii) ''Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement,''

(iii) ''Guidance Document for the Preparation of Premarket Notification (510(k)) Applications for Orthopedic Devices,''

(iv) ''Guidance Document for Testing Non-articulating, 'Mechanically Locked' Modular Implant Components,'' and

(3) American Society for Testing and Materials':

(i) F75–92 ''Specification for Cast Cobalt-Chromium-Molybdenum Alloy for Surgical Implant Material,''

(ii) F799–96 ''Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants,''

(iii) F1108–97 ''Ti6Al4V Alloy Castings for Surgical Implants,''

(iv) F648–96 ''Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants,''

(v) F1537–94 ''Specification for Wrought Cobalt-Chromium-Molybdenum Alloy for Surgical Implants,''

(vi) F1044 ''Test Method for Shear Testing of Porous Metal Coatings,''

(vii) F1147 ''Test Method for Tension Testing of Porous Metal Coatings,''

(viii) F370–94 ''Specification for Proximal Femoral Prosthesis,'' and

(ix) F1672–95 ''Specification for Resurfacing Patellar Prosthesis.''

48. Section 888.3650 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 888.3650 Shoulder joint metal/polymer non-constrained cemented prosthesis.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's:

(i) ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(ii) ISO 5832 ''Implants for Surgery—Metallic Materials,''

(iii) ISO 5833 ''Implants for Surgery—Acrylic Resin Cements,''

(iv) ISO 5834 ''Implants for Surgery—Ultra High Molecular Weight Polyethylene,''

(v) ISO 9001 ''Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation, and Servicing,'' and

(vi) ISO 6018 ''General Requirements for Marketing, Packaging, and Labeling.''

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''

(ii) ''Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement,''

(iii) ''Guidance Document for the Preparation of Premarket Notification (510(k)) Application for Orthopedic Devices,'' and

(iv) ''Guidance Document for Testing Non-articulating, 'Mechanically Locked' Modular Implant Components,''

(3) American Society for Testing and Materials':

(i) F75–92 ''Specification for Cast Cobalt-Chromium-Molybdenum Alloy for Surgical Implant Material,''

(ii) F799–96 ''Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants,''

(iii) F1108–97 ''Ti6Al4V Alloy Castings for Surgical Implants,''

(iv) F648–96 ''Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants,''

(v) F1537–94 ''Specification for Wrought Cobalt-Chromium-Molybdenum Alloy for Surgical Implants,''

(vi) F1044 ''Test Method for Shear Testing of Porous Metal Coatings,''

(vii) F1147 ''Test Method for Tension Testing of Porous Metal Coatings,'' and

(viii) F1378 ''Specification for Shoulder Prosthesis.''

49. Section 888.3660 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 888.3660 Shoulder joint metal/polymer semi-constrained cemented prosthesis.

* * * * *

(b) *Classification*. Class II. The special controls for this device are:

(1) International Standards Organization's:

(i) ISO 10993 ''Biological Evaluation of Medical Devices Part I: Evaluation and Testing,''

(ii) ISO 5832 ''Implants for Surgery—Metallic Materials,''

(iii) ISO 5833 ''Implants for Surgery—Acrylic Resin Cements,''

(iv) ISO 5834 ''Implants for Surgery—Ultra High Molecular Weight Polyethylene,''

(v) ISO 9001 ''Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation, and Servicing,'' and

(vi) ISO 6018 ''General Requirements for Marketing, Packaging, and Labeling,''

(2) FDA's:

(i) ''510(k) Sterility Review Guidance and Revision of 11/18/94 K90–1,''

(ii) ''Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement,''

(iii) ''Guidance Document for the Preparation of Premarket Notification (510(k)) Application for Orthopedic Devices,'' and

(iv) ''Guidance Document for Testing Non-articulating, 'Mechanically Locked' Modular Implant Components,'' and

(3) American Society for Testing and Materials':

(i) F75–92 ''Specification for Cast Cobalt-Chromium-Molybdenum Alloy for Surgical Implant Material,''

(ii) F799–96 ''Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants,''

(iii) F1108–97 ''Specification for Ti6Al4V Alloy Castings for Surgical Implants,''

(iv) F648–96 ''Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants,''

(v) F1537–94 ''Specification for Wrought Cobalt-Chromium-Molybdenum Alloy for Surgical Implants,''

(vi) F1044 ''Test Method for Shear Testing of Porous Metal Coatings,''

(vii) F1147 ''Test Method for Tension Testing of Porous Metal Coatings,'' and

(viii) F1378 ''Standard Specification for Shoulder Prosthesis.''

Dated: March 1, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–6266 Filed 3–12–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–007]

RIN 2115–AE47

Drawbridge Operation Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to temporarily change the regulation for the operation of the draw of the L & N Railroad/Old Gentilly Road bascule span drawbridge across the Inner Harbor Navigation Canal, mile 2.9 at New Orleans, Orleans Parish, Louisiana. This proposal would allow the draw of the L&N Railroad/Old Gentilly Road bascule span drawbridge to remain closed to navigation daily from 8 a.m. until noon and from 1 p.m. until 5 p.m. from May 17 through May 28, 1999, June 1 through July 2, 1999, July 6 through September 3, 1999 and from September 7 through September 22. This proposed temporary rule will allow for replacement of the damaged fender system, an extensive but necessary maintenance operation. Presently, the draw opens on signal at all times.

DATES: Comments must be received on or before April 29, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments should also be submitted to the same address. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this proposed temporary rule.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, at the address given above. Telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data,views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 08–99–007) and the specific section of this document to

which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**. The comment period will be limited to 45 days because the rule needs to be effective by May 15, 1999.

The L&N Railroad/Old Gentilly Road bascule span drawbridge across the inner Harbor Navigation Canal, mile 2.9, in New Orleans, Louisiana has a vertical clearance of one foot above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, small ships, fishing vessels, sailing vessels and other recreational craft. The Board of Commissioners of the Port of New Orleans requested a proposed temporary rule for the operation of the drawbridge to accommodate maintenance work, involving removing portions of the existing damaged fender system, driving new pilings and replacing the timbers. This work is essential for continued safe transit of vessels through the bridge. This proposal would allow the draw of the L&N Railroad/Old Gentilly Road bascule span drawbridge to operate as follows: From May 17 through May 28, 1999, June 1 through July 2, 1999, July 6 through September 3, 1999 and from September 7 through September 22, 1999 the draw need not open for the passage of vessels from 8 a.m. until noon and from 1 p.m. until 5 p.m.

In the event of an approaching tropical storm or hurricane, the draw will return to normal operation within 12 hours notice from the Coast Guard. Presently, the draw opens on signal at any time.

Regulatory Evaluation

This proposed temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not required an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposed temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This is because the number of vessels affected by the closure is minimal. Commercial vessels, sailboats and most of the other recreational craft which normally transit the bridge will be able to do so between the hours of 5 p.m. and 8 a.m. and during the one-hour, mid-day opening between noon and 1 p.m.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposed temporary rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may 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. Commercial vessels and fishing vessels which normally transit the causeway bridge will still be able to do so between the hours of 5 p.m. and 8 a.m. and during the one hour mid-day opening between noon and 1 p.m. Thus, the Coast Guard expects there to be no significant impact on these vessels. The Coast Guard is not aware of any other waterway users who would suffer economic hardship from being unable to transit the waterway during these closure periods. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposed temporary rule and concluded that this action is categorically excluded from further environmental documentation under current Coast Guard (CE # 32(e), in accordance with Section 2.B.2 and Figure 2–1 of the National Environmental Protection Act Implementing Procedures, COMDTINST M16475.1C. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33 Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; and 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective from May 17, 1999 through September 22, 1999 § 117.458 is amended by adding a new paragraph (c) to read as follows:

§ 117.458 Inner Harbor Navigation Canal, New Orleans.

* * * * *

(c) The draw of the L&N Railroad/Old Gentilly Road bridge, mile 2.9, shall operate as follows: From May 17 through May 28, 1999, June 1 through July 2, 1999, July 6 through September 3, 1999 and from September 7 through September 22, 1999 the draw need not open for the passage of vessels from 8 a.m. until noon and from 1 p.m. until 5 p.m. At all other times the bridge opens on signal. In the event of an approaching tropical storm or hurricane, the bridge will be returned to normal operation within 12 hours of notification by the Coast Guard.

Dated: March 1, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–6223 Filed 3–12–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–173]

RIN 2115–AE47

Drawbridge Operation Regulations: Fort Point Channel, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules governing the Northern Avenue Bridge, mile 0.1, across Fort Point Channel in Boston, Massachusetts. This proposed rule removes the two time periods during vehicular traffic rush hours Monday through Friday when the Northern Avenue Bridge is not required to open for vessel traffic. Motor vehicles no longer use the Northern Avenue Bridge to cross Fort Point Channel as a result of the construction of a new highway bridge upstream. It is expected that this proposed rule will remove obsolete restrictions in the regulations to better meet the needs of navigation.

DATES: Comments must reach the Coast Guard on or before April 14, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Ma. 02110–3350, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The District Commander maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–98–173) and specific section of this proposal to which their comments apply, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in response to comments received. The Coast Guard does not plan to hold a public hearing; however, persons may request a public hearing by writing to the Coast Guard at the address listed under **ADDRESSES** in this document. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this matter, the Coast Guard will hold a public hearing at a time and place announced by a subsequent notice published in the **Federal Register**.

Background

The Northern Avenue Bridge has a vertical clearance at mean high water (MHW) of 7 feet and at mean low water (MLW) of 17 feet. The Northern Avenue Bridge is presently required to open on signal from 6 a.m. to 8 p.m., except during the two vehicular traffic rush hours, 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday. From 8 p.m. to 6 a.m. the draw need not open for vessel traffic.

The present use of the Northern Avenue Bridge is by pedestrians only. Vehicular traffic no longer uses the Northern Avenue Bridge. The roadway, Northern Avenue, has been relocated to align with the new replacement bridge which has been constructed upstream from the old bridge. Bridges normally open on signal at all times except when there is a demonstrated offsetting benefit to traffic crossing the bridge. In this case the traffic crossing the bridge no longer exists. Motor vehicles no longer cross over this bridge to cross Fort Point Channel. Retention of the two closed periods for rush hour vehicular traffic in the regulation is no longer necessary because it restricts the passage of vessels unnecessarily. The Northern Avenue Bridge provides an alternate pedestrian route to cross Fort Point Channel in addition to the new bridge. The present waterway usage is primarily construction barges working on projects upstream and recreational vessels docked along the Fort Point Channel waterfront.

The Coast Guard recently granted a temporary deviation from the operating regulations for a period of 60 days ending on January 6, 1999, requiring a twenty-four hour advance notice for bridge openings, to assist construction operations repairing the bridge protective fender system. Increased barge traffic on the waterway has made the repair of the fender system essential.

The period the bridge need not be opened for vessel traffic, 8 p.m. to 6 a.m., will remain unchanged.

The Coast Guard is limiting the comment period to 30 days for this notice of proposed rulemaking. The Coast Guard feels this is reasonable because of the increase in navigation on the waterway both from the upstream construction of the Central Artery Tunnel Project and the additional recreational traffic using the docks located behind the Barking Crab restaurant on Fort Point Channel. Comments are expected to be at a minimum because vehicular traffic no longer uses the Northern Avenue Bridge and can no longer benefit from the restriction in the regulations for rush hour traffic.

The navigational traffic on this waterway, which has increased will benefit from the speedy removal of this unnecessary restriction on navigation.

Discussion of Proposal

The Coast Guard proposes to revise § 117.599 to remove the obsolete clause in the regulations allowing the bridge to need not open fro vessel traffic from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday. This proposal will require the bridge to open on signal from 6 a.m. to 8 p.m. daily.

The Coast Guard also proposes to remove from the regulations the provision of opening the bridge as soon as possible for the passage of state and local vessels used for public safety. This provision is now included under the general operating regulations for bridges at § 117.31.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that this proposal is only removing obsolete language from the regulations that allow the bridge to remain closed during vehicular traffic rush hours. Vehicles no longer pass over the Northern Avenue Bridge to cross Fort Point Channel. This

change to the regulations will economically benefit navigational interests that use this waterway by no longer delaying their transits. The Coast Guard believes that the added cost to crew the bridge is not significant because the bridge owner must crew the bridge during the daytime hours 6 a.m. to 8 p.m. anyway and the additional cost to crew the bridge during the two rush hour periods is offset by the benefit to navigation using this waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this proposed rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this proposed rule.

List of Subjects in 33 CFR part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.599 is revised to read as follows:

§ 117.599 Fort Point Channel.

The Northern Avenue Bridge, mile 0.1, at Boston, shall open on signal from 6 a.m. to 8 p.m. daily. From 8 p.m. to 6 a.m. the bridge need not be opened for the passage of vessels.

Dated: March 2, 1999.

R. M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–6268 Filed 3–12–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY108–9904b: FRL–6307–7]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted on August 27, 1998, by the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet. This minor revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in Jefferson County, Kentucky, to require, beginning January 1, 2001, a check of the On Board Diagnostic (OBD) system of 1996 and newer cars and light duty trucks equipped with the system. In the final rules section of this **Federal Register**, the EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: To be considered, comments must be received by April 14, 1999.

ADDRESSES: Written comments on this action should be addressed to: Dale Aspy at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303.

Air Pollution Control District of Jefferson County 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Dale Aspy, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303. The telephone number is 404/562–9041. Reference file KY108–9904b.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: February 23, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–6252 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–61–7276; FRL –6307–6]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Oregon for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). This SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements for an approvable moderate nonattainment area PM–10 SIP for the Oakridge, Oregon, PM–10 nonattainment area. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by April 14, 1999.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the state submittal are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

The State of Oregon, Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6510.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules Section of this **Federal Register**.

Dated: February 19, 1999.

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 99–6260 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6239–6]

Approval and Promulgation of Implementation Plans, Texas; Reasonably Available Control Technology for Emissions of Volatile Organic Compounds From Wood Furniture Coating Operations and Ship Building and Repair Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing direct final approval of rules submitted by Texas for the control of emissions from Wood Furniture Coating Operations and Ship Building and Repair Operations.

In the ''Rules and Regulations'' section of this **Federal Register**, we are approving the State's SIP revision as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no relevant adverse comments, we will not take further action on this proposed rule. If we receive relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. We will address all relevant public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received by April 14, 1999.

ADDRESSEES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–7242.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action of the same title that is located in the ''Rules and Regulations'' section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 1, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–6255 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 64, No. 49
Monday, March 15, 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

Office of the Secretary

[Docket No. 98–115–1]

Declaration of Emergency Because of Classical Swine Fever (Hog Cholera) in the Dominican Republic and Haiti

A serious outbreak of classical swine fever (CSF), commonly known as hog cholera in the United States, is occurring in the Dominican Republic and Haiti. CSF was confirmed in Haiti in October 1996, and in the Dominican Republic in June 1997.

CSF, a highly contagious viral disease of swine, was eradicated from the United States in 1978 after a 16-year effort by industry and Federal and State Governments. If a similar eradication effort were attempted today, the estimated cost would exceed $500 million. While CSF does not cause illness in people, the more virulent strains can cause high morbidity and mortality in pigs. The less virulent strains can typically cause diarrhea, severe growth retardation, and reproductive losses. CSF is currently found in 36 countries in Europe, Asia, South America, and the Caribbean. The reintroduction of this disease into the United States could devastate the U.S. pork industry.

The Animal and Plant Health Inspection Service (APHIS) and the U.S. pork industry have recently determined that CSF in the Dominican Republic and Haiti poses a risk to the U.S. swine population. The primary risk to U.S. swine is through the illegal movement of swine and meat products, such as sausage, by airline passengers coming into the United States from the Dominican Republic. The CSF virus can survive for several months in pickled meat and for several years in smoked and frozen meat.

To protect the multi-billion dollar U.S. pork industry, including 600,000 jobs, and to maintain the Nation's food security and the pork and pork product export market valued at more than $1 billion, APHIS has already begun to respond to the CSF risk. The Agency has provided technical assistance to both the Dominican Republic and Haiti; enhanced passenger and baggage inspections on flights arriving from these two countries; and increased inspections of garbage feeders in Puerto Rico.

APHIS needs an additional $5.3 million to take adequate precautions against the introduction of CSF into the United States. Activities that would be funded by the additional money include an inspection program in the Dominican Republic and Haiti, a veterinarian stationed on the Island of Hispaniola, and enhanced surveillance of swine herds in the United States.

Therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. (7 U.S.C. 147b), I declare that there is an emergency which threatens the swine population of the United States and hereby authorize the transfer and use of such funds as may be necessary from appropriations or other funds available to the agencies or corporations of the United States Department of Agriculture for the conduct of a program to enhance surveillance activities and prevent the introduction of CSF into the United States.

EFFECTIVE DATE: This declaration of emergency shall become effective March 9, 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–6227 Filed 3–12–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 98–088–2]

Declaration of Emergency Because of the Asian Longhorned Beetle

A serious outbreak of the Asian longhorned beetle, *Anoplophora glabripennis*, is occurring in Illinois and New York.

The Asian longhorned beetle, an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy maple, horse chestnut, birch, Rose of Sharon, poplar, willow, elm, locust, mulberry, chinaberry, apple, cherry, pear, and citrus trees. It may also attack other species of hardwood trees. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of a half an inch or more in diameter are subject to infestation. The Asian longhorned beetle bores into the heartwood of host trees, eventually killing the host trees. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and over-winter in, the interior of the trees. Adult beetles emerge in the spring and summer months from round holes approximately ⅜-inch diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of the Asian longhorned beetle is produced each year. If this pest moves into the hardwood forests of the United States, the nursery and forest products industry could experience severe economic losses.

Since August 1996, infestations of the Asian longhorned beetle have been found in a portion of Brooklyn and Queens, NY, an area near Amityville, NY, and in three areas in and around Chicago. The damage and losses that would occur if the Asian longhorned beetle should become established and spread in the United States would be substantial. For example, many species of hardwood trees would be destroyed, severely harming industries that depend on the wood and other products of these trees (e.g., maple syrup, maple sugar, fruit). Hardwood lumber industries would face critical supply shortages and would be forced to try to meet their needs with imported hardwoods. Mature ornamental trees would be attacked, and domestic supplies of trees for nursery and landscaping companies would be reduced or eliminated. Widespread destruction of hardwood trees in public and private forest land would occur, causing enormous direct losses in tourism and related industries and enormous losses that cannot be easily measured to the aesthetics of our woodlands.

In cooperation with the States of Illinois and New York, the Animal and

Plant Health Inspection Service (APHIS) has initiated a program to eradicate the Asian longhorned beetle in Illinois and New York. The States of Illinois and New York are assisting APHIS in funding the program. However, APHIS resources are insufficient to meet the estimated $5.5 million needed for the Federal share. In addition, some of these resources may be needed to fund other, small scale emergencies before the end of the year.

Therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. (7 U.S.C. 147b), I declare that there is an emergency which threatens the forest and maple syrup industries of this country and hereby authorize the transfer and use of such funds as may be necessary from appropriations or other funds available to the agencies or corporations of the United States Department of Agriculture for the conduct of a program to detect the Asian longhorned beetle, identify infested areas, control and prevent the spread of the Asian longhorned beetle to noninfested areas of the United States, and eradicate the Asian longhorned beetle wherever it may be found in the United States.

Effective Date: This declaration of emergency shall become effective March 9, 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–6226 Filed 3–12–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of National Genetic Resources Advisory Council Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The United States Department of Agriculture announces a meeting of the National Genetic Resources Advisory Council.

SUPPLEMENTARY INFORMATION: The National Genetic Resources Advisory Council consists of 16 members to provide advice to the Secretary and Director regarding the advancement of the USDA's National Genetic Resources Program. The meeting will discuss matters concerning the USDA's germplasm banks, genetic diversity and the genome initiative among other matters.

Times and Dates: April 28, 1999, 8:30 a.m.–5:00 p.m.; April 29, 1999, 8:30 a.m.–4:00 p.m.

Place: Room 3109, USDA South Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Henry L. Shands, Director, National Genetic Resources Program, Room 323–A Jamie L. Whitten Federal Building, USDA, 1400 Independence Avenue SW, Washington, D.C. 20250–0300. Telephone 202–205–7835, Fax 202–690–1434.

Done at Washington, D.C. on this 10th Day of March, 1999.

Henry L. Shands,

Assistant Administrator for Genetic Resources, USDA–ARS.

[FR Doc. 99–6229 Filed 3–12–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–107–2]

Availability of Memorandum of Understanding With the Forest Service, USDA; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; correction.

SUMMARY: We are correcting the Supplementary Information section of a notice that was published in the **Federal Register** on November 13, 1998 (63 FR 63445, Docket No. 98–107–1).

FOR FURTHER INFORMATION CONTACT: Mr. Martin Mendoza, Jr., Director, Operational Support, Wildlife Services, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234, (301) 734–7921.

Correction

In the **Federal Register** issue of November 13, 1998 (Volume 63, Number 219), FR Doc. 98–30392, on page 63445, in the second column, in the second paragraph following the ''Supplementary Information'' caption, the second sentence, which begins ''The U.S. Forest Service is * * *'', is corrected to read as follows:

The U.S. Forest Service is responsible for the management of land and resources under its jurisdiction and is also responsible for conducting routine nonpredator control operations on National Forest System lands, including National Environmental Policy Act compliance on these activities.

Done in Washington, DC, this 9th day of March, 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–6228 Filed 3–12–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Jacobs/Swale Vegetation Management Project, Dixie National Forest, Garfield County, UT

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of Record of Decision for the Jacobs/Swale Vegetation Management Project.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will withdraw the Record of Decision of July 28, 1995 signed by Hugh C. Thompson, Forest Supervisor. I am instructing the District Ranger of the Escalante Ranger District to stop implementation activities authorized by Supervisor Thompson's decision.

This action is made necessary by implementation of the agency's Interim Roads Rule which became effective March 1, 1999. I have found that large portions of the Jacobs/Swale project area are within suspension Category 2 of the Interim Roads Rule.

FOR FURTHER INFORMATION CONTACT: Direct questions about the withdrawal to Kevin R. Schulkoski, District Ranger, Escalante Ranger District, by mail at Escalante Ranger District Escalante Interagency Federal Building, 755 West Main Street, Escalante, UT 84726, or by phone at (435) 826–5400.

Dated: March 5, 1999.

Ronald S. Wilson,

Acting Forest Supervisor,

Dixie National Forest.

[FR Doc. 99–6222 Filed 3–12–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hells Canyon Subgroup of the John Day/Snake Resource

Advisory Council will meet on April 9, 10, and 11, 1999 at the Pittsburg Administrative site located at Pittsburg Landing.

The meeting will begin at 11 a.m. and continue until approximately 8 p.m. the first day and will begin at 7:30 a.m. and continue until approximately 8 p.m. on the second day; the meeting will again begin at 7:30 a.m. and continue until 12 p.m. on the third day. Agenda items to be covered include: (1) Noxious Weeds; (2) Review of the Comprehensive Management Plan resources; (3) Comprehensive Management Plan, draft Preferred Alternative, Native Ecosystem Alternative and Alternative W; (4) Budget (5) Open public forum.

All meetings are open to the public. Public comments will be received at 1 p.m. on April 9th at the Pittsburg Launch site located in Idaho at the Snake River terminus of Forest Road 493, accessed off of Highway 95 near White Bird, Idaho.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–426–5501.

Dated: March 8, 1999.

Kendall Clark,

Area Ranger.

[FR Doc. 99–6212 Filed 3–12–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Increase of a Guaranteed Access Level for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

March 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and increasing a guaranteed access level.

EFFECTIVE DATE: March 15, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing and carryover.

Upon the request of the Government of Costa Rica, the U.S. Government has agreed to increase the current Guaranteed Access Level for textile products in Category 447.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 70107, published on December 18, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on March 15, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	1,143,834 dozen.
342/642	422,479 dozen.
443	220,933 numbers.
447	13,904 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

Also effective on , you are directed to increase the Guaranteed Access Level for Category 447 to 14,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–6237 Filed 3–12–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

[CFDA No. 84.128J]

Recreational Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: To provide grants for recreational programs providing individuals with disabilities recreational activities and related experiences to aid in their employment, mobility, socialization, independence, and community integration. Funds may be requested for vocational skills development, leisure education, leisure networking, leisure resource development, physical education and sports, scouting and camping, 4–H activities, construction of facilities for aquatic rehabilitation therapy, music, dancing, handicrafts, art, and homemaking. If possible and appropriate, these programs and activities are to be provided in settings with peers who are not individuals with disabilities.

Eligible Applicants: States, public agencies, and nonprofit private organizations.

Supplementary Information: Applications for funding under this notice will be used to support grants in FY 1999. The Secretary may consider supporting approved applications submitted in FY 1999 for grant support in FY 2000.

Deadline for Transmittal of Applications: April 30, 1999.

Deadline for Intergovernmental Review: June 29, 1999.

Applications Available: March 19, 1999.

Available Funds: $1,156,479.

Estimated Range of Awards: $120,000—$140,000.

Estimated Average Size of Awards: $130,000.

Estimated Number of Awards: 9.

Project Period: Up to 36 months.

Note: The Department is not bound by any estimates in this notice.

Statutory Requirements

All applicants seeking funding under this competition shall—

(a) Assure that individuals provided services must be advised of the availability and purposes of the State's Client Assistance Program, including

information on means of seeking assistance from that program (section 20 of the Rehabilitation Act of 1973, as amended (the Act));

(b) Describe the manner in which the applicant will address the needs of individuals with disabilities from minority backgrounds (section 21(c) of the Act);

(c) Describe the manner in which the findings and results of the project to be funded under the grant, particularly information that facilitates the replication of the results of that project, will be made generally available (section 305(a)(4)(A) of the Act);

(d) Describe, in budgetary detail, whether the applicant proposes to use the Federal share of the grant for a program of recreational services, construction of an aquatic rehabilitation facility, or a combination of recreational services and construction of an aquatic rehabilitation facility (section 305 (a)(4) of the Act); and

(e) Assure that the project, to the greatest extent possible, will use existing resources and facilities to carry out the recreational activities provided by the project (section 305(a)(4) of the Act).

In addition, all applicants proposing to provide a program of recreational services shall—

(a) Assure that the project will maintain, at a minimum, the same level of services over the three-year project period (section 305(a)(5) of the Act);

(b) Assure that the service program funded under the grant will be continued after Federal assistance ends (section 305(a)(4)(B) of the Act); and

(c) If applicable, describe the extent to which any service program for which the applicant has received funding previously under this part has been continued or will be continued after Federal funding ends (section 305(a)(4) of the Act).

All applicants proposing to construct a facility for aquatic rehabilitation therapy shall provide an assurance that, upon completion of the construction, the facility will be used for a service program of aquatic rehabilitation therapy consistent with section 305 of the Act (section 305(a)(4)(A) of the Act).

Definitions

For purposes of a recreation program involving construction of a facility for aquatic rehabilitation therapy, the terms ''construction'' and ''cost of construction'' are defined in section 7(6) of the Act as follows:

(a) *Construction*—The term ''construction'' means (i) the construction of new buildings; (ii) the acquisition, expansion, remodeling, alteration, and renovation of existing buildings; and (iii) initial equipment of buildings described in clauses (i) and (ii).

(b) *Cost of Construction*—The term ''cost of construction'' includes architects' fees and the cost of acquisition of land in connection with construction but does not include the cost of offsite improvements.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR part 79 apply to applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in § 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition. For purposes of the selection criteria only, references to *services* relate to *all activities* proposed for funding by the applicant, including a program to construct and aquatic rehabilitation therapy facility.

For Applications Contact: The Grants and Contracts Service Team (GCST), U.S. Department of Education, 400 Maryland Avenue, SW, Room 3317, Switzer Building, Washington, DC 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 application packages 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.

FOR FURTHER INFORMATION CONTACT: Mary E. Chambers, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3322 Switzer Building, Washington, DC 20202–2647. Telephone: (202) 205–8435.

Individuals with disabilities may obtain a copy of this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 775.

Dated: March 9, 1999.

Judith E. Heumman,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–6218 Filed 3–12–99; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6309–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for renewal.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for renewal: Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting requirements, OMB No. 2050–0154, current expiration date is September 30,

1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection described below.

DATES: Comments must be submitted on or before May 14, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–DFIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, D.C. 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: *rcradocket@epamail.epa.gov*. Comments in electronic format should also be identified by the docket number F–1999–DFIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/sqg/sqg.htm
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this rulemaking contact Paul Cassidy, EPA, Office of Solid Waste (5306W), Industrial & Extractive Waste Branch, 401 M Street, SW, Washington, D.C. 20460, phone 703 308–7281, e-mail address cassidy.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting requirements—40 CFR Part 257, Subpart B.

OMB No.: 2050–0154.

Current expiration date: September 30, 1999.

Affected entities: EPA assumes that industrial waste units that previously co-disposed non-hazardous wastes and conditionally exempt small quantity generator (CESQG) hazardous waste on-site have ceased that practice and that commercial off-site industrial waste units are operating with stringent environmental controls in place. Therefore, entities that potentially will be affected by this action are limited to those that dispose of CESQG hazardous wastes in construction and demolition (C&D) waste landfills.

Abstract: In order to effectively implement and enforce final changes to 40 CFR Part 257—Subpart B on a State level, owners/operators of construction and demolition waste landfills that receive CESQG hazardous wastes will have to comply with the final reporting and recordkeeping requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. This continuing ICR documents the recordkeeping and reporting burdens associated with location and ground-water monitoring provisions contained in 40 CFR part 257—subpart B.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and the clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual burden to respondents for complying with the information collection requirements of part 257—subpart B Criteria is approximately 11, 000 hours per year, with an annual cost of $393,000. The estimated number of respondents is 164 with an average annual burden of approximately 67 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 9, 1999.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 99–6263 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6309–3]

National Drinking Water Advisory; Council Right-to-Know Working Group; Notice of Conference Call

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a conference call of the Right-to-Know Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*), will be held on March 22, 1999, from 1:00–3:00 p.m., Eastern Standard Time, in Room 1209, East Tower, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to review and make recommendations on draft materials which NDWAC recommended that EPA prepare to support Consumer Confidence Reports and other right-to-know provisions of the Safe Drinking Water Act. Statements from the public will be taken if time permits.

For more information, please contact Marjorie Jones, Designated Federal Officer, Right-to-Know Working Group, U.S. EPA, Office of Ground Water and Drinking Water, Mail Code 4601, 401 M Street SW, Washington, D.C. 20460. The telephone number is 202–260–4152 or E-mail *jones.marjorie@epa.gov*.

Dated: March 2, 1999.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 99–6261 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6309–2]

National Drinking Water Advisory Council; Right-to-Know Working Group; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Right-to-Know Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*), will be held on March 25, 1999, from 9:00 a.m.–5:30 p.m. and on March 26 from 8:30 a.m.–1:30 p.m., at the Hilton Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, Virginia. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to determine whether materials developed to support Consumer Confidence Reports and other Right-to-Know provisions meet the overall needs for public information, as recommended by the Right-to-Know Working Group to NDWAC in November, 1998; to recommend the most effective ways to distribute the information; and to recommend ways to facilitate partnerships at the local level. The meeting is open to the public to observe. The working group members are meeting to gather information and to analyze relevant issues and facts, as noted above. Statements from the public will be taken if time permits.

For more information, please contact Marjorie Jones, Designated Federal Officer, Right-to-Know Working Group, U.S. EPA, Office of Ground Water and Drinking Water, Mail Code 4601, 401 M Street SW, Washington, D.C. 20460. The telephone number is 202–260–4152 or E-mail *jones.marjorie@epa.gov*.

Dated: March 2, 1999.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 99–6262 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00266; FRL–6069–3]

Forum on State and Tribal Toxics Action (FOSTTA) Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Four projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public at the time and place listed below in this notice. The public is encouraged to attend the proceedings as observers. However, in the interest of time and efficiency, the meeting is structured to provide maximum opportunity for state, tribal, and EPA invited participants to discuss items on the predetermined agenda. At the discretion of the chair of the project, an effort will be made to accommodate participation by observers attending the proceedings.

DATES: The four projects will meet March 29, 1999, from 8 a.m. to 5 p.m. and on March 30, 1999, from 8 a.m. to noon. There will be a plenary session on OPPT's FY '99 budget, programs, and activities on Monday, March 29, 1999, from 8 a.m. to 9:30 a.m.

ADDRESSES: The meetings will be held at The Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Darlene Harrod, Designated Federal Official (DFO), Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–6904; e-mail: harrod.darlene@epa.gov. Any observer wishing to speak should advise the DFO at the telephone number or e-mail address listed above no later than 4 p.m. on March 26, 1999.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states, tribes, EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS), and Office of Enforcement and Compliance Assurance (OECA). FOSTTA currently consists of the Coordinating Committee and four issue-specific projects. The projects are the: (1) Toxics Release Inventory Project; (2) Pollution Prevention Project; (3) Chemical Management Project; and (4) Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: March 3, 1999.

Joseph S. Carra,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–6275 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6309–5]

Pollution Prevention Research Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of Office of Research and Development research strategy for pollution prevention.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today announcing the availability of the ''Pollution Prevention Research Strategy'' prepared by the Agency's Office of Research and Development (ORD). The Strategy lays out a

framework for pollution prevention research that emphasizes two long-term ORD goals: (1) Providing common sense and cost-effective approaches for preventing and managing risks, and (2) providing leadership for others in developing ways of preventing or reducing those risks. The Strategy includes ''core'' and ''problem-oriented'' research and development activities designed to maintain ORD's long-term capabilities and to address current critical needs identified by EPA Program Offices and Regions. The Strategy is designed around the vision that scientifically-based pollution prevention research and development products will be used routinely for improved decision making by both the public and private sectors. This use would be part of a national move toward sustainable development in the 21st Century. The Strategy has four objectives: (1) conducting research to address economic, social, and behavioral research for pollution prevention; (2) developing and transferring pollution prevention technology approaches; (3) verifying the performance of selected pollution prevention technologies; and (4) delivering broadly applicable tools and methodologies for pollution prevention and sustainability. The Strategy contains four chapters: Chapter 1 provides the context for the Strategy; Chapter 2 outlines the strategic pollution prevention rationale; Chapter 3 describes long-term goals and objectives, as well as research activities to be pursued; and Chapter 4 presents the implementation approach for the goals and objectives described in Chapter 3.

ADDRESSES: An electronic version of the Research Strategy is accessible from ORD's Internet home page at http://www.epa.gov/ORD/resplans. Interested parties can obtain a single copy of the report by contacting EPA's National Service Center for Environmental Publications (NSCEP) at (800) 490–9198. When contacting NSCEP, please provide your name and mailing address, and request publication number EPA/600/R–98/123 dated September 1998. There are a limited number of paper copies available from the above source, and requests will be filled on a first-come first-served basis. After the supply is exhausted, copies of the report can be purchased by contacting the National Technical Information Service (NTIS) at (703) 605–6000, or by sending a facsimile to (703) 605–6900.

FOR FURTHER INFORMATION CONTACT: Jonathan Herrmann (513) 569–7839 or Teresa Harten (513) 569–7565 at the National Risk Management Research Laboratory, 26 W. Martin Luther King Drive, Cincinnati, OH 45268.

Dated: February 18, 1999.

Calvin O. Lawrence,

Acting Director, National Risk Management Research Laboratory.

[FR Doc. 99–6264 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

OPPTS–44651; FRL–6068–3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on Hexamethylene Diisocyanate (HDI) (CAS No. 822–06–0). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. What are the details of the submission?

Test data for HDI were submitted by the Chemical Manufacturers Association (CMA) on behalf of its test sponsor companies: ARCO Chemical Company, Newtown Square, PA; Bayer Corporation, Pittsburgh, PA; and Rhodia Inc. (Formerly Rhone-Poulenc Inc.), Raleigh, NC. The reports were submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order. EPA received the data on January 29, 1999. The submission includes three final reports entitled: 1) ''Bacterial Reverse Mutation Assay Using Vapor-Phase Exposure for 1,6-Hexamethylene Diisocyanate,'' 2) ''*In Vitro* Mammalian Cell Gene Mutation Test with an Independent Repeat Assay Using Vapor Phase Exposure to 1,6-Hexamethylene Diisocyanate,'' and 3) ''Acute Inhalation of Hexamethylene Diisocyanate For a Mouse Micronucleus Assay.'' HDI is used in the manufacture of higher molecular weight biuret polyisocyanate resins and trimer polyisocyanate resins. HDI biuret polyisocyanate resins and trimers are mainly used as reactive components of two part polyurethane paint systems for automobile refinishing, industrial maintenance, marine coatings, and other high performance coating systems. For example, the civilian and military aircraft industry uses aliphatic diisocyanate-containing paint almost exclusively because of its stability in ultraviolet light. Other consumer uses of HDI are not known at this time.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. How do I get additional information?

EPA has established a public record for this TSCA section 4(d) receipt of test data notice (docket number OPPTS–44651). This record includes copies of the studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e-mail: oppt.ncic@epamail.epa.gov.

Electronic Availability:

Internet

Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: March 5, 1999.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–6274 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–NJ; FRL–6055–4]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of New Jersey's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On November 30, 1998, the State of New Jersey submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of New Jersey's application, provides a 45 day public comment period, and provides an opportunity to request a public hearing on the application. New Jersey has provided a certification that its program meets the requirements for approval of a State program under TSCA section 404. Therefore, pursuant to TSCA section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in New Jersey.

DATES: Comments on the authorization application must be received on or before April 29, 1999. Public hearing requests must be received on or before March 29, 1999.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket number ''PB–402404–NJ'' (in duplicate) to: Environmental Protection Agency, Region II, Pesticides and Toxic Substances Branch, 2890 Woodbridge Ave., MS–225, Edison, NJ 08837–3679.

Comments, data, and requests for a public hearing may also be submitted electronically to: bevilacqua.louis@epa.gov. Follow the instructions under Unit IV of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Louis Bevilacqua, Regional Lead Coordinator, Pesticides and Toxic Substances Branch, Environmental Protection Agency, Region II, 2890 Woodbridge Ave., MS–225, Edison, NJ 08837–3679, telephone: (732) 321–6671, e-mail address: bevilacqua.louis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92), entitled Lead Exposure Reduction.

TSCA section 402 (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under TSCA section 404 (15 U.S.C. 2684), a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to TSCA section 404(h) (15 U.S.C. 2684(h)), EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of TSCA section 404(b). Upon submission of such certification letter, the program is deemed authorized (15 U.S.C. 2684(a)). This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to TSCA section 404(b) (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether New Jersey's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register** .

II. State Program Description Summary

The following summary of New Jersey's proposed program has been provided by the applicant:

The State of New Jersey, through the Department of Health and Senior Services, has implemented its lead-based paint program based on the following outlined structure.

The ''Lead Abatement and Evaluation Act,'' Pub.L. 1993, c.288, was signed into law on December 12, 1993, and directed the Commissioner of the Department of Health and Senior Services (DHSS) to establish a certification program to assure the competency of individuals performing lead abatement or lead evaluation work in all buildings and structures in a safe and reliable manner. The Act also required the Commissioner of the Department of Community Affairs (DCA) to certify business firms prior to their performing lead evaluations or abatement work. The Act further directed the prescription of standards to ensure that these activities are conducted safely. The Act further required the DCA to delegate its administrative and enforcement duties to the Department of Labor (DOL) for

buildings and structures that do not contain dwelling units. Effective May 29, 1998, by Executive order, all of the duties and responsibilities carried out by DOL were transferred to DCA.

On February 21, 1995, DHSS adopted N.J.A.C. 8:62, ''Standards for Lead Certification,'' establishing standards for the certification of training providers and the permitting of lead abatement workers, supervisors, inspectors/risk assessors, and planner/project designers. These rules specify the educational and experiential requirements for each discipline, the application process to obtain a permit, the required training course and examination, and renewal procedures. These rules also establish certification standards for training providers and training courses which specify the curriculum for each discipline. These rules further specify remedial measures available to the DHSS should an individual be in violation of these requirements.

On July 17, 1995, DCA adopted N.J.A.C. 5:17, ''Lead Hazard Evaluation and Abatement Code,'' as well as, amendments to N.J.A.C. 5:23, ''Uniform Construction Code,'' establishing the rules for the certification of business firms that perform lead evaluation and abatement and the prescription of work practice standards. These rules require contractors performing lead abatement to obtain a work permit under the ''Uniform Construction Code.'' The rules specify remedial measures available to DCA in the occurrence of violations. The proposed new rules at N.J.A.C. 5:17 serve as a companion to the rules promulgated at N.J.A.C. 8:62 fulfilling the legislative mandate.

The ''Uniform Construction Code'' was amended by incorporating definitions of lead abatement and lead evaluation requiring a construction permit to be issued for abatement work and listing the information to be required in the permit application. The amendments established fees and the need for a lead abatement clearance certificate once an abatement is successfully completed.

III. Federal Overfiling

TSCA section 404(b) (15 U.S.C. 2684(b)) makes it unlawful for any person to violate, or fail, or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure, or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number ''PB–402404–NJ.'' Copies of this notice, the State of New Jersey's authorization application, and all comments received on the application are available for inspection in the Region II Office, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at Environmental Protection Agency, Region II, Pesticides and Toxic Substances Branch, Building 209, Bay B, Lead Team Office, 2890 Woodbridge Ave., Edison, NJ 08837–3679.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

bevilacqua.louis@epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''PB–402404–NJ.'' Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (*Regulatory Planning and Review*, 58 FR 51735, October 4, 1993), and Executive Order 13045 (*Protection of Children from Environmental Health Risks and Safety Risks*, 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in

a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: February 8, 1999.

William J. Muszynski,

Acting Regional Administratior, Region II.

[FR Doc. 99–6273 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

March 8, 1999.

AGENCY: Federal Communications Commission.

SUNSHINE ACT HEARING: Notice of the Second Hearing in a Series of Hearings about Telephone Service for Indians on Reservations, and a Request for Comment from the General Public about Issues relevant to that Subject.

TIME AND DATE: Scheduled for 8:00 a.m. to 12:30 on March 23, 1999.

PLACE: The Gila River Indian Community at the Sprung Facility, 5550 West Wild Horse Path, Chandler, Arizona.

STATUS: Chairman William Kennard and other FCC Commissioners, including Commissioner Susan Ness and Commissioner Harold Furchtgott-Roth, will preside over the hearing. Representatives of Indian tribes and of Indian-owned telephone companies operating on reservations, representatives of non-Indian telephone companies, executives from telecommunications service providers, representatives of the State of Arizona, and technology experts will testify about the level of telephone service currently available on reservations. In addition, testimony will address measures that tribes, telecommunications service providers, the FCC, and states can take to improve access to affordable telephone service on reservations. Specific issues include the cost of telephone service to remote, low-population areas; the availability of 911 and enhanced 911 services on reservations; the availability of advanced services, including high-speed Internet access, on reservations; deployment of alternative technologies; rights-of-way issues; and governmental and sovereignty issues.

The hearing will be open to the general public. The Commission requests that all interested parties submit written comments on all testimony and evidence received during the hearing, and on all issues arising from the FCC's inquiry, on or before May 28, 1999. Such comments should be submitted in BO Docket No. 99–11.

MATTERS TO BE CONSIDERED: In comparison to other Americans, relatively few Indians on reservations have access to even basic service. This lack of telephone service limits the opportunities available to Indians on reservations. In particular, access to medical care in emergencies is limited; prospective employers cannot be reached quickly and easily; and commercial, educational, and other information available on the Internet is not available. The FCC seeks to examine the causes for low levels of service and to determine what actions might be taken to improve access to telephone service on Indian reservations.

FOR FURTHER INFORMATION CONTACT: Eric Jensen of the Office of Communications Business Opportunities at (202) 418–0990, e-mail ejensen@fcc.gov; William Kehoe of the Common Carrier Bureau at (202) 418–7122, e-mail bkehoe@fcc.gov; or Belford Lawson of the Office of Communications Business Opportunities at (202) 418–7264, e-mail blawson@fcc.gov.

Federal Communications Commission.

Eric Jensen,

Deputy Director, Office of Communications Business Opportunities.

[FR Doc. 99–6319 Filed 3–11–99; 3:20 pm]

BILLING CODE 6712–01–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 8:30 a.m., April 12, 1999.

PLACE: On board MISSISSIPPI V at Foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; (2) District Commander's overview of current project issues within Memphis District; and (3) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project.

TIME AND DATE: 8:30 a.m., April 13, 1999.

PLACE: On board MISSISSIPPI V at City Front, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project.

TIME AND DATE: 3:00 p.m., April 14, 1999.

PLACE: On board MISSISSIPPI V at City Front, Vicksburg, MS.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; (2) District Commander's overview of current project issues within Vicksburg District; and (3) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project.

TIME AND DATE: 8:30 a.m., April 16, 1999.

PLACE: On board MISSISSIPPI V at Corps District Office, Foot of Prytania Street, New Orleans, LA.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; (2) District Commander's overview of current project issues within New Orleans District; and (3) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental

features of the Mississippi River and Tributaries project.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Gwen Jones Edris, telephone (601) 634–5766.

Wendell W. Wilkinson,

Acting Executive Assistant, Mississippi River Commission.

[FR Doc. 99–6360 Filed 3–11–99; 3:20 pm]

BILLING CODE 3710–PU–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below.

License Number: 3856
Name: Derwent Freight International, Inc.
Address: 379 Monmouth Street, Suite 12, East Windsor, NJ 08520
Date Revoked: January 26, 1999
Reason: Surrendered license voluntarily.

License Number: 3592
Name: Eagle Transfer, Inc. d/b/a Eagle Companies
Address: 2330 N.W. 82nd Ave., Miami, FL 33122
Date Revoked: January 13, 1999
Reason: Failed to maintain a valid surety bond.

License Number: 2640
Name: Export Transports, Inc.
Address: 611 Eagle Drive, Bensenville, IL 60106
Date Revoked: February 18, 1999
Reason: Surrendered license voluntarily.

License Number: 3434
Name: Fast Cargo U.S., L.A., Inc
Address: 155–04 145th Ave., Jamaica, NY 11434
Date Revoked: January 25, 1999
Reason: Surrendered license voluntarily.

License Number: 4275
Name: Global Link Transport, Inc.
Address: 324 Garden Road, Springfield, PA 19064
Date Revoked: January 6, 1999
Reason: Failed to maintain a valid surety bond.

License Number: 547
Name: H. Z. Bernstein Co., Inc.
Address: 2975 Kennedy Blvd., Jersey City, NJ 07306
Date Revoked: January 11, 1999
Reason: Surrendered license voluntarily.

License Number: 3596
Name: Imex Shipping Group, Inc.
Address: 5599 Biscayne Blvd., P.O. Box 370612, Miami, FL 33137
Date Revoked: January 20, 1999
Reason: Surrendered license voluntarily.

License Number: 3142
Name: J.P. Shipping Consultants Inc.
Address: 7831 N.W. 72nd Avenue, Medley, FL 33166, P.O. Box 60–1337, No. Miami Beach, FL 33160–1337
Date Revoked: Feburary 16, 1999
Reason: Surrendered license voluntarily.

License Number: 4298
Name: Rula International, Inc.
Address: 13333 Northborough Drive, Apt. 109, Houston, TX 77067–1735
Date Revoked: February 10, 1999
Reason: Failed to maintain a valid surety bond.

License Number: 2098
Name: Sabine E. Bezem d/b/a Sabine International
Address: 1511 Edgewater Drive, P.O. Box 668, Livingston, TX 77351
Date Revoked: January 27, 1999
Reason: Surrendered license voluntarily.

License Number: 4003
Name: SCR International Freight Forwarding, Inc.
Address: 130 Minorca Avenue, Coral Gables, FL 33134
Date Revoked: February 4, 1999
Reason: Surrendered license voluntarily.

License Number: 2575
Name: Sebang (Global) Enterprises, Inc.
Address: 451 Grand Avenue, Palisades Park, NJ 07650
Date Revoked: February 3, 1999
Reason: Surrendered license voluntarily.

License Number: 3315
Name: Trans-Hemisphere Shipping Services Corporation
Address: 1701 North 20th Street, Tampa, FL 33605
Date Revoked: January 23, 1999
Reason: Failed to maintain a valid surety bond.

License Number: 3220
Name: Virginia Clement Green d/b/a Clement Worldwide Export
Address: 2052 Marsh Flower Lane, Charleston, SC 29414–6435
Date Revoked: February 23, 1999
Reason: Surrendered license voluntarily.

T. A. Zook,

Deputy Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–6207 Filed 3–12–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. First Financial Bancorp., Hamilton, Ohio; to merge with Hebron Bancorp, Inc., Hebron, Kentucky, and thereby indirectly acquire Hebron Deposit Bank, Hebron, Kentucky.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Southeast Bancshares, Inc., Mediapolis, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Southeast Security Bank, Mediapolis, Iowa.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. North County Financial Corporation, Manistique, Michigan; to acquire directly and indirectly not less than 28 percent of the voting shares of Northpointe Bancshares, Inc., Grand Rapids Township, Michigan, and thereby indirectly acquire Northpointe Bank, Grand Rapids Township, Michigan (a *de novo* bank).

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Commerce Bancshares, Inc., Adair, Oklahoma; to merge with Chelsea Bancshares, Inc., Chelsea, Oklahoma, and thereby indirectly acquire Bank of Chelsea, Chelsea, Oklahoma.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Mercantile Bancorp, Inc., Dallas, Texas and Mercantile Delaware Bancorp, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First Mercantile Bank, N.A., Dallas, Texas.

F. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Newco Alaska, Inc., Ketchikan, Alaska; to become a bank holding company by acquiring 100 percent of the voting shares of First Bancorp, Inc., Ketchikan, Alaska, and thereby indirectly acquire First Bank, Ketchikan, Alaska.

Board of Governors of the Federal Reserve System, March 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6208 Filed 3–12–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Guaranty Development Company, Livingston, Montana; to engage *de novo*, through its subsidiary, Kennedy American Mortgage LLC, Bozeman, Montana, in a joint venture in residential mortgage loan origination activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6209 Filed 3–12–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy; Stocking Change of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the 7-part version of the following Standard Form is now authorized for local reproduction:

SF 1109, U.S. Government Bill of Lading—Continuation Sheet

The nine-part version of the SF 1109 (NSN 7540–00–656–1477) is still available from the Federal Supply Service.

You can obtain the revised camera copy in two ways:

On the internet. Address: http://www.gsa.gov/forms/forms.htm, or; From Forms-X, Attn.: Barbara Williams, (202) 501–0581.

DATES: Effective March 15, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: March 8, 1999.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 99–6194 Filed 3–12–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–11]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Center for Disease Control and Prevention. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received with 60 days of this notice.

Proposed Project

1. National Sexually Transmitted Disease Morbidity Surveillance System—Extension—(0920–0011)—The National Center for HIV, STD, and TB Prevention (NCHSTP)—The reports used for this surveillance system provide ongoing surveillance data on national sexually transmitted disease

morbidity. The data are used by health care planners at the national, state, and local (including selected metropolitan and territorial health departments) levels to develop and evaluate STD prevention and control programs. In addition, there are many other users of the data including scientists, researchers, educators, and the media. STD data gathered in these reports are used to produce national statistics published in the annual STD Surveillance Report, MMWR articles, and serve as a progress report to meet objectives in *Healthy People 2000: Midcourse Review and 1995 Revisions.* It is important to note that these reporting forms are in the process of being phased out and replaced by electronic, line-listed STD data collected in the National Electronic Telecommunications System for Surveillance (NETSS).

Costs are covered by way of cooperative agreements to the project areas. The annual cost to respondents is estimated at $12,627 based on an estimated hourly salary of $15.25 for health department personnel responsible for completing these forms.

Forms	No. of respondents	No. of responses/respondent	Avg. burden (in hrs.)	Total burden (in hrs.)
CDC 73.688*	36	4	1	144
CDC 73.688**	27	4	1	108
CDC 73.998	36	12	0.5833	252
CDC 73.2638	36	3	3	324
Total				828

**State-level reporting:* Respondents for the state-specific CDC 73.688 forms now include 26 state health departments (originally, respondents included 50 states, but 24 states have now discontinued hardcopy reporting and send all STD data as electronic line-listed records through NETSS), seven large city health departments and three outlying areas.

*** City-level reporting:* The health departments for the 26 states and one of the outlying regions (Puerto Rico) also prepare and submit reports for additional large cities within their jurisdictions.

2. Evaluation of the Needlestick Injury Alert—NEW—The mission of the National Institute of Occupational Safety and Health (NIOSH) is to promote ''safety and health at work for all people through research and prevention.'' NIOSH not only investigates and identifies occupational safety and health hazards, the Institute also develops recommendations for controlling those hazards. In some cases, NIOSH distributes these recommendations about the hazard directly to affected workplaces.

One way that NIOSH accomplishes this is through the Alert. The Alert is usually a six to ten page document that outlines the causes and detection of the hazard and recommendations for controlling the risk to workers. One of the central goals of the Alert is to educate employers and encourage them to take steps to reduce the risks to their workers. It is also important that the recommendations in the Alert provide them with sufficient information.

The Alert chosen for this study concerns the risk of needlestick injuries (NSI) to health care workers. Although there is not precise information about the frequency of NSI in the United States, it has been estimated that approximately 800,000 of these injuries occur each year. As a result of NSI, health care workers can be exposed to HIV, and the Hepatitis B and C viruses. It is believed that the incidence of NSI account for the majority of occupational transmission of these pathogens to health care workers.

In the proposed study, NIOSH will send the Alert to one of two individuals with formal responsibility for employee health and safety in hospitals—Directors of Infection Control and Directors of Health and Safety. NIOSH will then follow-up with a randomly selected sample of hospitals at two points in time. The recipient of the Alert will be interviewed two to six weeks after the Alert was sent and ten to fourteen weeks later, the other key individual will be interviewed.

Broadly, the goals of the study are to: (1) assess whether, and under what circumstances, the Alert encourages employers to adopt control measures, and (2) ascertain whether the information in the Alert assists employers in implementing control measures. Overall, the hope is that the study will reveal ways of making the Alert a more effective tool for primary prevention. The total cost to respondents is $0.00.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per response	Total burden
Directors of Infection Control	450	1	0.3333	149
Directors of Health and Safety	450	1	0.3333	149
Total				297

3. Cancer Morbidity and Mortality Among Current and Former Employees of the National Center for Health Statistics—NEW—Employees of the National Center for Health Statistics (NCHS) have raised concerns regarding the number of cancers occurring among the staff in recent years and have asked NCHS management to investigate this possible cancer excess. The purpose of the proposed study is to determine the actual number of cancers that have been diagnosed among the employees of NCHS since 1991, and to determine whether the rate of cancer deviates from what would be expected based on rates for the Washington suburban area. A questionnaire will be sent to each person employed at NCHS during 1991 asking whether s/he has been diagnosed with cancer and requesting permission to contact their physician for confirmation; other questions will be included on the questionnaire, including their family history of cancer, location of NCHS office, and smoking status. These data will be used to judge whether the employee cohort has an unusual cancer risk profile compared to other similar cohorts and, subsequently, whether an in-depth epidemiologic study is necessary. Respondents include both current and former employees, but

for purposes of calculating a total burden under the Paperwork Reduction Act of 1995, only retirees and other former employees are counted. The total cost to respondents is estimated at $645.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Former employees	86	1	0.25	21.5

Dated: February 24, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–6211 Filed 3–12–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Registration and Listing Grassroots Meetings for Medical Device Manufacturers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following two open public meetings: Registration and Listing Grassroots Meetings. The topic to be discussed at these meetings is FDA's intention to propose changes to the current medical device registration and listing system. These meetings are being conducted to provide a forum in which FDA can obtain industry views on changes to the device registration and listing system that FDA is currently considering. The changes being considered are aimed at streamlining the collection of registration and listing data, improving the accuracy and quality of the data in the system, and decreasing the time it takes manufacturers to register their establishments and list their devices, while ultimately reducing FDA's cost of maintaining the registration and listing system.

DATES: See Table 1 in the ''**SUPPLEMENTARY INFORMATION**'' section of this document.

ADDRESSES: See Table 1 in the ''**SUPPLEMENTARY INFORMATION**'' section of this document.

FOR FURTHER INFORMATION CONTACT:

For general meeting program information: Bonnie H. Malkin, Office of Health and Industry Programs (HFZ–200), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–2845.

For registration information: Mark S. Roh, Pacific Region, Food and Drug Administration, 1301 Clay St., suite 1180N, Oakland, CA 94612–5217, (FAX) 510–637–3977.

Those persons interested in attending these meetings, should fax their registration to 510–637–3977, including name and position/title, company name, mailing address, and telephone and fax numbers. There is no charge to attend these meetings, but advance registration is requested due to limited seating. If you need special accommodations due to a disability, please contact Mark S. Roh at least 7 days in advance.

SUPPLEMENTARY INFORMATION: Over the past one and a half years, FDA has reviewed the entire registration and listing process to determine if the process can be made more efficient and accurate. This was one of many reengineering efforts conducted by the Center for Devices and Radiological Health (CDRH). This reengineering effort has resulted in a number of suggestions aimed at improving the registration and listing process for both FDA and industry. These meetings will help FDA obtain the medical device industry perspective on the changes under consideration and suggestions for additional changes.

Some of the changes that FDA is currently considering include the following:

(1) Require industry submission of registration and listing information through the World Wide Web (WEB). What are the advantages and disadvantages to industry and how would industry be affected if WEB submissions were mandated?

(2) Require that owners and parent companies register and list and take responsibility for the registration and listing of their establishments. What is the highest level in a company that should be responsible for registration and listing and how should this level be defined/described?

(3) Require that additional data elements be submitted to FDA, e.g., premarket submission numbers for those devices that have gone through the premarket notification (510(k)), premarket approval, or product development protocol process.

(4) Because of the ease of submission through the WEB, require that firms register and list within 5 days (current requirement is 30 days) of entering into an operation that requires registration and listing.

A summary report of the meetings will be available on the CDRH website approximately 15 working days after the meetings. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh'' .

TABLE 1.—MEETING SCHEDULES

Meeting Address	Dates	Times
Northern California Meeting		
Airport Hyatt, San Jose, 1740 North First St., San Jose, CA 95112, 408–993–1234.	Tuesday, April 20, 1999	Registration: 7:30 a.m. Meeting: 8:30 a.m. to 12 m.
Southern California Meeting		
FDA Los Angeles District Office, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612, 949–798–7714.	Wednesday, April 21, 1999	Registration: 7:30 a.m. Meeting: 8:30 a.m. to 12 m.

Dated: March 9, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–6265 Filed 3–12–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Notice of Listing of Members of the Food and Drug Administration's Senior Executive Service Performance Review Board

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the members of the FDA Performance Review Board (PRB). This action is intended to ensure that members of the PRB's are appointed in a manner that provides consistency, stability, and objectivity in performance appraisals, and that notice of the appointment of members of the board be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Arlene S. Karr, Office of Human Resources and Management Services (HFA–408), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4183.

The following persons will serve on FDA's PRB, which oversees the evaluation of performance appraisals of FDA's Senior Executive Service members in accordance with 5 U.S.C. 4314(c)(4):

Michael A. Friedman, Chairperson
Robert J. Byrd
Margaret J. Porter
Sharon Smith Holston
Linda A. Suydam

Dated: February 11, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

[FR Doc. 99–6267 Filed 3–12–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Joseph Hemby, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057 ext. 265; fax: 301/402–0220; e-mail: jh259b@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Novel ATP Binding Cassette Responsible for Cytotoxin Resistance

Michael C. Dean, Susan Bates, Tito A Fojo, Rando Allikmets (NCI)
Serial No. 60/110,473 filed 30 Nov 98

This technology describes a new human gene (ABCP) that is a member of a subfamily that includes several multidrug resistance (MDR) transporters. It is highly expressed in placenta and is amplified 10–12 fold in the MCF ADVp3000 cells (mitoxantrone-resistant cells), but not in the SI–m1–0 (human colon carcinoma cells). The gene is important in the study of MDR and the development of drugs to block the transporter's function in MDR, as well as important in the role in placental function and fetal health. Mutations in this gene may predispose individuals to miscarriages or birth defects. The described technology may have utility as a diagnostic marker for drug resistance and drug screening for drugs that block the gene. The gene may also be a diagnostic marker for tumors of the breast and other tissues. Monoclonal antibodies to the ABCP gene are described in this technology. Also described are methods for overexpressing the ABCP gene in a cell. Protein and cDNA sequences of the ABCP gene are also disclosed.

Cloning and Characterization of Two Novel Human Factors, p52 and p75, That Mediate Transcriptional Activation and/or Pre-mRNA Splicing

Hui Ge (NICHD)
Serial No. 60/108,248 filed 13 Nov 98

This technology involves two novel, human transcriptional co-activators, p52 and p75 which are 52kd and 75kd polypeptides purified with Positive Co-factor 4 (PC4) and are involved in the regulation of transcription. Mediation of transcription is extremely important since it is involved in almost every biological function. The co-activator, p52, has been implicated in pre-mRNA through interaction with Alternative Splicing Factor (ASF)/Splicing Factor 2 (SF2). Pre-mRNA splicing can generate multiple mRNAs for different proteins with different functions from a single gene, which is considered to be essential for the viability of many vertebrate organisms. These factors control and regulate gene expression of most genes and thus may have diagnostic, prognostic, and therapeutic utilities in the detection and treatment of many cancers and other genetic disease. The technology further describes the isolation of the cDNAs encoding the two transcriptional co-activators. The two co-activators share a region of 325 residues; however, they show distinct co-activator properties. Both co-activators interact directly with the VP16 activation domain and with components of the general transcription machinery. Sp1, a glutamine rich cellular activator which can bind the GC-box present in many cellular and viral promotors, is essential for the activation of the HIV–1 gene and others, requires the presence of the transcriptional co-activator p52. Thus, the technology may have a therapeutic utility in the prevention and therapy of AIDS.

Triplex Mediated Site Directed Mutagenesis

TA Winters, K Mezhevaya, I Panyutin, RD Neumann (CC)
DHHS Reference No. E–285–98/0 filed 08 Oct 98

This technology describes triple helix forming oligonucleotides (TFOs) which specifically bind to a target site in a DNA molecule to induce double strand breaks (DSB's). These TFO's are labeled with ^{125}I and are used to generate mutations at specific target sites. DNA DSB's are known to be highly mutagenic. Auger emitting radioisotopes such as ^{125}I are known to induce DNA DSB's when they disintegrate in close proximity to, or within the DNA duplex. In addition, radionuclides such as ^{125}I which emit ~20 Auger electrons upon disintegration would be expected to produce DSB sites that also contain base damage proximal to the strand break ends.

Potential applications of this technology include diagnostics or therapeutics where site specific mutagenic disruption or knock-out of target genes involved in genetic diseases such as cancer, HIV, human hepatitis B

or C, human herpes, or Parkinson's disease is desired. Other applications include inducing site specific reversion mutations in defective disease causing genes to produce a phenotypic shift back to wild type.

Additionally, this technology could be used for in situ identification and in-vivo imaging of diagnostic gene rearrangements as well as monitoring/assessing the efficacy of gene therapy by specifically activating or deactivating transferred genes without affecting endogenous cellular genes.

A Method of Reversing Resistance to Cisplatin Utilizing a Dominant-Negative Construct

Maria Bonovich, Eddie Reed, Charles Vinson (NCI)
Serial No. 60/103,330 filed 07 Oct 98

This technology describes an acidic amphipathic domain (A–Zip) transcription factor, A–FOS, a dominant negative, that has high binding affinity with a basic leucine zipper (B–ZIP) transcription factor, AP–1, to selectively prevent binding of AP–1 to the Excision Repair Cross-Complementing-1 (ERCC1) DNA repair gene at the cis element of cisplatin resistant cells. Binding is selectively inhibited at the cis-element of the ERCC1 promotor region which is important or ERCC1 expression in cisplatin resistant cells and thus ERCC1 transcription is preferentially inhibited in the cisplatin resistant cells. Increased mRNA expression of ERCC1 is associated with resistance in cancer cells, particularly ovarian cancer cells, to chemotherapeutic drugs such as cisplatin. ERCC1 is involved in DNA repair of damage caused by adducts which are formed by cisplatin. The AP–1 transcription complex, consisting of Jun and Fos, is thought to upregulate ERCC1 in cancer cells, such as ovarian cancer cells. In particular, the application describes an adenoviral replication defective infection system which delivers A–Zip's to a cell, resulting in heterodimerization with AP–1, thus competing with the ERCC1 gene for binding of AP–1 and selectively inhibiting the expression of ERCC1 in cisplatin resistant cells and not parental cells. Thus, this invention has utility as a therapeutic method in the treatment of cancer.

Identification of the Factor in Bone Responsible for Prostate Cancer Cell Metastasis

K Jacob, H Kleinman, D Benayahu (NIDCR)
Serial No. 60/102,918 filed 02 Oct 98

This technology describes a bone matrix protein which may be a member of the bone matrix protein family of osteonectin/SPARC/BM40, a chemoattractant. Also described is the role protein plays in making breast, and particularly prostate cancer cells highly invasive, migratory, and metastatic to bone. Osteonectin is a 32,000 dalton bone-specific protein that binds selectively to both hydroxyapatite and collagen. The level of the receptor for osteonectin may be a marker of metastatic potential for both breast and prostate cancer, lending itself as an assay for determining the diagnosis and prognosis of prostate and breast cancer. Levels of osteonectin in serum may also have utility as a marker of prostate cancer.

PB39, A Novel Isolated Complete cDNA Whose Function Is Dysregulated in Prostate Cancer

Rodrigo Chaugui, Lance A. Liotta, Kristina A. Cole (NCI) Serial No. 60/094, 137 filed 14 Jul 98

This technology describes the identification and cloning of two cDNAs derived from a human prostate cancer. In addition, the technology describes the cDNA for the murine homolog as well as the murine genomic sequence has been determined. The human gene is located on chromosome 11 and the gene product appears to exist in two forms, PB–39A (adult) and PB–39B (fetal). The products of the gene, which correspond to these cDNAs, are over-expressed in prostate cancer and PB–39 is over-expressed in prostate intraepithelial neoplasia (PIN). PIN is an early precursor of cancer; therefore, the PB–39B gene product may serve as an early marker for prostate cancer. The over-expression of PB–39A or PB–39B in prostate cancer when compared to normal tissue indicates that either may be used in the diagnosis of prostate cancer. Early results indicated that PB–39B may be a more reliable indicator (3/4 samples were positive for PB–39B while 5/11 samples were positive for PB–39A).

Screening Assays for Compounds That Cause Apoptosis and Related Compounds

CC Harris, XW Wang (NCI)
Serial No. 08/675,631 filed 01 Jul 96

This technology describes peptides which may be useful as therapeutics due to their ability to cause apoptosis and assays which can be used to screen compounds for their ability to cause apoptosis. Preferably, the peptides are derived from the carboxy (COOH) terminus of the amino acid sequence of the known protein p53. More preferably, the peptides correspond to amino acids 367–387, 319–393, 350–380, 355–375, and 360–370 of the COOH terminus of p53. In particular, a single peptide derived from amino acid residues 360–370 of p53 is described. Diseases and conditions which have been linked to defects in apoptosis include cancer, heart attack, Parkinson's, Alzheimer's and stroke.

Dated: March 5, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–6204 Filed 3–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting J.R. Dixon, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

Title: "Anthrax Lethal Factor is a MAPK Kinase Protease"

Inventors: Drs. Nicholas S. Duesbery (NCI–FCRDC), Craig Webb (NCI–FCRDC), Stephen H. Leppla (NIDCR), and Dr. George Vande Woude (NCI–FCRDC)
DHHS Ref. No. E–066–98/0—Filed April 1, 1998

Anthrax toxin, produced by *Bacillus anthracis*, is composed of three proteins; protective antigen (PA), edema factor (EF), and lethal factor (LF). PA by itself has little or no toxic effect upon cells, but serves to bind cell surface receptors and mediate the entry of EF and LF into the cell. EF has been identified as an adenylate cyclase and together with PA forms a toxin (edema toxin; EdTx) which can induce edema formation when injected subcutaneously. LF and PA together form a toxin (lethal toxin; LeTx) which can cause rapid lysis of certain

macrophage-derived cell lines *in vitro* as well as death when injected intravenously.

Indirect evidence had suggested that LF was a metalloprotease. However, the intracellular target of LF remained unknown until recently when NIH scientists discovered that LF proteolytically inactivates mitogen activated protein kinase kinase 1 and 2 (MAPKK1, 2). Using oocytes of the frog *Xenopus laevis* as well as tumor derived NIH3T3 (490) cell expressing an effector domain mutant form of the human V12HaRas oncogene these scientists demonstrated that LF induced proteolysis of MAPKK 1 and 2, resulting in their irreversible inactivation. MAPKK 1 and 2 are components of the mitogen activated protein kinase (MAPK) signal transduction pathway, an evolutionarily conserved pathway that controls cell proliferation and differentiation in response to extracellular signal and also plays a crucial role in regulating oocyte meiotic maturation. Further, the MAPK pathway has been shown to be constitutively activated in many primary human as well as in tumor-derived cell lines. Consistent with this, treatment of V12Ha–Ras transformed NIH 3T3 cells with LeTx inhibits cell proliferation and causes their reversion to a non-transformed phenotype.

This invention specifically relates to *in vitro* and ex vivo methods of screening for modulators, homologues, and mimetics of LF mitogen activated protein kinase kinase (MAPKK) protease activity. Applications for this technology could be:

1. A novel tool (LF) for the study of the cellular role of the MAPK pathway in normal or tumor cells.

2. Investigation of LF for developing inhibitors for cancer therapy. By analyzing structural-functional relationships, additional compounds with improved specificity, increased potency, and reduced toxicity can be generated. Mimetics which block MAPKK activity or the determination of mechanisms of regulation of proteases that target MAPKK at or near the same site targeted by LF could be developed.

3. A protease-based assay for LF by using a peptide to test for LF cleavage. There is no commercial test for anthrax. This assay could be used for testing soldiers for anthrax exposure. Characterization of the interaction between LT and MAPKK at the amino acid level may lead to the generation of inhibitors which may prove useful in treating anthrax.

The above mentioned invention is available for licensing on an exclusive or non-exclusive basis.

Dated: March 5, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–6205 Filed 3–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Girish C. Barua, Ph.D. at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057 ext. 263; fax: 301/402–0220; e-mail: gb18tnih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mixing Arrangement and Method

Lesley Pesnicak (NIAID)
Serial No. 08/823,417 filed 25 Mar 97; U.S. Patent 5,810,773 issued 22 Sep 98

An arrangement for sterilely mixing two viscous fluids together. It consists of a base with removable stops to accommodate two syringes (different sizes can be used) and a 3-way stopcock. Two commercially available syringes are connected to a 3-way stopcock and fitted onto the base such that the flanges of the syringes are up against stops connected to the base and the 3 way stopcock is fitted into stops also connected to the base in such a manner that syringes and stopcock are unable to pull apart when the desired fluids are forced through the stopcock from one syringe to another. In this manner two fluids can be easily mixed without the loss for material which might result from the syringes popping off the stopcock and the ability to provide complete sterility. This device is especially good for emulsification of peptides.

Isolation of Amplified Genes Via cDNA Subtractive Hybridization

Bertrand C. Liang (NCI)
Serial No. 08/700, 763 filed 09 Aug 96; U.S. Patent 5,827,658 issued 27 Oct 98

A method of analyzing an amplified gene, including determining its copy number involves subtractive hybridization of cDNA libraries, one from the tissue of interest and the other containing biotinylated cDNA from normal tissue, where the annealed cDNA is removed by means of magnetic beads coated with streptevidin or avidin. The cDNA isolated after subtractive hybridization represents amplified DNA, and it is analyzed to determine what gene(s) were amplified. Furthermore, the copy number of the gene(s) can be estimated. The copy number thus determined can be correlated to the severity of a pathogenic state, to the prognosis or to treatment efficacy.

Method of Identifying and Using Drugs With Selective Effect Against Cancer Cells

George F. Vande Woude, Anne P. Monks, Han-Mo Koo (NCI) Serial No. 08/260,515 filed 15 Jun 94; U.S. Patent 5,645,983 issued 08 Jul 97

The invention covers a method of identifying drugs which selectively inhibit the growth of particular cancer cells. This is accomplished by contacting cancer cells, which differ as to the presence of a particular DNA sequence with a drug and measuring the effect of the drug on growth of the cells. A determination is then made as to whether there is a correlation between the growth rate and presence or absence of the DNA sequence.

The invention may potentially be applied in research and development of cancer therapeutics, or as a diagnostic. It may provide the ability to design combinations of drugs for cancer treatment.

Dated: March 5, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–6206 Filed 3–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Subcommittee H—Clinical Groups, March 25, 1999, 8:00 AM to March 26, 1999, 5:00 PM, The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD, 20814 which was published in the **Federal Register** on February 17, 1999, 64 FR 7901.

The meeting will be held for one day only on March 26, 1999. The meeting is closed to the public.

Dated: March 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6196 Filed 3–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Brain, Behavior and Emergence of Cognitive Competence.

Date: March 22–23, 1999.

Time: 7:30 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: The Westin Hotel, Atlanta Airport, 4736 Best Road, Atlanta, GA 30337.

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892 (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS).

Dated: March 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6197 Filed 3–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Cell-Matrix Interactions in Limb Development.

Date: March 18, 1999.

Time: 1:00 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS.)

Dated: March 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6198 Filed 3–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2 (M1) P.

Date: April 14–16, 1999.

Time: April 14, 1999, 7:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: The Inn at Longwood Medical, 342 Longwood Avenue, Boston, MA 02115.

Contact Person: Shan S. Wong, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6 as 25, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: March 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6199 Filed 3–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–45, R01 Review.

Date: March 19, 1999.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PHD, Chief, Scientific Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–39, R–44 Review.

Date: March 30, 1999.

Time: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–38, Review of R–44.

Date: April 1, 1999.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washhko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–41, R44 Review.

Date: April 6, 1999.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research National Institutes of Health, HHS.

Dated: March 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6200 Filed 3–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications an the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Program Project SEP.

Date: April 8, 1999.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Birdie D. Pierson, Grants Technical Assistant, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, NIAMS Clinical Trial SEP.

Date: April 8, 1999.

Time: 8:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Melody Maryland, Grants Technical Assistant, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Researach, National Institutes of Health, HHS).

Dated: March 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6201 Filed 3–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: April 7–8, 1999.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Aftab A. Ansari, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis,

Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS).

Dated: March 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6202 Filed 3–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 15, 1999.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 22, 1999.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: March 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6203 Filed 3–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals association with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 11, 1999.

Time: 4:15 pm to 5:15 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Donald Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 9, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–6394 Filed 3–11–99; 4:09 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in the action entitled *United States of America* v. *Agway, Inc., et. al.,* Civil Action No. 99–CV–0227 (NAM/GJD) (N.D.N.Y.), was lodged on February 18, 1999 with the United States District Court for the Northern District of New York. The proposed consent decree resolves claims of the United States, on behalf of the U.S. Environmental Protection Agency, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675, against defendants Agway, Inc., BMC Industries, Inc., Cooper Industries, Inc., Elf Atochem North America Inc., Keystone Consolidated Industries, Inc., Mack Trucks, Inc., Monarch Machine Tool Co., New York State Electric & Gas Corp., Niagara Mohawk Power Corp., Overhead Door Corp., Pall Corp., Potter Paint Co., Inc., Raymond Corp., Redding-Hunter, Inc., and Wilson Sporting Goods Co. These claims are for injunctive relief and recovery of response costs incurred and to be incurred by the United States with respect to the Rosen Brothers Superfund Site (''Site''), located in Cortland, New York.

Under the terms of the proposed consent decree, the defendants will compensate the United States in the amount of $810,927.52 for its incurred costs with respect to the Site, and will also reimburse the United States for all of its future response costs with respect to the Site in excess of $200,000. By the terms of the proposed consent decree, defendants Agway, Inc., BMC Industries, Inc., Elf Atochem North America Inc., Mack Trucks, Inc., New York State Electric & Gas Corp., Pall Corp., Raymond Corp., and Wilson Sporting Goods Co. will also perform the remedy specified by the U.S. Environmental Protection Agency for cleanup of the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and

should refer to *United States* v. *Agway, Inc., et al.,* Civil Action No. 99–CV–0227 (NAM/GJD) (N.D.N.Y.), DOJ Ref. No. 90–11–3–254B.

The proposed consent decree may be examined at the Office of the United States Attorney, 445 Broadway, Room 231, Albany, New York 12207; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866; and the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, telephone (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $114.25 (25 cents per page reproduction costs for the Decree and appendices) made payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 99–6234 Filed 3–12–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

In accordance with Departmental policy and 28 CFR 50.7, please be advised that a proposed Consent Decree was lodged on February 24, 1999, in *United States* v. *Crozer Chester Medical Center, et al.,* C.A. No. 97–CV–4376, with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree resolves litigation brought by the United States under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged violations of the Pennsylvania State Implementation Plan (''SIP''). At issue were emissions and operating practices at a hospital waste incinerator (''HWI''). Defendants voluntarily shut down the incinerator shortly before the lawsuit was filed, and have since permanently closed the HWI.

Under the Consent Decree, Defendant Eastern Power Corporation (now known as Statoil Energy Power, Inc.) will pay a civil penalty of $250,000. Defendant Crozer Chester Medical Center (''Crozer'') will perform a Supplemental Environmental Project (''SEP'') estimated to cost $250,000. Under the SEP, Crozer will institute an asthma detection program for first, sixth, and eleventh grade students in the Chester-Uplands public school system. All students diagnosed as asthmatic will be enrolled in an Asthma Management Program designed to increase students' exercise capacity and reduce: time lost from school; nocturnal asthma; emergency room visits; and effects from medications.

Any comments on the proposed Consent Decree should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Crozer Chester Medical Center, et al.,* DOJ Ref. #90–5–2–1–2110. The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Twelfth Floor, Philadelphia, PA 19106, and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. The proposed Consent Decree contains 51 pages, including the attachment describing the SEP. To obtain the Consent Decree, with the attachment, please enclose a check for $12.75. Please make the check payable to the Consent Decree Library, and refer to the case by its title and DOJ Ref. #90–5–2–1–2110.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–6233 Filed 3–12–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Safe Drinking Water Act

Notice is hereby given that on February 18, 1999 a proposed Consent Decree (''Decree'') in *United States* v. *Old Capital Valley Cheese, Inc.,* Civil Action No. 2:99CV0096J, was lodged with the United States District Court for the District of Utah. The United States filed this action pursuant to the Safe Drinking Water Act (''SDWA''), 42 U.S.C. 300g, et seq., seeking injunctive relief and civil penalties for the Defendant's monitoring and reporting violations of the SDWA.

The proposed Consent Decree requires the Defendants to comply with the SDWA by testing its water supply at regular intervals over the next three years for certain contaminants. In addition to this injunctive relief, the proposed Consent Decree will recover a civil penalty of $9,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States* v. *Old Capital Valley Cheese, Inc.,* Civil Action No. 2:99CV0096J, and D.J. Ref. #90–5–1–1–06066.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202 and the U.S. EPA Region VIII, 999 18th Street, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $4.75 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–6232 Filed 3–2–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1981–99]

Immigration and Naturalization Service User Fee Advisory Committee: Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and time: Wednesday, May 5, 1999, at 1:00 pm.

Place: Immigration and Naturalization Service Headquarters 425 I Street, NW., Washington, DC 20536, Shaughnessy Conference Room—6th Floor.

Status: Open. 19th meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2 The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service

on issues related to the performance of airport and seaport immigration inspection services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public and the Federal Government.

Agenda

1. Introduction of the Committee members.

2. Discussion of administrative issues.

3. Discussion of activities since last meeting.

4. Discussion of specific concerns and questions of Committee members.

5. Discussion of future traffic trends.

6. Discussion of relevant written statements submitted in advance by members of the public.

7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least 5 days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contract person for consideration by this Advisory Committee. Only written statements received by the contact person at least 5 days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street, NW., Washington, DC 20536, telephone (202) 616–7648 or fax (202) 514–8345.

Dated: March 5, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–6239 Filed 3–12–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 9, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Acting Departmental Clearance Officer, Pauline Perrow ([202] 219–5095 ext. 165) or by E-Mail to Perrow-Pauline@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ([202] 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assump[tions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Improving and Eliminating Regulations; Calibration and Maintenance Procedures for Wet Test Meters and Coal Mine Respirable Dust Samples.

OMB Number: 1219–ONEW (existing collection in use without OMB control number).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 900.

Estimated Time Per Respondent: .12 hour per response.

Total Burden Hours: 109.

Total Annualized capital/startup costs: $639.

Total annual costs (operating/maintaining systems or purchasing services): $204,500.

Description: Requires that approved sampling devices be calibrated before they are put into service; that they be calibrated at intervals not to exceed 200 hours of operation time; and that they be maintained as approved under 30 CFR Part 74.

Agency: Occupational Safety and Health Administration.

Title: Longshoring and Marine Terminals (29 CFR parts 1917 and 1918).

OMB Number: 1218–0196 (reinstatement)

Frequency: Varies (Initially, On Occasion, Monthly, Weekly, Annually).

Affected Public: Business or other for-profit; No-for-profit institutions; Federal Government; State, local or tribal Government.

Number of Respondents: 746.

Estimated Time Per Respondent: Varies (Initially, on Occasion, Monthly, Weekly, Annually).

Total Burden Hours: 23,161.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $).

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The Longshoring and Marine Terminals regulation contain requirements related to the testing, certification and marking of specific types of cargo lifting appliances and associated cargo handling gear and other cargo handling equipment such as conveyors and industrial trucks. The collections of information required from employers by OSHA are necessary to reduce employee injuries and fatalities associated with cargo lifting gear, transfer of vehicular cargo, manual

cargo handling, and exposure to hazardous atmospheres.

Pauline Perrow,

Acting Departmental Clearance Officer.

[FR Doc. 99–6236 Filed 3–12–99; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Erlenborn Commission; Notice of Public Hearings

AGENCY: Legal Services Corporation.

ACTION: Notice of public hearings of Commission authorized by the Legal Services Corporation (''LSC'' or ''Corporation'') to study the issue of when aliens must be present in the United States to be eligible for legal assistance from Corporation-funded programs.

SUMMARY: The Corporation has formed and authorized a Commission, known as the Erlenborn Commission, to hold public hearings and study the meaning of a statutory requirement in the Corporation's appropriations act that an alien be present in the United States in order to be eligible for legal assistance from LSC-funded programs (hereinafter referred to as ''the presence requirement''). This notice provides information on the public hearings that will be held by the Commission. The public hearings and comments are intended to aid the Commission compile a factual record and prepare findings to be transmitted to the Corporation's Board of Directors, along with recommendations, to inform the Corporation's interpretation of the presence requirement and to provide the basis for any necessary and appropriate remedial action, such as a rulemaking or a request for legislative action by the Congress.

Public Hearing Dates: Two public hearings will be held by the Commission. The first hearing has been scheduled for Saturday, March 27, 1999, and will be held in the Moot Court Room of the Duke University School of Law, located at Science Drive and Towerview Road, in Durham, North Carolina. The School of Law's main number is (919) 613–7006. The second hearing has been tentatively scheduled for April 10, 1999, at Stanford University, in Palo Alto, California. Details concerning the second hearing will be published at a later time.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, 202–336–8810.

SUPPLEMENTARY INFORMATION: On February 18, 1999, the Corporation published a notice in the **Federal Register** of the formation of a Commission to study the issue of when aliens must be present in the United States to be eligible for legal assistance from Corporation-funded programs. See 64 FR 8140 (Feb. 18, 1999). The February notice requested written comments on the alien eligibility matter and gave notice that comments are due at the Corporation on or before March 22, 1999. Id. In addition, the notice solicited requests to provide oral testimony at the public hearings. Requests to provide testimony must be submitted to the Corporation no later than March 22, 1999.

Dated: March 10, 1999.

Victor M. Fortuno,

General Counsel & Secretary of the Corporation.

[FR Doc. 99–6238 Filed 3–12–99; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

U.S. National Commission on Libraries and Information Science (NCLIS) Sunshine Act Meeting

DATE, TIME, PLACE AND DISCUSSION TOPICS:

April 7, 1999—8:30 a.m.–4:30 p.m.
- University of Michigan, Ann Arbor, MI (contact 734–763–3528 for exact location), Administrative Matters
- Demonstration of the Digital Library, Faculty Exploratory Room
- Reports, NCLIS Committees, Programs and Projects
- Report, Working Group on Issues of Journal Pricing, Publishing and Copyright
- Discussion, Library and Information Science Education

April 8, 1999—8:00 a.m.–3:00 p.m.
- Tour of the Gerald R. Ford Presidential Library
- Meeting at Wayne State University, Undergraduate Library
- Briefing on Southeast Michigan Consortium
- Presentation of Information Literacy
- Meeting with representatives of the Association of College and Research Libraries, Detroit, MI (contact 202–606–9200 for exact location)

While pre-registration for attendance at NCLIS meetings is not required, observers are encouraged to notify NCLIS if they plan to attend. With such notice, NCLIS can provide appropriate advance material or send notice in the case of location change(s).

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: March 5, 1999.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 99–6331 Filed 3–11–99; 12:28 pm]

BILLING CODE 7527–$$–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 9:00 a.m., Friday, March 19, 1999.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Rule: Collateral Eligible to Secure Federal Home Loan Bank Advances.
- Interim Final Rule: Fee in Lieu of Mandatory Redemption of Excess Stock.
- Proposed Rule: Mandatory Redemption of Excess Stock; payment of Stock Dividends.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–6393 Filed 3–11–99; 3:36 pm]

BILLING CODE 6725–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of

continuing value in the National Archives of the United States and the destruction, after a specified period, records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 29, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2. nara.gov.

Requesters must cite the control number, which appears in paren theses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301) 713–7110.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA'S approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Education, Institutional Participation and Oversight Service (N1–441–99–1, 3 items, 3 temporary items). Records accumulated between 1977 and 1996 relating to applications submitted by educational institutions for recertification to participate in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965 and its amendments. The records consist of approvals and denials of school recertification, files relating to the collection of fines from educational institutions that failed to submit audits of Federal student financial assistance programs, and related litigation case files.

2. Department of Education, Office of Special Education and Rehabilitative Services (N1–441–99–2, 1 item, 1 temporary item). Comments received as a result of the publication in 1982 of a proposed regulation pertaining to the education of handicapped children. Included are the comments and tracking sheets.

3. Department of Health and Human Services, Health Care Financing Administration (N1–440–99–2, 8 items, 8 temporary items). Records relating to the statutory and regulatory requirements of Health Maintenance Organizations under Titles XIII of the Public Health Service Act and XVIII of the Social Security Act, as amended. This schedule reduces retention periods for such records as applications, correspondence, compliance files, grantee development files, and service area expansion files which were previously approved for disposal. Also included are electronic copies of documents created using electronic mail and word processing.

4. Department of Health and Human Services, National Institutes of Health (N1–443–99–3, 25 items, 23 temporary items). Investigations of research misconduct, including drafts, reports, case tracking materials, correspondence, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of final reports and case files of investigations are proposed for permanent retention.

5. Department of Justice, Bureau of Prisons (N1–129–99–1, 10 items, 6 temporary items). Correspondence with members of Congress, state and local correctional institutions, Federal correctional institutions, inmates, and inmate family members accumulated by the Office of the Director. Included are a related electronic correspondence tracking system and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of program subject files and correspondence with other Department of Justice components are proposed for permanent retention.

6. Department of Justice, Bureau of Prisons (N1–129–99–9, 15 items, 9 temporary items). Files pertaining to routine administrative matters and management assessment and strategic planning files used to update periodic reports that are accumulated by the Program Review Division. Included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of documents that provided the information for Executive Staff decisions and profiles of institutions and accreditation files are proposed for permanent retention.

7. Department of Justice, Bureau of Prisons (N1–129–99–12, 39 items, 28 temporary items). Files accumulated by component offices of the Information, Policy, and Public Affairs Division, including chronological and subject files, files on proposed legislation,

hearings and other aspects of congressional relations, research proposals, background materials compiled for tours of facilities, files on media contacts, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files documenting overall Bureau activities and programs are proposed for permanent retention, including briefing books, newsletters, publications, photographs, videotapes, speeches, directives, and research reports.

8. Department of Justice, National Institute of Corrections (N1–129–99–14, 15 items, 8 temporary items). Electronic copies of documents created by the NIC using electronic mail and word processing. Also included are recordkeeping copies of case files documenting technical assistance provided to state and local facilities and a related electronic management information system. Recordkeeping copies of files pertaining to the Institute's overall program and activities are proposed for permanent retention, including administrative files, meeting minutes, history files, photographs, reports, and publications.

9. Department of Justice, Bureau of Prisons (N1–129–99–15, 12 items, 7 temporary items). Files of the Management and Specialty Training Center consisting of student training records, reference files, videotapes and related production files, minutes of internal committees, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of curriculum packages, job analyses, and supplements to directives are proposed for permanent retention.

10. Department of State, Chief of Protocol (N1–59–98–4, 29 items, 19 temporary items). Files related to awards given to State Department employees, background files for gifts given and received by U.S. Government employees, notices announcing Government holidays, and requests for tributes of appreciation. Proposed for permanent retention are the recordkeeping copies of files related to such subjects as gifts to and from U.S. officials, foreign dignitaries' visits, gifts and decorations policies, U.S. delegations to ceremonies abroad, official functions hosted by the Secretary of State and other officials, and tribute of appreciation policies. Electronic copies of these records created using electronic mail and word processing are proposed for disposal.

11. Department of Transportation, Surface Transportation Board (N1–134–99–1, 1 item, 1 temporary item). Operating Rights Dockets accumulated by the Interstate Commerce Commission (ICC) prior to 1978. This schedule reduces the retention period for these files, which were previously approved for disposal. Operating rights granted by the ICC became null and void when the agency was terminated in 1995.

12. Department of the Treasury, U.S.-Saudi Arabian Joint Commission Program Office (N1–56–99–1, 5 items, 4 temporary items). Reduction in retention period for Project Case Files and Telex/Cable Files, which were previously approved for disposal. Records consist of contracts, agreements, personnel documentation, and cable correspondence relating to technical cooperation projects. Paper copies of Project and Program Files documenting the chronological development of technical cooperation projects are proposed for permanent retention. Electronic copies of documents relating to projects created using electronic mail and word processing are proposed for disposal.

13. Department of the Treasury, Internal Revenue Service (N1–58–99–1, 2 items, 2 temporary items). Miscellaneous records acquired or created by the IRS Historian. Records consist of blueprints and layouts for displays set up in IRS offices in 1987 to celebrate the Agency's 125th anniversary. Also included is a record book maintained by the IRS building custodian during the years 1911–1916. All other records collected by the Historian were previously approved for permanent retention.

14. Department of the Treasury, U.S. Secret Service (N1–87–97–2, 14 items, 14 temporary items). Records relating to training programs, including lesson plans and course documents and files on course registration, canine testing, and firearms training. Records also include ammunition and weapons inventories and receipts.

15. Environmental Protection Agency (N1–412–98–1, 2 items, 2 temporary items). Radiation Facility Site Files, including electronic copies of documents created using electronic mail and word processing. These records document the investigation of radiologically contaminated sites, radioactive waste disposal, and industrial sources of radionuclides as pollutants.

16. Environmental Protection Agency (N1–412–98–4, 5 items, 5 temporary items). Administrative records pertaining to Resource Conservation and Recovery Act (RCRA) land disposal permits and Underground Injection Control (UIC) permits, including electronic copies of documents created using electronic mail, word processing, and other office automation applications. These records, including permit applications, draft permits, and public hearing transcripts, are created to supplement the RCRA and UIC case file series, which were previously approved for permanent retention.

17. Environmental Protection Agency, Office of Pesticide Programs (N1–412–99–11, 3 items, 3 temporary items). Records documenting the evaluation and modification of test methods used in the analysis of pesticide chemical residue levels. Included are reports, supporting documentation, and electronic copies of documents created using electronic mail and word processing. Paper records were previously approved for disposal.

18. Federal Communications Commission, Wireless Bureau (N1–173–98–6, 5 items, 5 temporary items). Antenna Structure Registration Files, including FCC Form 854 and related materials, along with electronic copies of documents created using electronic mail, word processing, and other office automation applications.

19. Federal Energy Regulatory Commission (N1–138–99–3, 4 items, 2 temporary items). Working papers and electronic copies of documents created using electronic mail and word processing pertaining to mission and function statements and related organizational files such as management studies, workload and staffing reports, and organization charts. Recordkeeping copies of these files are proposed for permanent retention.

20. U.S. Office of Government Ethics, Office of Agency Programs (N1–522–99–1, 1 item, 1 temporary item). Semiannual expense reports submitted by Federal agencies to OGE for non-federally funded travel. The reports summarize payments made to an agency from non-Federal sources to cover travel, subsistence, and related expenses for an employee who attends a meeting or similar function relating to official duties.

21. Office of Strategic Services (N1–226–99–1, 1 item, 1 temporary item). Microfilm copies of Research and Analysis Branch numbered reports in the custody of the Central Intelligence Agency. Paper copies of the reports were previously accessioned into the National Archives of the United States.

Dated: March 5, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–6231 Filed 3–12–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following extensions of currently approved collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public.

DATES: Comments will be accepted until May 14, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of these information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collections of information:

OMB Number: 3133–0057.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Monthly Board Meeting Minutes.

Description: The Federal Credit Union (FCU) Act and the standard FCU bylaws require FCUs to maintain minutes of its board and member meetings.

Respondents: Federal Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 6,888.

Estimated Burden Hours Per Response: 3.25 hours.

Frequency of Response: 13 meetings per year @ 15 minutes per meeting.

Estimated Total Annual Burden Hours: 22,386.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0081.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Credit Union Bylaws and Certification, Bylaws, Article XIX, Section 5.

Description: The standard FCU Bylaws require that each Credit Union maintain copies of important documents and election results.

Respondents: Federal Credit Union board of directors.

Estimated No. of Respondents/ Recordkeepers: 6,888.

Estimated Burden Hours Per Response: 12 minutes.

Frequency of Response: 13 meetings per year @ 12 minutes per meeting.

Estimated Total Annual Burden Hours: 1379.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0139.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Organization and Operation of Federal Credit Unions.

Description: Federal Credit Unions wishing to pay lending-related incentives to employees must establish written policies.

Respondents: Certain Federal Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Response: One.

Frequency of Response: On Occasion.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost: $25,000.

OMB Number: 3133–0140.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Secondary Capital for Low-Income Designated Credit Unions.

Description: Low-income designated credit unions that offer secondary capital accounts must adopt a written plan, send a copy of their plan to their NCUA Regional Director, and have account contract documents and disclosure forms.

Respondents: Certain Limited-Income Federal Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 26.

Estimated Burden Hours Per Response: 3.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 78.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on March 9, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–6272 Filed 3–12–99; 8:45 am]

BILLING CODE 7535–01–U

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in March 1999. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in April 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in March 1999 is 4.56 percent (*i.e.*, 85 percent of the 5.37 percent yield figure for February 1999).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between April 1998 and March 1999.

For premium payment years beginning in:	The assumed interest rate is:
April 1998	5.06
May 1998	5.03
June 1998	5.04
July 1998	4.85
August 1998	4.83
September 1998	4.71
October 1998	4.42
November 1998	4.26
December 1998	4.46
January 1999	4.30
February 1999	4.39
March 1999	4.56

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in April 1999 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of March, 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–6125 Filed 3–12–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–11900]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Integrated Security Systems, Inc., Common Stock, $.01 Par Value)

March 8, 1999.

Integrated Security Systems, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Security Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the BSE and the Nasdaq Stock Market (''Nasdaq''). The Company has complied with the rules of the BSE by filing with the Exchange a certified copy of the resolution adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the BSE and by setting forth the reasons for the proposed withdrawal. In making the decision to withdraw its Security from listing on the BSE, the Company considered the direct and indirect costs and expenses attendant upon continuing dual listing of the Company's Security on the BSE and the Nasdaq Stock Market. The Company does not see any particular advantage in the dual trading of its Security.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the BSE.

The Company's application relates solely to the withdrawal from listing of the Security from the BSE and shall have no effect upon the continued listing of the Security on the Nasdaq.

Any interested person may, on or before March 29, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 99–6219 Filed 3–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41143; File No. SR–PCX–99–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Define OptiMark Profile and Order Types

March 5, 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 January 22, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt new rules to distinguish between two types of principal profiles (*i.e.*, ''principal exempt'' and ''principal non-exempt'') that may be entered into the OptiMark System (''OptiMark'') and to distinguish between four categories of order types for purposes of time priority under the PCX rules on OptiMark.

The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. The PCX commenced use of OptiMark in January 1999. As part of the operational planning for OptiMark's integration into the PCX auction market, the PCX and OptiMark have examined the structure of the OptiMark matching cycle algorithm to ensure that it reflects (1) the terms of the Commission's approval of the PCX application of the OptiMark system;[3] (2) the equity trading rules of the PCX; and (3) the requirements of Section 11(a) of the Act.[4] As a result of this examination, OptiMark will program its matching cycle algorithm to provide four different levels of time priority. The PCX believes that this algorithm is reasonably and fairly implied by its rules and the terms of the OptiMark Approval Order.

Proposal. The PCX proposes to distinguish between two types of principal profiles (*i.e.,* ''principal exempt'' and ''principal non-exempt'') and four categories of order types for time priority under its Rule 15.3(b).

First, ''principal exempt'' and ''principal non-exempt'' will identify profiles for the account of a member or member organization. The ''principal non-exempt'' profile includes specialist proprietary, floor broker proprietary and non-exempt member profiles as described below. All other member profiles will be categorized as principal-exempt. The separation of member profiles is designed to insure that entry of these profiles in the OptiMark matching cycle complies with PCX rules. Member proprietary profiles (other than those of specialists and floor brokers) are on parity with agency profiles only when the member does not hold or have knowledge of an unexecuted customer's order or profile at the same price or better. If the member holds or has knowledge of a customer order or profile, the member must designate any proprietary profile as ''principal non-exempt.''

Second, in the OptiMark Approval Order, the Commission explained the OptiMark priority principals as follows. At the Aggregation Stage, profile priority would be determined by price, standing, time of entry of a profile, and size, in that order.[5] Subject to the considerations imposed by other PCX rules, specialist proprietary profiles would have a lower time priority than that of a profile submitted by any other user of the system.[6] In addition, a CQS profile's time of entry would be later than that of a profile generated by any other user, including a PCX specialist's proprietary trading profile.[7]

To comply with these specifications and other PCX rules, the OptiMark cycle matching process will prioritize specific categories of orders for time of entry purposes. In other words, after screening for price and standing, the matching algorithm will rank the following categories of profile and order types for time priority purposes:

(1) PCX Book—limit orders from the PCX limit order book;

(2) Agency—other public customer profiles, non-member profiles and ''exempt'' member proprietary profiles (''principal-exempt'') entered directly into OptiMark;

(3) Principal—proprietary profiles submitted by PCX specialists and floor brokers, and ''non-exempt'' members (all three considered ''principal non-exempt''); and

(4) Consolidated Quote System (''CQS'') profiles.

Exempt members are those who can have proprietary orders represented on the floor of the PCX without yielding priority under Section 11(a) of the Act. These include non-members of the PCX and, with one exception noted below, PCX members who are not specialists or floor brokers. This category reflects the Commission's no-action letter of November 30, 1998, that generally granted relief with respect to Section 11(a) to all PCX members except specialists and floor brokers (*i.e.,* to members utilizing only off-floor terminals).[8] The exception involves a member who has knowledge that his firm has entered a customer profile into OptiMark. PCX Rule 4.5 and Article XI, Section 2(b) of the PCX Constitution, prohibit a member from engaging in proprietary trading for his or his firm's account on the PCX when he has knowledge of an unexecuted limit order for his firm's customer. Consequently, to prevent a member from knowingly trading ahead of his firm's customer order, a member with knowledge of such an unexecuted customer limit order or profile on the PCX would enter a proprietary profile as a ''non-exempt'' member and the profile would be placed in the third priority category so that his firm's customer limit order could be executed first.

For each of the four priority categories, orders within a category would be ranked according to time priority. For example, a limit order entered on the specialist's book at 10:00 would have time priority over a similarly priced limit order entered on the book at 10:01. Both orders would have time priority over other public customer and principal exempt profiles entered directly into OptiMark, principal non-exempt profiles, and CQS profiles. These priorities, however, only reflect time of entry; profiles with better prices or standing would have priority over profiles that are lesser-priced or lack standing, regardless of time of entry into OptiMark.[9]

PCX limit order book profiles receive the highest time priority in order to comply with the procedures under which limit orders currently are handled on the PCX.[10] Under PCX Rule 5.8(c), a bid or offer established as the first made at a particular price obtains priority and precedence over other bids or offers. Because orders on the PCX limit order book exist as bids or offers before they are entered into OptiMark as profiles, they have been established on the PCX before any other profiles are entered into OptiMark. Conversely, profiles entered into OptiMark from off the PCX floor are considered by PCX to be indications of interest that become orders on the PCX only when they are processed in an OptiMark matching cycle.[11] To ensure that orders from the PCX limit order book retain the priority to which they are entitled under PCX Rule 5.8(c), they are accorded the first level of time priority in the OptiMark matching process.

As to the second level of priority, the PCX's current auction procedures do not differentiate between agency and proprietary orders for priority purposes.[12] Consequently, the second

[3] Securities Exchange Act Release No. 39086 (September 17, 1997); 62 FR 50036 (September 24, 1997) (''OptiMark Approval Order'').

[4] 15 U.S.C. 78k(a).

[5] *See* OptiMark Approval Order, *supra* note 3; and PCX Rule 15.3(b).

[6] *See* OptiMark Approval Order, *supra* note 3.

[7] *See* OptiMark Approval Order, *Supra* note 3.

[8] Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to David E. Rosedahl, Executive Vice President and Chief Regulatory Officer, PCX.

[9] A coordinate with standing has no size limitation at a given price. For example, if a profile to purchase 10,000 shares of stock has a coordinate with a satisfaction value of 1 to purchase all 10,000 shares at a single price, that coordinate would have standing. For a more detailed description of standing *see* OptiMark Approval Order, *Central Processing, supra* note 3.

[10] The OptiMark Approval Order states that the handling of profiles resulting from limit orders submitted by PCX specialists or floor brokers would be consistent with the parameters under which public limit orders are currently filled on the PCX. *See* OptiMark Approval Order, *Supra* note 3.

[11] *Id.*

[12] *See* PCX Rule 5.8(c), which states that: ''When a bid or offer is clearly established as the first made at a particular price regardless of the floor, the maker shall be entitled to priority and shall have

Continued

time priority level includes agency and principal exempt profiles.

Specialist and floor broker proprietary profiles and non-exempt member profiles are placed in the third time priority level. The third level reflects: (1) the statement in the OptiMark Approval Order that PCX specialists would have a lower time priority than all other profiles except for CQS profiles;[13] (2) the need to enable floor brokers to comply with Section 11(a) of the Act; and (3) a means to enable an individual member to comply with PCX Rule 4.5. The PCX believes that its existing rules and policies justify equivalent treatment for the three types of principal non-exempt orders. Under current PCX policy, a specialist trading for his own account is on parity with a floor broker trading for his own account on the PCX floor.[14] Because floor broker proprietary orders occur infrequently, they are normally on parity with specialist orders on the PCX floor, and, like specialist profiles, will have to go behind all other profiles in OptiMark except CQS profiles, the PCX believes that it is unnecessary to separate specialist and floor broker proprietary profiles for time priority purposes. Similarly, a member trading for his own account on the PCX normally would be on parity with the specialist. For OptiMark purposes, however, most member proprietary profiles have a higher priority than specialist proprietary profiles. In the limited situation where a member is constrained from trading due to PCX Rule 4.5, the PCX believes it is reasonable to group such a member's profile with specialist and floor broker proprietary profiles. It would be burdensome for the PCX OptiMark Application to create a separate priority category for a member's profile subject to Rule 4.5 when such situations should occur infrequently and considering that under regular PCX priority rules such a member on the floor would be on parity with the specialist and floor broker. Accordingly, the PCX believes that the grouping of specialist, floor broker, and non-exempt member proprietary profiles into the principal non-exempt category is both reasonable and consistent with the OptiMark Approval Order's statement that ''the Exchange would continue to apply all existing rules governing trading on its equity floor.'' [15]

Finally, as noted in the Optimark Approval Order, CQS profiles receive the lowest time priority.

The PCX believes that the four levels of time priority in the OptiMark matching algorithm accurately reflect the description of the Optimark Application in the OptiMark Approval Order and PCX Rule 15.1(h), which states that the Optimark Application will permit executions in accordance with ''other applicable rules and policies of the Exchange.'' PCX believes that the time priority levels constitute a material aspect of the operation of the facilities of the PCX,[16] as well as a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of existing PCX rules under Rule 19b–4(b) of the Act.[17]

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) [18] of the Act in general and further the objectives of Section 6(b)(5) [19] in particular, because it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.[20]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

According to the PCX, the foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [21] and subparagraph (f)(1) of Rule 19b–4 thereunder.[22] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–99–01 and should be submitted by April 5, 1999.

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precedence on the next sale at that price, up to the number of shares of stocks . . . specified in the bid or offer[.]'' PCX Rule 5.8(c), *Priority of Bids and Offers.*

[13] *Id.* The provision was intended to prevent specialists from trading ahead of any agency orders. Thus, PCX contends that it is consistent with the OptiMark Approval Order to rank specialist profiles in the same category with other principal non-exempt profiles.

[14] Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and David Sieradzki, Special Counsel, Division of Market Regulation, Commission, on February 25, 1999.

[15] *See* OptiMark Approval Order, *supra* note 3.

[16] The PCX Application of OptiMark will be regulated as a facility of the PCX. *Id.*

[17] For the reasons noted above, the PCX believes that the priority levels are reasonably and fairly implied from the OptiMark Approval Order and the rules of the Exchange. Nevertheless, the PCX has determined to file the time priority levels under Section 19(b)(3)(A) of the Act for immediate effectiveness to codify the operation of the matching algorithm of the OptiMark application.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] In Reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(3)(A)(i).

[22] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6220 Filed 3–12–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Modification of the San Francisco Class B Airspace Area, CA; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces two public meetings. The purpose of these meetings is to brief interested parties regarding the proposed modification of the San Francisco Class B airspace area, CA.

DATES: *Meeting:* The public meetings will be held on Monday, April 5, and Wednesday, April 7, 1999, starting at 7:00 p.m. *Comments:* Comments must be received on or before April 30, 1999.

ADDRESSES: On April 5, 1999, the meeting will be held at the San Jose City Council Chambers, 801 N. 1st Street, San Jose, CA. On April 7, 1999, the meeting will be held at the Western Aerospace Museum, 8250 Earhart Road, Oakland, CA, located on the North Field of the Oakland Airport.

COMMENTS: Send or deliver comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, CA 90261.

FOR FURTHER INFORMATION CONTACT: Leonard Mobley, Air Traffic Division, AWP–500, FAA, Western-Pacific Regional Office, telephone (310) 725–6620.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

The following procedures will be used to facilitate the meeting:

(a) The meetings will be informal in nature and will be conducted by a representative of the FAA Western-Pacific Region. Representatives from the FAA will present a formal briefing on the proposed changes to the Class B airspace area. Each participant will be given an opportunity to deliver comments or make a presentation at the meetings.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of the meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) The meetings will not be formally recorded. However, a summary of the comments made at the meetings will be filed in the docket.

Agenda for the Meeting

Opening Remarks and Discussion of Meeting Procedures.
Briefing on Background for Proposals.
Public Presentations and Comments.
Closing Comments.

Issued in Washington, DC, on March 9, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–6225 Filed 3–12–99; 8:45 am]

BILLING CODE 4910–13–P

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 Orlando International Airport, Orlando, FL

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 Orlando International Airport (MCO) 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 April 14, 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. Egerton K. van den Berg, Executive Director of the Greater Orlando Aviation Authority (GOAA) at the following address: Greater Orlando Aviation Authority, One Airport Boulevard, Orlando, Florida 32827–4399.

Air carriers and foreign air carriers may submit copies of written comments previously provided to GOAA under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Vernon P. Rupinta, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, x24. 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 MCO 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 March 4, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by GOAA 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 May 25, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–06–C–00–MCO.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 2005.

Proposed charge expiration date: June 30, 2005.

Total estimated PFC revenue: $95,772,673.

Brief description of proposed project(s): Cargo Road Improvements—Design; Cargo Road Improvements—Construction; South Access Road—Design, South Terminal Earthwork and Site Preparation; FAA Receiver/Transmitter Relocation; Midfield Road Extensions—Design; Hardstand at Airside 1; Airside 1 and 3 Ramp Replacements; Runway Modifications; Operations Training Facility Class or

[23] 17 CFR 200.30–3(a)(12).

classes of air carriers which the public agency has requested not be required to collect PFCs: None

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 Greater Orlando Aviation Authority.

Issued in Orlando, Florida on March 5, 1999.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 99–6141 Filed 3–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Polk County, IA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA issues this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Polk County, Iowa.

FOR FURTHER INFORMATION CONTACT: Gerald L. Kennedy, SR/WA, Environment and Realty Manager, FHWA, 105 6th Street, Ames, IA 50010–6337, (515) 233–7317. Harry S. Budd, P.E., Director, Office of Project Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, (515) 239–1391.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA, in cooperation with the Iowa Department of Transportation and the Polk County Public Works Department, will prepare an environmental impact statement (EIS) on the proposed extension of the M. L. King Jr. Parkway. The proposed four-lane roadway would extend from a location approximately 460 meters south of Euclid Avenue to approximately 460 meters north of Interstate Highway 35/80. The proposed roadway would involve the construction of an interchange where the M. L. King Jr. Parkway intersects Interstate Highway 35/80. The proposed roadway extends approximately 3.4 km (2.1 miles) between the Interstate Highway 35/80 termini and the Euclid Avenue termini.

The proposed M. L. King Jr. Parkway will provide direct access to Euclid Avenue in Des Moines and is expected to reduce traffic congestion on 2nd Avenue and Merle Hay Road. If constructed, average daily traffic (ADT) on the proposed roadway is projected to approach 27,886 vehicles in Horizon Year 2020. The proposed roadway from Euclid Avenue to Interstate Highway 35/80 will complement the existing street network.

Alternatives under consideration include: ((1) Taking no action; (2) using alternate travel modes; (3) improvements to Merle Hay Road and 2nd Avenue as well as the interchanges at Interstate Highway 35/80; and (4) construction of a four-lane limited access roadway from a proposed interchange at Interstate Highway 35/80 to Euclid Avenue. The ''build'' scenario will consider and study various alignments, interchange locations, and variations of grade.

Letters describing the proposed action and soliciting comments will be sent to Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in the proposal. Public involvement will be sought throughout the further analysis of this proposal. In addition, a public hearing will be offered. Public notice will be given of the time and place of the public meetings and public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

A scoping meeting will be held for identifying significant issues to be addressed in the environmental impact statement. A number of issues were identified in a functional study, completed in 1993. The functional study identified a corridor as well as existing conditions within the corridor.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided in the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Dated: March 5, 1999.

Bruce Matzke,

Acting Division Administrator.

[FR Doc. 99–6240 Filed 3–12–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Cargo Container and Road Vehicle Certification for Transport under Customs Seal

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

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Cargo Container and Road Vehicle Certification For Transport Under Customs Seal. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before May 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary

for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Cargo Container and Road Vehicle Certification for Transport Under Customs Seal.

OMB Number: 1515–0145.

Form Number: N/A.

Abstract: This information collection is used in a voluntary program to receive internationally-recognized Customs certification that intermodel container/road vehicles meet construction requirements of international Customs conventions. Such certification facilitates International trade by reducing intermediate international controls.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 880.

Estimated Time Per Respondent: 3.5 hours.

Estimated Total Annual Burden Hours: 3080.

Estimated Annualized Cost to the Public: $37,500.

Dated: March 5, 1999.

J. Edgar Nichols

Team Leader, Information Services Group.

[FR Doc. 99–6241 Filed 3–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions.

OMB Number: 1515–0194.

Form Number: N/A.

Abstract: This collection is used to ensure revenue collections and to provide duty free entry of merchandise eligible for reduced duty treatment under provisions of HTUSA.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 750.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 450.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 5, 1999.

J. Edgar Nichols

Team Leader, Information Services Group.

[FR Doc. 99–6242 Filed 3–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request Permit To Transfer Containers to a Container Station

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Permit to Transfer Containers to a Container Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before May 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols,

1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Permit to Transfer Containers to a Container Station.

OMB Number: 1515–0138.

Form Number: N/A.

Abstract: This information collection is needed in order for a container station operator to receive a permit to transfer a container or containers to a container station, he/she must furnish a list of names, addresses, etc., of the persons employed by them upon demand by Customs officials.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 400.

Estimated Annualized Cost to the Public: N/A.

Dated: March 5, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–6243 Filed 3–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; General Declaration

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning General Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: General Declaration.

OMB Number: 1515–0062.

Form Number: Customs Form 1301.

Abstract: This collection is used to record vessel identification and general manifest. This information is recorded and provided to the Bureau of Census to be used for statistical purposed and by other agencies.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 208,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 17,326.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 4, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–6244 Filed 3–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; U.S. Customs In-Transit Manifest

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S. Customs In-Transit Manifest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300

Pennsylvania Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: U.S. Customs In-Transit Manifest.

OMB Number: 1515–0045.

Form Number: Customs Form 7533C.

Abstract: This collection Customs Form 7533C serves as an in-transit manifest for merchandise being laden on trains at one point in the United States, usually with a Customs seal affixed thereon, which will then be transferred through Canada to a port of unloading in the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 4, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–6245 Filed 3–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Establishment of a Container Station

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Establishment of a Container Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Establishment of a Container Station.

OMB Number: 1515–0117.

Form Number: N/A.

Abstract: This collection is an application to establish a container station for the vaning and devaning of cargo.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 177.

Estimated Time Per Respondent: 2 hours

Estimated Total Annual Burden Hours: 350.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 4, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–6246 Filed 3–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

CUSTOMS SERVICE

Proposed Collection; Comment Request; Ship's Stores Declaration

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Ship's Stores Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Ship's Stores Declaration.

OMB Number: 1515–0059.

Form Number: Customs Form 1303.

Abstract: This collection is required for audit cargo purposes to ensure that goods used for Ship's Stores can be easily distinguished from other cargo and retain duty free status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 104,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 26,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 4, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–6247 Filed 3–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Bonded Warehouses—Alterations, Suspensions, Relocations, and Discontinuance

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Bonded Warehouses—Alterations, Suspensions, Relocations, and Discontinuance. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Bonded Warehouses—Alterations, Suspensions, Relocations, and Discontinuance.

OMB Number: 1515–0134.

Form Number: N/A.

Abstract: Alterations to, or relocation of, a bonded warehouse may be made with the permission of the port director in whose port the facility is located by submission of an application by the warehouse proprietor to alter or relocate the warehouse.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 110.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 193.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 8, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–6248 Filed 3–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Application to Receive Free Materials in a Bonded Manufacturing Warehouse

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Application to Receive Free Materials in a Bonded Manufacturing Warehouse. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application to Receive Free Materials in a Bonded Manufacturing Warehouse.

OMB Number: 1515–0133.

Form Number: N/A.

Abstract: The proprietor of a bonded manufacturing warehouse must make application to the port director of Customs to receive therein any domestic merchandise, except merchandise subject to Internal Revenue Tax, which is to be used in connection with the manufacture of articles permitted to be manufactured in such a warehouse.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 8.

Estimated Time Per Respondent: 375 hours.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 8, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–6249 Filed 3–21–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Application for Bonding of Smelting and Refining Warehouses

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Application for Bonding of Smelting and Refining Warehouses. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 14, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Application for Bonding of Smelting and Refining Warehouses.

OMB Number: 1515–0127.

Form Number: N/A.

Abstract: A manufacturer engaged in smelting or refining, or both, of metal-bearing materials as provided for in Section 312, Tariff Act of 1930, as amended, may make application to the port director nearest the plant location, for the bonding of such plants pursuant to 19 U.S.C. 1312 and 19 CFR 19.17(a).

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 6.

Estimated Time Per Respondent: 96 hours.

Estimated Total Annual Burden Hours: 135.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 8, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–6250 Filed 3–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Establishment of a Bonded Warehouse

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Establishment

of a Bonded Warehouse. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before May 14, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Establishment of a Bonded Warehouse.

OMB Number: 1515–0121.

Form Number: N/A.

Abstract: Owners or lessees desiring to establish a bonded warehouse must make written application to the port director where the warehouse is located. The application must state warehouse location, describe the premises and indicate the class of bonded warehouse permit desired. These requirements are pursuant to 19 U.S.C. 1555, 1556 and 19 CFR 19.2.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 45.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 135.

Estimated Total Annualized Cost on the Public: N/A.

Dated: March 8, 1999.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 99–6251 Filed 3–12–99; 8:45 am]

BILLING CODE 4820–01–P

federal register

Monday
March 15, 1999

Part II

Department of Transportation

Office of the Secretary

14 CFR Parts 257 and 399

Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 257 and 399

[Docket Nos. OST–95–179 & OST–95–623]

RIN 2105–AC10

Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule strengthens the Department's current consumer notification rules and policies to ensure that consumers have pertinent information about airline code-sharing arrangements and long-term wet leases in domestic and international air transportation. The rule, among other things, does the following: First, requires travel agents doing business in the United States, foreign air carriers, and U.S. air carriers: To give consumers reasonable and timely notice if air transportation they are considering purchasing will be provided by an airline different from the airline holding out the transportation, and to disclose the identity of the airline that will actually operate the aircraft.

Second, for tickets issued in the United States, requires U.S. and foreign air carriers and travel agents to provide written notice of the transporting carrier's identity at the time of purchase of air transportation involving a code-sharing or long-term wet-lease arrangement.

DATES: This regulation is effective July 13, 1999. Comments on the information collection requirements must be received on or before May 14, 1999.

ADDRESSES: Comments should be sent to Jack Schmidt, Office of Aviation and International Economics (X–10), Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366–5420 or (202) 366–7638 (FAX).

FOR FURTHER INFORMATION CONTACT: Laura Trejo, Office of International Law, Office of the General Counsel, Room 10118, (202) 366–9183, or Timothy Kelly, Aviation Consumer Protection Division, Room 4107, (202) 366–5952, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Department issued a Notice of Proposed Rulemaking (NPRM), 59 FR 40836 (August 10, 1994), to obtain comments and reply comments on requiring the disclosure of code-sharing arrangements and long-term wet leases. In these operations, the operator of a flight differs from the airline in whose name the transportation is sold. The NPRM proposed to strengthen the current disclosure rules.

The NPRM, among other things, proposed (1) to require travel agents doing business in the United States, foreign air carriers, and U.S. air carriers (a) to give consumers reasonable and timely notice if air transportation they are considering purchasing will be provided by an airline different from the airline holding out the transportation, and (b) to disclose the identity of the airline that will actually operate the aircraft; and (2) for tickets issued in the United States, to require U.S. and foreign air carriers and travel agents to provide written notice of the transporting carrier's identity at the time of purchase of air transportation involving a code-sharing or long-term wet-lease arrangement. The NPRM also stated that the Department wants to consider seriously a requirement that the transporting carrier's identity be printed on the flight coupon for services involving a code-sharing or long-term wet-lease arrangement.

This action was taken to ensure that consumers have pertinent information about airline code-sharing arrangements and long-term wet leases on domestic and international flights.

We received comments on the NPRM and reply comments from ten U.S. airlines (Alaska Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Frontier Airlines, Inc.[1], Northwest Airlines, Inc., Southwest Airlines Co., Trans World Airlines, United Air Lines, Inc., and USAir, Inc.), eight foreign airlines (Aerovias de Mexico, S.A. de C.V., British Airways, Qantas Airways Limited, SwissAir, LTU Lufttransport-Unternehmen GmbH. & Co. KG, British Midland Airways, Ansett Australia Holdings, and Lan Chile), the International Association of Machinists and Aerospace Workers, three associations (Regional Airline Association, International Airline Passengers Association, and National Air Carrier Association), three CRS vendors (Galileo International Partnership, Worldspan, and System One Information Management, Inc.), nine travel agent/industry groups (Action 6, Admiral Travel Bureau, American Automobile Association, American Society of Travel Agents, Mercury Travel, Omega World Travel, Rogal Associates, Township Travel, and USTravel), and five other groups or individuals (Americans for Sound Aviation Policy, the City of Philadelphia, Donald Pevsner, the British Embassy, and Congresswoman Rosa De Lauro).[2]

The comments persuaded us that we should change one aspect of the proposal. The proposed rule would have allowed airlines operating under network names, e.g., American Eagle or Delta Connection, to identify themselves to the public only by those names. Supporters of this original proposal argued that giving passengers the actual corporate name, e.g., Atlantic Coast Airlines, could add to confuse passengers' confusion, because there are typically no airport signs using that name that would tell passengers where to check in.

Some commenters, however, argued that the public should know precisely who is operating the aircraft. They asserted that permitting the commuters to operate only under a network name obscures, rather than clarifies, the nature of the operation.

We issued a supplemental notice proposing to require all operators to disclose their corporate name. 60 FR 3359 (January 17, 1995). The notice also requested comments on whether, to avoid any airport-related confusion, we should also require disclosure of the network name where there is one. The purpose of this proposal was to help ensure that consumers will not assume that a major airline is the transporting carrier when purchasing transportation operated by one of its regional airline partners.

We received comments on the supplemental notice from Northwest Airlines, American Airlines and AMR Eagle, Trans World Airlines, United Air Lines, USAir, Inc., Midwest Express Airlines and Astral Aviation doing business as Skyway Airlines, Delta Air Lines, Continental Airlines and System One, the International Association of Machinists and Aerospace Workers, the Port Authority of New York and New Jersey, Gulfstream International Airlines, Inc., the American Society of Travel Agents, and the Regional Airlines Association.

The following is a summary of the comments and reply comments and the Department's decision on each component of the NPRM:

[1] Frontier Airlines, Inc. subsequently withdrew its comments.

[2] The Saturn Corporation and PMI Mortgage Insurance submitted letters prior to publication of the NPRM.

Written Notice on the Flight Coupon

The NPRM announced that the Department was considering a requirement that, where the designator code on the ticket is different from that of the transporting carrier on any flight segment, there must be printed on the flight coupon (1) an asterisk, like the one that already identifies flights listed in computer reservation systems (CRSs) under an airline code different from that of the transporting carrier, and (2) a legend elsewhere on the coupon that states the transporting carrier's identity preceded by the words ''operated by.''

American supported the proposal and stated that the legend ''operated by'' could be printed on the newer ''Automated Ticket and Boarding Pass'' (''ATB'') ticket stock, which accounts for 80 percent of the tickets issued. However, American claimed that there is insufficient room on the older ''Transitional Automated Ticket'' (''TAT''), which still accounts for 20 percent of the tickets issued. American estimated that total modifications to its SABRE computer reservation system (used by travel agents and American's own ticket agents) to comply with the proposed requirement would cost between $250,000 and $300,000. The National Air Carrier Association (''NACA'') also supported the proposal. Mr. Pevsner proposed that an asterisk be placed in the ''CARRIER'' box with a bold-type disclosure elsewhere on the flight coupon.

The American Automobile Association (''AAA''), British Airways, Delta, Galileo, Northwest, Qantas, Worldspan, USAir, the City of Philadelphia, Lan Chile, and SwissAir opposed printing on the ticket. Most of the opposition claimed that there was simply no room on the ticket and that the associated costs would be unduly burdensome. Worldspan argued that it would not be feasible to include the identity of the transporting carrier on a flight coupon, and it opposed American's suggestion that the notice should be carried on the ATB stock but not the TAT stock. Worldspan asserted that if notice were provided on one type of ticket stock but not the other, the result would be more confusing to passengers than providing no notice on either type of stock. Galileo stated that it would be necessary to retrofit about 13,000 ticket printers located in Apollo agencies, costing $500,000, and that the implementation phase would take longer than 60 days. Delta stated that if the Department imposed a new written notice requirement, the industry would need up to one year to comply.

Because American stated that a notice could be placed on ATB stock but not on TAT stock, TWA suggested that the notice be required either on the ticket stock or on the mini-itinerary stapled to the ticket. TWA believes that the mini-itinerary, when stapled to the ticket package, is an adequate substitute for requiring notice of a code-share carrier on the ticket coupon.

United claimed that printing on the tickets would duplicate the written notice on the itinerary and conflict with the movement towards ticketless travel. Further, United disagreed with American's cost estimate, because it was based on only one type of ticket generated on domestic ticket printers. According to United, most carriers would not want to limit such a ticketing change only to the type of ticket issued in the United States but would want it to apply system-wide, and to all types of printers. If the costs of reprogramming and retooling all ticket printers worldwide were taken into account, United estimated that costs would exceed $1 million and that implementation would take more than one year. Continental and System One estimated the costs to System One at more than $300,000 with a six to ten month implementation phase.

Delta argued that the standard ticket format is based on an industry agreement. According to Delta, any changes to the format will require discussions between the carriers and CRSs, which would be time-consuming and potentially costly.

The International Airline Passenger Association (IAPA) stated that if there is insufficient space to print a notice on the ticket, a card could be added after each coupon on which a code-sharing flight appears stating that the flight on the prior coupon is actually being operated by another carrier.

Decision

The Department has decided to defer further consideration of a rule requiring written notice on the face of the ticket until standards for ticketing, evolution of ticketless travel, and the effectiveness of other disclosure measures can better be evaluated. The comments have persuaded us that we could, at best, cover only 80 percent of the tickets issued at this time without imposing substantial costs, since the older TAT ticket stock cannot accommodate our proposed notice. It appears that the major cost of providing the written notification on the coupon is due to the reprogramming of the print command software and retooling the printer hardware. Based on the comments, these costs range from $300,000 to $1,000,000 depending upon the system. The total cost for the written notification on the ticket coupon would approximate $3,800,000 for the largest portion of the U.S. airline/CRS vendor industries.

We believe that we should impose such a cost burden only if it could be shown that the benefits would clearly outweigh the costs. Given the difficulty of estimating the incremental benefit that notice on the ticket would add to the other measures we are requiring, such as the written and oral notice components of the rule, we cannot conclude at this time that imposition of the additional requirement is warranted. Also, as United argued, it is unclear at this point how the ticketless travel movement will develop. Therefore, during the two to three year period following effectiveness of this rule, the Department will monitor (1) the effectiveness of the disclosure rule as adopted, (2) the ticketless travel trend, and (3) the ability of airlines to give adequate consumer notices in a ticketless environment and will revisit this issue then if justified. We can then initiate further rulemaking action if it appears necessary.

Application of Rule to Wet Leases

The NPRM proposed to apply the oral and written notice requirements to wet leases that last more than 60 days because, from the consumer's perspective, wet leasing is indistinguishable from code-sharing: the passenger buys a ticket from one airline, but the aircraft is operated by another.

Continental, System One, British Airways, Qantas, USAir, NACA, the Government of the United Kingdom, Lan Chile, and Northwest opposed this proposal. They argued that wet-lease operations do not cause significant confusion problems and that the proposed notice would actually confuse passengers. In addition, these opponents claimed that it is not technically feasible to give notice, because aircraft used in wet leases are frequently used on different routings and/or on different days of the week, making advance identification impracticable. USAir in particular claimed that it would take at least a year to modify computer software, and it stated that the Department can impose any necessary consumer protection conditions through the present licensing process. British Airways argued that requiring notice will keep airlines from being able to enter into flexible aircraft arrangements. Northwest stated that a wet lease differs from a code-sharing arrangement in that only one carrier is holding out service on the flight. Moreover, Northwest

argued that the lessee carrier is fully responsible for the operation of the flight even though the crew is provided by the lessor carrier, and the wet-lease agreement typically states the lessee's operating requirements.

Americans for a Sound Aviation Policy (''ASAP'') stated that the notification requirement should be triggered by wet leases of two weeks since CRS notification to travel agents can be nearly instantaneous.

LTU, a privately owned German carrier, suggested amending section 257.3(f), the definition of a long-term wet lease, to add at the end the phrase, ''unless such lease is between air carriers with 100 percent common ownership.'' LTU leases aircraft on a long-term basis to an affiliate with identical ownership. The aircraft are then leased back to LTU with crew for the same term. A limited portion of the operations of these aircraft are in scheduled service to the United States. LTU claimed that these are not true wet leases because LTU owns the aircraft it leases, but it noted that LTU's operations would appear to be subject to this proposal. According to LTU, its affiliate does not have a separate commercial identity or a designator code in the Official Airline Guides, and moreover, it and its affiliate have the same managing director and most of the same management. Reasoning that the disclosure requirement would only confuse passengers, LTU suggested amending the proposal as indicated above.

Southwest asked the Department to revise the NPRM to exclude the Southwest-Morris Air arrangement and similar operating arrangements from the public disclosure requirements. Morris Air is now wholly owned by Southwest. Southwest stated that, under their transitional arrangement, Morris Air ceased holding out its services to the public on October 4, 1994, and after that date those services were held out solely in Southwest's name. For a period of six months, some flights would be operated by Morris Air aircraft and crews. This arrangement was to last only long enough to meet the FAA procedures for conversion of the remaining Morris Air aircraft to Southwest's certificate and operations specifications.

Decision

The Department has decided to retain but modify the proposed requirement to disclose the identity of the actual operator of a long-term wet lease. No commenter provided an adequate basis for distinguishing between long-term wet leases and code-sharing arrangements from the consumer's perspective. Northwest's observation that in a wet lease only one carrier is holding out service on the flight does not take into account major U.S. carriers' alliances with commuter carriers (such as United Express or American Eagle). In these alliances, generally only the major carrier holds out service.[3]

The Department will modify the proposal, however, to apply only to those wet leases where the aircraft are dedicated to particular routes. This modification addresses the commenters' concern that giving notice may not be feasible if aircraft are not dedicated to particular routes and that the requirement will keep airlines from entering into flexible aircraft arrangements. Carriers in situations such as those like LTU and Southwest may seek individual relief from the rule from the Department.

We are not adopting USAir's suggestion that the Department impose any necessary consumer protection conditions through the present licensing process, since the purpose of this rule is to impose clear and uniform disclosure requirements, not ad hoc conditions. Moreover, wet leases involving only U.S. carriers are not now subject to any economic licensing process, but are authorized by regulation.

Corporate and Network Names

The Supplemental Notice of Proposed Rulemaking (SNPRM) proposed a requirement that for operations conducted under a network name, such as ''The Delta Connection,'' that is applied to several airlines, the transporting carrier's corporate name itself be disclosed to consumers in code-share and long-term wet lease operations. The Department stated that it expects airlines and ticket agents also to disclose the network name, if that is the name in which service is generally held out to the public. We solicited comments on whether we should make this an explicit requirement in the final rule.

American, AMR Eagle, and the International Association of Machinists and Aerospace Workers (IAM) supported this proposal. IAM based its support on its concern that consumers should have this pertinent information about airline code-sharing arrangements and long-term wet leases on domestic and international flights. American and AMR Eagle asserted that the rule should require the disclosure of both the network name and the identity of the transporting carrier to minimize confusion and to tie the reputation of the major carrier to the service provided by the commuter code-share partner. They stated that the rule is feasible and relatively inexpensive to implement. To this extent, they asserted that in American's timetables, the American Eagle logo is used to indicate that service in a particular city-pair is provided by one of the American Eagle carriers. They noted that a simple chart in the timetable can correlate the flight numbers with each of the four operating entities that make up the American Eagle network. Furthermore, they stated that in the SABRE computer reservations system used by about 24,000 travel agencies world wide, the identity of the individual network carrier is already available for most airlines. According to American and AMR Eagle, SABRE would not have difficulty complying with the proposed rule so long as the individual carriers in code-sharing networks are obligated to provide the required information.

Opponents argued that there would be substantial costs and confusion. TWA stated that the rule would increase costs that are impossible to quantify for consumers, carriers, and travel agents. TWA asserted that the rule would cause consumer delays as they search airports vainly for gates showing the carrier's corporate name. According to TWA, the Department has no basis to believe that passengers experience any confusion when they hear the name of commuter carrier affiliates of major carriers.

Northwest stated that many carriers already voluntarily disclose the corporate identity to passengers who want the information. Northwest claimed that Worldspan and its internal reservation system identify the corporate names in both the availability and booking screens. Northwest also noted that American does not provide the corporate names of its American Eagle network commuters in the Official Airline Guides or of its American Eagle carriers in its system timetable.

United argued that the Department's consumer complaint files do not indicate a consumer demand for identification of network commuters by their corporate names. United stated that it already instructs its reservation agents to provide the corporate name where a passenger books a ticket involving United Express. United noted

[3] Furthermore, Northwest's assertion that the lessee carrier is fully responsible for the operation of the flight even though the crew is provided by the lessor carrier is only partially correct. The Federal Aviation Administration policy requires ''each U.S. air carrier to retain operational control of each wet leased aircraft listed on its operations specifications regardless of whether the aircraft is U.S. or foreign registered.'' Air Transportation Operations Inspector's Handbook, Order 8400.10, August 23, 1988, section 4.309.

that its Apollo CRS displays the commuter carrier's actual name on the screen when the reservation is made.

United stated that the Department should require disclosure of the corporate name in addition to the network name only when a passenger requests it. However, United asserted that if any regulation is deemed necessary, it should be limited to the requirement in proposed sections 257.5(a) and 257.5(c) regarding information in CRSs and in carrier schedules and a written notice. United asserted that it, like most other carriers (except for American), already provides the corporate name in written or electronic schedule information, so adoption of this portion of the rule should not be burdensome. As for written notice, United stated that it does not object to the rule so long as the Department clarifies that United can use, as it does currently, abbreviations where these are used by the commuter carriers themselves. In contrast, United stated that there is no need for proposed section 257.5(b) requiring corporate name information in the oral notices or in advertising as indicated in proposed section 257.5(d). United argued that a requirement to disclose the corporate name would be an undue burden and restrictions on carrier advertising would represent an unconstitutional restraint on freedom of commercial speech. Finally, United noted that the Department did not conduct a cost-benefit analysis for the additional notice proposed in the SNPRM.

The Port Authority of New York and New Jersey asserted that the proposed rule would not avoid consumer confusion. It argued that it is unclear whether the term ''corporate name'' means the name in which the Department issued the applicable certificate or the ''doing business as'' name, which is easy to change .

According to Midwest Express, its only code-share partner is its subsidiary with the official corporate name of Astral Aviation, Inc. doing business as Skyway Airlines. Midwest Express stated that Skyway Airlines is not the name of a network of different commuter operations by different, independent corporations. It urged the Department to exempt from the corporate name identification requirement the situation where only one corporation is using a particular servicemark. Midwest Express argued that requiring it to identify Skyway as ''Astral Aviation/Skyway Airlines'' will not help consumers know that Midwest Express and Skyway are separate operations. It argued that the proposed rule would only confuse consumers and increase costs. Astral estimated that the corporate name disclosure requirement would add about $90,000 annually to its reservation costs based on the assumption of an average increase in ''talk time'' of 15 seconds per call to its reservation number. Astral alleged that the costs are a significant percentage of its projected profits on its forecast 1995 revenues of $35 million. Astral stated that its estimate does not include, among other things, the increased expenses to travel agents, which book about 80 percent of the tickets on Midwest Express/Skyway Airlines.

Delta argued that the proposal represents a significant modification to long-standing industry practice and would impose substantial costs and burdens without bringing any countervailing public benefits. Delta estimated that several hundred hours of programming would be required over several months to include the corporate names of the Delta Connection carriers and all other code-share partners in its primary availability screens. It noted that if the proposed rule requires disclosure of the corporate name of the Delta Connection carrier to be included as part of each relevant flight listing, such requirement would substantially increase the size and costs of the printed schedules. Delta stated that it is unaware of any confusion among the public concerning domestic code-sharing under network names and argued that disclosing the corporate name would not provide additional information concerning the type and size of aircraft, crew qualifications, comfort, and in-flight amenities. If anything, Delta argued, the proposal would promote consumer confusion. Delta also stated that travel agents would likely only disclose what is required (i.e., the corporate name) and argued that requiring disclosure of the corporate name would dilute the value of the network name. Delta suggested that if the Department requires disclosure of the corporate name, it should key the timing of such disclosure to the point at which the customer purchases the transportation rather than requiring such notice before booking transportation.

Continental and System One argued that if the Department adopts any rule requiring disclosure of corporate names, that rule should be limited to code-sharing arrangements. They asserted that corporate names change frequently and are relatively meaningless to the general public. Moreover, like Delta, they also stated that use of network names has long been standard industry practice. They claimed that requiring disclosure of corporate names in electronic and written schedule information provided to the public with respect to long-term wet-lease arrangements would force System One to spend about $200,000 in implementation costs. According to them, written disclosure of corporate names at time of sale and in advertising would also incur substantial costs.

USAir stated that of the 2500 USAir Express departures per day, not one is operated by a USAir commuter affiliate under its own corporate name. Furthermore, USAir argued that there are no public identifiers used for these operations except for the USAir Express network name. According to USAir, if consumers are given both the network name and corporate name, they will be unsure of which name to seek at the airport. In addition, USAir estimated that complying with the proposed rule would cost $255,000 in programming hours and at least six months to a year's time to update USAir's PACER reservations system.

The Regional Airline Association (RAA) supports the disclosure of network names. However, it does not believe that disclosure of the corporate name would have any benefits for the public.

The American Society of Travel Agents (ASTA) argued that the proposed rule was not the most efficient method of notifying travel agents about code-sharing details. ASTA suggested that the Department require that CRS displays clearly indicate the existence of code-sharing by showing all code-shared flights only once in the CRS availability displays and using a double airline code, with the first displayed code indicating the transporting carrier. According to ASTA, the rest of the rule should be deferred until voluntary compliance with their proposal can be monitored. ASTA questioned whether any rule is necessary on this subject if the Department is convinced that agents and airlines are going to disclose the existence of code-sharing situations voluntarily along with the network name.

Gulfstream International Airlines, Inc. (Gulfstream) asserted that the network name is sufficient to alert customers to a code-shared flight. Although it opposes the rule, Gulfstream stated that if the rule is adopted, the Department should make it mandatory for travel agents to inform the public of the network name to avoid airport terminal confusion. As to potential costs for the regional carriers to re-identify themselves in terminal facilities, Gulfstream noted that a major terminal will charge a new airline between $5,000 to $10,000 for a signage package.

According to Gulfstream, any argument that network names might be intentionally masking the true corporate identities is not valid, because all information concerning the corporate name of the transporting carrier is provided at the customer's request by the issuing airline or travel agency. In addition, Gulfstream claimed, all pertinent information is provided by the major carriers' publications and published in the Official Airline Guides.

Decision

The Department has decided to require airlines and ticket agents to disclose to consumers the corporate name of the transporting carrier in code-share and long-term wet lease operations. In addition, we have decided to revise this proposal to require the sellers of air transportation to disclose the network name, if one is used, as well as the corporate name. This requirement will apply to all four notice requirements: information supplied to CRS vendors, oral notice during the decision making portion of the purchase of transportation, written notice, and advertisements.

Internationally, the practice of code sharing is expanding dramatically. The gradual liberalization of our bilateral air services agreements will increasingly enable foreign airlines to offer through service to many interior U.S. points. We expect much of this service, particularly international service to our smaller communities, to be provided through code-sharing arrangements with U.S. airlines.

As discussed below, we are taking this action because we believe strongly that consumers are entitled to know all significant information regarding the air transportation they are purchasing and that consumers can make fully informed choices only when they have all relevant information. Further, we believe that the failure to disclose both the corporate and network names is inherently unfair and deceptive. Failure to disclose would leave many consumers without information important to them and not readily available to them otherwise. The potential for their confusion would increase as the practice of code sharing becomes more widespread.

The Requirement To Disclose the Corporate Name

Service to many U.S. communities is provided by commuter airlines that share the code of major airline partners. Services such as these are marketed using a trade name that is often similar to that of the major airline partner. This ''network'' name may be shared by a number of independent, separately owned and managed carriers. However, the contract of carriage is frequently between the commuter airline and the passenger in domestic transportation, and except in certain circumstances, the major airline may bear no legal responsibility to the passenger. Further, the passenger may erroneously believe that he or she is traveling on that major airline.

Without disclosure requirements, code sharing carriers can obscure their relationships as well as important aspects of the contract of carriage. Indeed, one marketing objective in the domestic code sharing practice of using a network name may well be to draw upon the goodwill and reputation of the major airline to attract passengers to the commuter airline. However, if the relationship is not fully disclosed, it is often unclear to the consumer who is responsible to them in cases of lost baggage, for example, making recovery difficult. Moreover, consumers purchasing air transportation are purchasing a service to be performed in the future: in essence, the consumer is extending credit to the carrier. The use of the network name, without disclosure of the corporate name, could result in a passenger's inadvertently purchasing transportation from a carrier that the passenger believes is not worthy of his or her credit.

Passengers may prefer to avoid certain carriers because of prior negative experiences. Their ability to do so is a critical part of a competitive system. Yet undisclosed or inadequately-disclosed code-sharing, by obscuring the identity of the actual operator, could inhibit the free operation of the market. Finally, passengers can be misled by code-sharing arrangements between commuter carriers and major carriers into thinking that they have purchased jet transportation because they dealt with a major carrier. This confusion has proved particularly troublesome for passengers with disabilities since commuter aircraft are often less accessible than large jets. For all these reasons, we believe that passengers should be told the identity of the company with which they are doing business and that the failure to identify the transporting carrier by its corporate name is inherently unfair and deceptive.

The only passenger groups that have participated in this rulemaking strongly supported requiring disclosure of the corporate name, citing the right of consumers to make fully informed choices.[4] Moreover, we do not understand most other commenters to be advocating that the information be withheld from consumers: the dispute seems to be over when and how it should be provided, and whether a rule requiring disclosure is warranted.

United and Northwest say that some carriers already make the corporate name available to passengers who want the information, if they ask.[5] We believe that the reasons that compelled these carriers to do so, and the interest shown by the consumers who ask, justify requiring that this information be provided to all passengers. Moreover, if several carriers already have a system for providing this information, this would appear to undermine the assertions that the proposal is unduly burdensome.

Like our predecessor, the Civil Aeronautics Board, we have long believed that code-sharing can be misleading if not disclosed to purchasers of air transportation. When it first examined the need for consumer protection in a code-sharing context in 1984, the CAB found that ''code sharing * * * may cause confusion and may be deceptive to consumers in some cases.'' United is mistaken when it suggests that the First Amendment precludes us from requiring airlines to divulge the corporate name: the First Amendment protects only truthful speech, not false and misleading commercial speech.[6]

Moreover, we have recently undertaken a study of the economics of code sharing,[7] and we believe that in the future, code-sharing arrangements will become even more common than they are today. Also, they may be more complex, involving more partners, and potentially global in scope.[8] Although United accurately notes that we had few complaints in 1994, we expect that the trend towards expanded and more complex code-sharing arrangements will result in many more complaints unless we improve disclosure to the consumer.

Thus, we conclude that consumers will benefit from having complete information. Consumers have a right to know what kind of service they are purchasing and with whom they are dealing. Our rule will effectuate this right.

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[4] See, Comments of International Airline Passenger Ass'n. and Americans for Sound Aviation Policy.

[5] Reply comments of Northwest Airlines, Inc. at 3 (Feb. 23, 1995); Comments of United Air Lines, Inc. at 4 (Feb. 16, 1995).

[6] In re RMJ, 455 U.S. 191, 203 (1982).

[7] A Study of International Airline Code Sharing prepared for the Department of Transportation, December 1994.

[8] International Air Transportation Policy Statement, 60 FR 21841 at 21842 (May 3, 1995).

Our analysis indicates that the costs of providing this information should not be substantial, especially over time. Although some commenters claimed that revealing the corporate name to passengers would be unduly burdensome and expensive, they provided very little evidence to support their claims, despite our specific request that they do so.[9] Indeed, Northwest's internal reservation system provides the information already.[10] Continental/System One and USAir provided only conclusory estimates of the costs of reprogramming. United confirmed that it instructs its reservations agents to provide the corporate name when a passenger books a ticket involving a United Express carrier and that its internal reservation system displays the commuter carrier's actual name on the screen at the time the reservation is entered.[11] It did not estimate the cost of reprogramming its systems to display the information at the earlier decision making point.

Reprogramming costs are, of course, one-time costs. The Department is aware, as Midwest/Astral and other commenters point out, that there will be recurring operating costs due to the increase in time that it will take to disclose the additional information required by this rule. Among the commenters, only Midwest Express/Astral provided a more detailed estimate of the increase. Based on increased labor costs ($30,000) resulting from additional talk time of 15 seconds per call for reservation agents and increased telephone line usage charges ($58,000), they calculated an annual increase in operating costs of $88,000.

In order to estimate annual operating costs, we estimated the number of airline tickets that involve code-sharing or long-term wet-lease arrangements since the Department does not collect data on the actual number of tickets that involve these arrangements. We have therefore determined that a reasonable estimate of the number of tickets issued under a code-sharing arrangement could be made based on the number of passenger enplanements. For domestic air transportation, code-sharing arrangements typically involve agreements between a larger major airline and a regional airline. For the year ended December 31, 1994, the U.S. regional airline industry reported 57.1 million passenger enplanements of which 94 percent (or 53.7 million enplanements) were transported by code-sharing regional airlines. As a proxy, the figure 53.7 million enplanements, which are 10.3 percent of the total domestic enplanements, serves as a starting point for estimating the number of code-sharing tickets. We know, however, that this total overstates the number of code-sharing tickets, since many tickets are written to cover a round-trip journey that would encompass two enplanements but only a single ticket. For these passengers, use of the number of enplanements overstates the number of tickets by a factor of two.

To estimate the number of tickets for U. S. and foreign airlines on international routes, which include some travel to or from a U.S. point or points, we began with the total of 89.8 million passengers for the year ended December 31, 1994. Of this total, 48.6 million flew on U.S. flag carriers and 41.2 million used foreign carriers. In estimating the number of code-sharing tickets based on these passenger totals, it is apparent that the number of code-sharing tickets would be overstated for the same reason of round-trip ticketing as stated previously. We also believe that in 1994, on a volume basis, code-sharing was not nearly as prevalent internationally as it was domestically. Since domestic regional enplanements are 10.3 percent of total domestic enplanements, we believe that it is reasonable to assume that code-sharing tickets comprise less than 10.3 percent of total international tickets and have used five percent for purposes of this analysis.

Based on U.S. airlines' estimated code-sharing domestic traffic of 32.2 million (calculated on the assumption that 80 percent of the 53.7 million passengers purchase round-trip tickets), U.S. estimated code-sharing international traffic of 1.5 million (five percent of the total of 48.6 million using the 80 percent round-trip assumption), and 1.2 million estimated code-sharing foreign flag passengers (five percent of the total of 41.2 million with the same 80 percent round-trip assumption), this analysis estimated that there were approximately 34.9 million code-sharing tickets issued in the year ended December 31, 1994.

We then estimated the annual increase in operating costs for the airline and travel agent industries. Using the 15 seconds (0.25 minutes) of additional talk time and assuming that each of the estimated 34.9 million code-sharing purchasers in 1994 made an average of 2.1 phone calls during the process of purchasing tickets, the estimated number of total calls amounted to 73.3 million representing 18.3 million additional minutes or 305,375 additional hours. Based on an hourly rate of $17.44 (salary and fringe benefits) for a travel agent and $24.04 for an airline ticket agent, weighted by the relative number of tickets sold by each, and an assumed rate of $0.25 per minute for the cost of additional telephone line usage, the annual increase in operating costs for the airline and travel agent industries amounted to $10.3 million. In the context of the $68 billion in annual passenger revenues that the U.S. airline industry generated in 1994 or the $94 billion in sales ($56 billion of which pertained to airline sales) that travel agencies produced in 1993, the increased operating cost is clearly not prohibitive.

We also used similar assumptions (duration of call, number of tickets, and number of calls) to estimate the potential increase in cost to the prospective traveler that would result from the loss of productive time due to the additional talk time. Based on the value of time at $34 per hour and $65 per hour for domestic and international travelers, respectively, we estimated that the annual additional cost to travelers would amount to $11.1 million. On a per ticket basis, the average cost to consumers would be $0.30 for domestic travel and $0.57 for an international trip. While the Department would prefer not to take actions which have the potential to increase the cost of travel or result in a loss of productive time, we believe these amounts are minimal and not prohibitive considering that the average ticket price for domestic travel is approximately $140 and the average price for international travel exceeds $400. Based on these, the cost to consumers would represent approximately 0.2 percent and 0.1 percent of the domestic and international ticket prices.

The Department recognizes that code-sharing arrangements and the number of code-sharing trips are likely to increase in the future. We also recognize that the cost for fully informing prospective travelers will impact different segments of the travel industry and the public to varying degrees. However, we believe that the fact that such arrangements are increasing and becoming more sophisticated emphasizes the paramount importance that the traveling public be fully informed. This benefit clearly outweighs the minor cost increases and we further believe that these costs will decrease in the future as consumers and frequent travelers adjust and as new, less-costly, channels of

[9] 60 FR 3361, January 17, 1995.

[10] Motion for Leave to File and Reply Comments of Northwest Airlines, Inc. at 3 (Feb. 23, 1995).

[11] Comments of United Air Lines, Inc. at 10 (Feb. 16, 1995).

distribution become available (such as the Internet.)

Midwest Express/Astral pointed out that the $88,000 increase is significant for an airline the size of Astral. While we recognize that the impact of the rule will vary among airlines and travel agencies, we are reluctant to accept the impact on Astral as stated since the increase in telephone line charges was not documented and was difficult to evaluate in comparison to our research into toll-free calling systems.

The Requirement To Disclose the Network Name

We have also decided to require disclosure of the network name, if any, under which the services are operated. As we noted in our August 1994 NPRM, many carriers have chosen not to advertise or publicize their corporate name, choosing instead to operate under the network name of a major airline.[12] As a result, if a carrier or ticket agent were to identify the code-shared service of a small carrier only by its corporate name, passenger confusion is likely. In particular, we wish to avoid having passengers arrive at the airport and look for a carrier that they know only by its corporate name (or which the ticket or written notice identifies only by its corporate name), when that particular carrier identifies itself at the airport only by its network name. Not only would such passengers be inconvenienced as they attempted to locate the carrier, but in some cases, particularly in the case of a connection, they could miss their flights.

When and How Disclosure Should Be Made

1. *Notice in schedules.* The rule will require airlines involved in code-sharing arrangements or long-term wet leases to ensure that schedule information provided to the public identifies both the corporate name and the network name, if any, of the transporting carrier. We believe that this information is the minimum necessary to enable reservations agents and travel agents to help the consumer make an informed decision about the transportation that they are purchasing.

2. *Oral Notice.* As discussed elsewhere, it is our policy that prospective purchasers of air transportation should know all the relevant facts during the decision making portion of the reservation transaction. We believe that the true corporate identity of the transporting carrier is highly relevant to deciding what air transportation to purchase. Accordingly, the rule will require airlines and travel agents to tell consumers, in any direct oral communication, before booking transportation, that the transportation they are considering involves a code-sharing arrangement or a long-term wet lease, and to identify the transporting carrier by both its corporate name and its network name (if any).

3. *Written Notice.* We will require the transporting carrier to be identified by corporate name and network name (if any) in the written notice requirement of section 257.5(c). Written notice that clearly identifies the carrier by corporate and network name will serve at least two important functions. It will provide consumers with relevant information about the transportation being purchased, and with the written notice as a reminder, the consumer will be more likely to find the proper ticket counter, check-in desk, or gate.

4. *Advertisements.* Advertisements are part of the decision making process. Therefore, we believe that the transporting carrier should be identified in printed advertisements by both its corporate name and its network name, if any. As discussed below, we have decided that a generic disclosure will be acceptable in the case of broadcast advertisements.

Application of Rule to Ticket Agents

The NPRM proposed to require travel agents doing business in the United States, when giving information about air transportation involving code-sharing arrangements and long-term wet leases, to disclose these arrangements and the identity of the transporting carrier.

Delta, Northwest, the RAA, Continental, System One, TWA, Worldspan, Qantas, Mr. Pevsner, and United supported the proposal. United and Qantas asked the Department to clarify that if the agent fails to provide notice, but the carrier has provided it with the necessary code-share information, any Department enforcement action would be directed against the travel agency, not against the carrier.

American, Alaska Airlines, ASTA, and PMI Mortgage Insurance complained about multiple listing of code-sharing arrangements on CRS displays. They claimed that it would be unfair to impose the notice requirement on travel agents unless there is better disclosure in the CRSs and the ''screen clutter'' problem is addressed. Omega World Travel requested that the Department terminate this rulemaking proceeding and prohibit all code-sharing arrangements except those where the carriers are affiliated by more than 10 percent ownership. Omega World Travel stated that the rule was unnecessary because travel agencies already have an interest in providing notice to their customers. Rogal Associates stated that code sharing should be abolished and that the travel agency business should not be burdened further.

Decision

The Department has decided to adopt this requirement. Ticket agents (including travel agents) sell about 80 percent of all airline tickets issued in the United States. They are an important source of information for consumers. Omega Travel stated that travel agents already have a economic incentive to provide information about code sharing. We agree. In order to attract repeat business, agencies have an incentive to give their customers accurate and complete information so that the customers will not be disappointed on their trips. However, not all travel agents may respond to this incentive in the same way. We believe it necessary to have a uniform rule so that all consumers will have complete information no matter who sells the ticket.

United, Qantas, and most travel agencies that commented voiced concerns with the implementation of this rule. Regarding United's and Qantas' concerns, the fact remains that carriers, as principals, bear responsibility for the acts of their agents, the travel agents. In cases involving violations, we will decide whether to take enforcement action, and, if so, against which entity or entities, based on the circumstances of any particular case. The travel agency industry's concerns regarding the resolution of the CRS display issue is outside the scope of this proceeding. Furthermore, that issue has been directly raised in a different proceeding, Dockets 49620 and 49622.

Application of Rule to Foreign Air Transportation

The NPRM proposed to apply the notice requirement to foreign air carriers. Northwest, United, Delta, Continental, System One, and TWA support this proposal. However, Qantas, the British Embassy, and British Airways argue that the disclosure rules should apply only to the sale in the United States of tickets for flights to, from, or within the United States.

TWA stated that British Airways' concern about the applicability of the proposed rule to sales and operations wholly within a foreign country is

[12] 59 FR 40836, 40838 (August 10, 1994).

overstated. According to TWA, the Department's jurisdiction only applies to foreign air transportation (traffic between the United States and another country). TWA noted that the application of the rule to inbound sales made abroad would protect consumers abroad who are buying transportation to the United States and that such transportation, as foreign transportation, is within the jurisdiction of the Department. American argued that the rule should cover all tickets sold in the United States, including segments between non-U.S. points. Continental and System One stated that the rule should apply to foreign carrier sales outside the United States for travel to and from the United States.

Decision

Based on these comments, we have decided that the notice requirement should apply to the marketing of foreign air transportation, within the meaning of the aviation statutes i.e., excluding transportation between two foreign points, in the United States whether the service is offered by a U.S. carrier or a foreign carrier. This provision merely conforms our rules to the Department's existing practice of imposing a notice requirement when we approve applications for code-share authority. Our decision to limit this rule to sales and calls made in the United States is consistent with our overall policy of limiting this type of rule to transactions that take place in the United States. (For example, the Department's recently-adopted rule on special event tours covers only tours in interstate air transportation, or in foreign air transportation originating at a point in the United States. (See 59 FR 61508 (November 30, 1994), 14 CFR Part 381.) We disagree with the arguments that the rule should apply to sales made overseas, because such an application might conflict with foreign consumer protection measures that would make implementation of this rule impractical. However, in view of the comments, we will clarify the rule.

The rule will require four types of disclosure:

1. *Notice in printed or electronic schedules:* The rule will require carriers to provide certain information regarding flights to, from, or within the United States to schedule publishers like the Official Airline Guides and CRSs in the United States, as well as in carriers' own schedules and timetables.

2. *Oral notice:* The requirement to give oral notice will apply to discussions in the United States, including all calls placed from the United States, including those that are routed to carrier reservation agents outside the United States.

3. *Written notice:* The rule will require carriers and travel agents to give written notice in connection with any air transportation sold in the United States—i.e., when either the seller or the buyer is located in the United States.

4. *Advertising:* The requirement to give notice in advertising will be limited to materials published, mailed or broadcast in the United States.

Oral Notice

The NPRM proposed to require disclosure to the prospective consumer in any direct oral communication, before booking transportation, that the transporting carrier is not the carrier whose designator code will appear on the ticket, as well as identification of the transporting carrier.

Several commenters expressed concerns with regard to including the phrase ''before booking transportation.'' American and TWA argued that disclosure should be made during any oral communication regarding a code-shared flight. American suggested that the phrase ''before booking transportation'' could be read to imply that a carrier need only disclose the information sometime before the transportation is booked. Current policy has been to require disclosure in any communication, and American supports continuation of that policy. American recommended that the Department make clear that the disclosure must occur during any oral communication that offers or refers to a code-sharing flight, regardless of whether a booking is made by the prospective customer. TWA found American's proposal reasonable because many consumers would be making multiple calls to decide which carrier they should use.

Qantas complained that the proposed rule would require notice to the same potential customer every time there was contact between a seller and purchaser. Qantas argued that only one oral notification should be required to the same consumer.

TWA claimed that the proposed requirement is inadequate because it could be delivered at any time prior to the actual booking of the transportation. According to TWA, notice should be offered at the first instance that the schedule is offered. In addition, TWA stated that the Department should clarify that providing the disclosure to the person requesting schedule/booking information on behalf of the actual consumer (e.g., a secretary acting for an executive) fulfills the requirements of the rule.

Delta argued that the most important time to provide notification of code-sharing arrangements is during conversations prior to booking, because that is the time during which the consumer is evaluating the available options. Delta further argued that the Department should reject the suggestion that notification be given ''at the first instance'' or on each and every occasion that contact is made with an airline representative.

Northwest recommended that the disclosure be made during the booking, rather than before the booking, because it still affords the passenger an opportunity to decline the service if the passenger objects to the code-shared service. TWA disagrees with Northwest and argued that notice during booking is inadequate because it moves the notice to a time after the consumer has made a decision.

American asserted that the current CRS displays of code-shared flights fail to list flight information in a comprehensible manner and noted that ASTA, TWA, Frontier Airlines, and ASAP also discussed the problems of the CRS displays. Therefore, American argued that to implement the oral notice requirement, the Department should mandate improvements to the CRS displays.

Decision

We have decided to make final the proposal that the seller must tell the consumer, before booking transportation, that the transporting carrier is not the carrier whose designator code will appear on the ticket and must also identify the transporting carrier. We have decided to apply the rule to carriers and ticket agents to ensure that the notice reaches all consumers of air transportation.

The rule is meant both to amend and to clarify the Department's existing policy of requiring that customers be informed ''in any direct oral communication'' of a code-sharing arrangement. As for American's request for a clarification of the phrase ''in any direct oral communication,'' it continues the Department's existing policy that requires notice ''in any direct oral communication'' concerning a code-shared flight. The phrase ''before booking transportation'' reflects the Department's enforcement policy: during a given encounter (phone call, visit, etc.) the agent or carrier may not wait until after the consumer has decided to make the reservation or purchase the ticket and disclose the code-sharing arrangement only when reading back the flight information. Instead, the disclosure must be made at

the time that the schedule information is being provided to the consumer during the ''information'' and ''decision-making'' portion of the conversation, as TWA and Delta recognize. We therefore reject Northwest's argument that disclosure should only be required during the booking process. Furthermore, the term ''booking'' has no meaning that departs from current policy, since it encompasses a reservation.

Moreover, none of the commenting parties, except for Qantas, claimed that this requirement would impose an undue financial or administrative burden. The comments support the Department's belief that agents can already find the information needed to inform prospective travelers properly.

TWA wanted the Department to clarify that the requirements of the rule are fulfilled by disclosure to persons acting on behalf of a consumer. The rule requires a seller to disclose information only to whomever is booking the transportation, and does not require a seller to seek out, and communicate orally directly with, anyone else.

Written Notice

The NPRM proposed to require written notice of the transporting carrier's identity in conjunction with the sale of any air transportation in the United States that involves a code-sharing arrangement or long-term wet lease. If a separate itinerary is issued with the ticket, the itinerary would have to contain a legend that states ''operated by'' followed by the name of the transporting carrier for any flight segment on which the designator code is not that of the transporting carrier. If no itinerary is issued, the rule would require a separate written notice that clearly identifies the transporting carrier for any such segment.

TWA, IAPA, Northwest, and United supported the written notice requirement. American supported written notice so long as it is to be given at time of ticketing. American noted that three CRSs—SABRE, Galileo International, and System One—each has indicated it can produce itineraries with the required disclosure. Thus, American argued that the cost of a separate notice to passengers who are not already receiving a printed itinerary seems likely to be minimal. In American's view, moreover, the benefit of a written notice is that it stays with the passenger, whereas an oral notice given to someone making travel arrangements for a business traveler may never reach a passenger at all, or a passenger may forget about the code-share before embarking on the trip. According to American, written notice will help the passenger at several critical points, such as at check-in or when boarding the aircraft. Northwest requested that the Department permit carriers to use a standard prepared notice that contains a cross-reference list of ranges of a carrier's flight numbers that are code-share services similar to the way carriers now identify code-share carriers in the Official Airline Guides.

In contrast, British Airways, Delta, and RAA opposed the written notice requirement. They argued that it would impose substantial financial and administrative burdens. Delta argued that the written notice would complicate and lengthen the ticket transaction and result in substantial delays at airport ticket counters and gates.

Continental and System One stated that written notice should be given at the time an itinerary or ticket is issued and opposed separate written notice where no itinerary or other document is issued prior to airport check-in. USAir argued that written disclosure should be required only if an itinerary is provided and claimed that updating software for other written notice would take six months. Where no itinerary is issued, USAir argued that a separate written notice is costly and of minimal benefit to the consumer who has already received oral notice and purchased the service. ASTA stated that in the case of travel agents making courtesy bookings of frequent flyer awards, the airlines should be responsible for providing the written itinerary with the notice of code-share details, because the tickets themselves are issued by the airlines.

TWA suggested that the Department clarify that written notice is to be given at the earliest point in the reservation process that a document is transferred to the consumer. In addition, TWA suggested that the Department consider expanding the role of electronic mail and telecopier in reservations. TWA asserted that the code-share information should be included at the earliest point in the exchange of electronic information as is possible (e.g., when the agent transmits a list of schedule choices to the consumer).

United, Delta, and ASTA contended that the rule must accommodate ticketless travel. United stated that code-shared service sold as a ticketless product will be accompanied by a written notice like the itinerary card that accompanies a ticket. United suggested that a considerable percentage of customers using ticketless travel would not want a written notice, but would prefer to rely entirely on the reservation confirmation number provided to them orally at the time they book the flight. United therefore suggested that the Department allow passengers to waive the right to written notice. ASTA asserted that written notice should be required when an agent obtains a document confirming the purchase. According to ASTA, the term ''provide'' notice as used in proposed section 257.5(c) must be interpreted to mean ''give, transmit or send'' to account for non-face-to-face transactions. In addition, ASTA asked the Department to clarify that an agent who provides written notice to the purchaser of the ticket along with the ticket has complied with the rule, even if the purchaser is not the actual traveler.

In contrast, American argued that written notice would not seriously affect ticketless travel and that the efficiencies of ticketless travel will continue to justify its development even if carriers are required to give written notice. American claimed that much of the efficiency of ticketless travels results from automating the functions represented by the ticket, not by eliminating the piece of paper itself. According to American, none of the costly features of issuing tickets, such as accounting, tracking, or security, applies to the written notice requirement, and the notice can presumably be delivered physically to the passenger by mail, by telecopier, or even by electronic mail.

Some parties voiced concerns with the technical drafting of the written notice. United urged the Department to accept language equivalent to ''operated by'' such as ''via.'' Galileo also wanted the Department to make clear that issuance of only a mini-itinerary, bearing the legend ''VIA XYZ AIRLINE'' would satisfy any written notice requirement. In addition, Galileo wanted the Department to make clear that no special typeface or underlining will be required for the written notice, because it would cost more than $25 million to purchase replacement printers for all Apollo subscribers.

ASTA, American, SwissAir, TWA, and Qantas stated that the term ''time of sale'' needs to be clarified. American stated that in industry parlance ''time of sale'' could be construed as the time of making a reservation rather than the time when the ticket is presented. According to American, written notice should be given when the ticket is presented to the consumer. United, similarly, assumed that ''time of sale'' means when the ticket is presented. ASTA too assumed that ''time of sale'' refers to ''ticket issuance'', which happens when the final itinerary is

normally printed, and it observed that this is also the point, in credit card transactions, at which the purchaser is charged for the ticket. SwissAir suggested that the Department should define the term ''sale'' to mean the delivery of a ticket or itinerary to the passenger, whichever occurs first. Qantas claimed that the phrase ''at the time of sale'' should be replaced with a requirement that prior to or upon the receipt of the ticket, the consumer be provided with the written notice. Qantas also asked the Department to amend the rule to allow carriers and agents to provide notice either in an itinerary or on another piece of paper.

Decision

We will require separate written notice, which can be included on the traveler's itinerary. We agree with American that this requirement will make it more likely that the passenger knows about the code share at critical junctures. The passenger will have either an itinerary or a separate notice that will serve as a reminder at all times before departure.

Moreover, this rule should not be unduly burdensome or entail more than minimal additional costs, since many sellers already provide written itineraries. American's comments confirmed that SABRE already prints out the information the Department would require under the proposed rule for airline personnel and travel agents. Furthermore, Galileo enables Apollo subscribers to generate a standard form itinerary/invoice document that includes the name of the marketing carrier and also a statement such as ''OPERATED BY XYZ AIRLINE'' as well as a mini-itinerary. On the other hand, the opposition (British Airways, Delta, and USAir) did not substantiate their claims of financial and administrative burden. USAir provided no estimate of its costs for the programming changes. Since a significant portion of tickets is issued and distributed by travel agents and many other tickets are sent by mail, we doubt that our rule will cause significant passenger delays at airport counters.

Having reviewed the technical drafting comments, the Department has decided that the use of ''via'' in place of ''operated by'' would be ambiguous, since it does generally connote ''by way of an intermediate point'' as noted by TWA.

We used the term ''time of sale'' in the NPRM in order to accommodate ticketless travel. We acknowledge American's concern that ''time of sale'' could be misconstrued as the time of making a reservation rather than the time when the ticket is presented. Agents taking reservations often refer to ''selling'' a seat when no money has changed hands. Therefore, merely making a reservation without consummating a sale will not trigger the written notice requirement. We will clarify section 257.5(c) by substituting ''purchase'' for ''sale.''

We will also add two paragraphs: one to account for ticketless travel and cases where there is not enough time for the written notice to be mailed, the other to allow for delivery of the written notice by telecopier, e-mail, or other means at the purchaser's request. Paragraph (3) provides for mail delivery of the written notice along with the ticket when transportation is purchased far enough in advance of travel. We expect sellers of air transportation to make a reasonable assessment of whether or not enough time remains for mailing based on their experience with the United States Postal Service. Paragraph (3) provides for delivery of the written notice at the airport if time does not allow for advance delivery by mail or otherwise.

Paragraph (3) also accounts for delivery of the written notice in the case of ticketless travel. Consistent with our policy on other passenger notices, see 62 FR 19473 (April 22, 1997), we will require the written notice of the transporting carrier's identity to be given to ''ticketless'' passengers no later than the time that they check in at the airport for the first flight in their itinerary. Of course, nothing prohibits sellers of air transportation from providing this written notice at an earlier juncture, such as along with any itinerary they send the passenger. We encourage sellers to do whatever they can to see that passengers receive the best possible notice, as early as possible.

Paragraph (4) allows for delivery of the written notice of code-sharing service other than by mail at the passenger's request. This paragraph offers carriers and ticket agents greater flexibility in meeting the written notice requirement.

Several points raised warrant clarification. First, in response to ASTA's concern regarding the liability of travel agents making courtesy bookings of frequent flyer awards, whoever issues the ticket is responsible for giving the written notice. Second, ASTA asked that the Department address the case where the purchaser and the actual traveler are not the same. We clarify that notice with the ticket is acceptable even if the purchaser is not the same as the actual traveler. Third, the Department is not requiring an itinerary in particular, only some form of written notice. We will amend the language in section 257.5(c)(1) as suggested by ASTA.[13] Fourth, regarding Galileo's concern about typefaces, we are not prescribing any particular type-size or requiring bold lettering. Fifth, some commenters expressed concern regarding how this rule will affect the trend toward ticketless travel. On January 19, 1996, the Department published a **Federal Register** notice seeking comment on passenger notice requirements as applied to ticketless travel; see 61 FR 1309. Sixth, we do not accept United's suggestion that we allow passengers to waive the right to written notice. Passengers might not understand what rights they were waiving, and we wish to avoid disputes over whether notice was waived or not. Seventh, as for TWA's concern regarding the timing of the requirement in the exchange of electronic information, the requirement is the same as with telephone transactions: notice in schedules, before booking transportation, and then written notice at the time of purchase as in Paragraph (3) of the rule. Eighth and finally, we do not adopt Northwest's suggestion that the Department permit carriers to use a standard prepared notice. We do not believe that such a notice would inform travelers of the transporting carrier as effectively as the more specific notice because the latter would name the transporting carrier.

Notice in Schedules

The NPRM proposed that, in written or electronic schedule information provided by carriers in the United States to the public, the Official Airline Guides and comparable publications, and, where applicable, computer reservation systems, carriers involved in code-sharing arrangements or long-term wet leases ensure that an asterisk or other easily recognizable mark identifies each flight in scheduled passenger air transportation on which the designator code is not that of the transporting carrier.

Galileo stated that its current Apollo displays appear to be consistent with the proposed requirement, and participating carriers and Apollo subscribers should be able to comply.

ASTA and American suggested requiring that code-shared services be indicated in CRSs by a double-airline code. ASTA suggested that the first

[13] ASTA suggested that the last sentence of proposed section 257.5(c)(1), which states that the indicated form of notice will ''satisfy the requirement of the preceding sentence,'' should state that the form of notice will satisfy ''the requirement of this subparagraph,'' as does the parallel language of section 257.5(c)(2).

displayed code should indicate ''which carrier is in fact operating the flight.'' American estimated that the double-airline code suggestion could be accomplished with under 200 hours of reprogramming and suggested that it would be easier for SABRE to show the transporting carrier's code second. ASTA (supported by Township Travel) also suggested that all code-shared services be displayed only once. American has filed a petition to require this in another docket. Alaska Airlines, Rogal Associates, and TWA supported the double-airline code suggestion.

USAir, British Airways, Continental, System One, United, and Galileo generally opposed this suggestion, because it is beyond the scope of this proceeding. Several parties claimed that it would be costly and force the elimination of other useful information from CRS displays, and that it would be impracticable for blocked-space arrangements where each carrier independently markets its seats on a flight. Galileo estimated that it would take 800 person hours of reprogramming work to redesign the Apollo screen to accommodate two codes for a single flight. Although Worldspan took no position on the merits, it opposed additional requirements concerning the screen display.

TWA said that the name of the code-share carrier should also be included in the CRS display or timetable schedule, rather than merely displaying an asterisk, which would have little meaning to the consumer. TWA proposed that the Department require that the explanation for the asterisk be placed in close proximity to its appearance in the text. Omega stated also that the ''asterisk or . . . other mark'' will not mean anything to the average consumer.

Decision

The Department will clarify the proposed rule by requiring that carriers provide information disclosing the corporate name of the transporting carrier as proposed in the SNPRM. We will not address any proposals regarding CRS displays, including the double-airline code proposal, because they are outside the scope of this proceeding. The NPRM did not propose changes to or seek comments on CRS displays. As for TWA's and Omega's concern that the asterisk does not mean anything to the average consumer, the consumers do not see CRS screens, and the travel agents that do see them are familiar with the meaning of the asterisk. As for timetables distributed to consumers, this provision requires that the name(s) of the carrier be disclosed, so the asterisk would have to lead to a means of determining these names, as is currently done in the Official Airline Guides and in all carrier timetables of which we are aware.

Advertising

The NPRM proposed to require notice, in any advertisement for any service in a city-pair market that is provided under a code-sharing arrangement or by long-term wet lease, that clearly indicates the nature of the service and identifies the transporting carrier(s).

USAir, Delta, United, and British Airways supported the advertising proposal as long as the requirement is limited to printed advertisements, because the cost of including the required information in radio and television advertisement would be exorbitant, and the need is unsupported in light of the other NPRM provisions. TWA questioned why radio or TV advertising should be excluded and noted that even in a TV advertisement, notice of code-sharing could be scrolled over the video. American also argued that there is no basis for limiting the requirement to printed advertisements. Continental and System One supported the requirement as written. Galileo stated that the requirement appears not to affect CRS vendors.

RAA opposed the requirement, claiming that the benefits appear to be limited. RAA assumed that the requirement would not only apply to air carrier advertisements, but to all advertising, which included air travel.

Some carriers sought clarification of the proposed requirement in cases where both code-shared and direct service are offered in a market. Northwest, which supported the advertising requirement, assumed that when carriers advertise service to a group of points and all points are served by the same code-sharing arrangement, it would be sufficient to make a generalized statement. Furthermore, Northwest assumed that if some points are served by code-share and others are served directly, the carrier may use an asterisk or similar device to identify the code-sharing services. In cases where a carrier serves a point both by code-share and directly, Northwest assumed that the carrier may state that some of the flights are operated by another carrier.

United has no objection to the identification of affiliated commuters in print ads as long as adequate time is allowed for implementation (six months). However, United also maintained that the intent of the rule is unclear where a carrier is operating services both with its own equipment and under a code-sharing arrangement in the same city-pair market. United proposed that a notice would not be needed in this situation. USAir supported United's position on this issue.

American recommended that the Department clarify the proposal to require that any advertising, no matter where it occurs, that relates to a city-pair in which service is provided by a code-sharing arrangement must make the required disclosures.[14] TWA stated that the Department should define ''service'' in the phrase ''service in a city-pair market'' so that both price and destination advertising must identify the transporting carrier. TWA suggested that the Department rephrase proposed section 257(d) to state ''In any advertisement of fares or service in a city-pair market''.

Decision

We believe that the basic provision is necessary to ensure that prospective consumers are informed of code-sharing arrangements or long-term wet leases. There is a strong public interest in consumers knowing the nature of the transportation advertised before they begin arranging a trip. As previously stated, the rule will only apply to advertising in the United States.

However, the comments have persuaded us to modify the rule. For print media, the rule will require notice in reasonably sized type (e.g., not in fine-print fare conditions) specifically identifying the transporting carrier. Printed advertisements holding out service to a group of points where some points are served by a code-sharing or wet-lease arrangement must identify each such arrangement. On the other hand, for broadcast media, the disclosure of a code-sharing or wet lease arrangement can be generic; for example, the following statement: ''Some services are provided by other airlines.'' We accept TWA's suggestion that in a TV advertisement, a generic notice such as the one noted above may be scrolled over the video in a legible fashion, or it may be verbal. The requirement applies to all advertising, as assumed by RAA.

Northwest presented three scenarios that would trigger the disclosure requirement. First, Northwest assumed that when a carrier advertised service to a group of points and all points are served by the same code-sharing

[14] We also received on July 5, 1995, a letter from Gayle Michaels, American's Advertising Manager, discussing the proposed ruling on advertising of code shares and claiming , among other things, that under certain situations the rule would be difficult, complex or unduly burdensome.

arrangement, it would be sufficient to make a single statement identifying the transporting carrier. Under this scenario, we would accept a statement at the bottom of the advertisement that says, for example, ''Service provided by Mesaba Aviation.'' However, if all of the service in the advertisement is a Northwest code-share and some is provided by Mesaba and the rest is provided by Simmons, then asterisks or other symbols must identify which service is provided by which carrier.

Second, Northwest assumed that if some points are served by code-share and others are served directly, the carrier may use an asterisk or similar device to identify the code-sharing services. We find the use of an asterisk acceptable. However, as in the first scenario, if the service is provided by more than one code-sharing carrier, an advertisement may have to display separately-numbered footnotes (e.g., footnote 1 next to some cities will refer to a note that states service is by Mesaba, and footnote 2 next to other cities will say the service is by Simmons.) Where service is provided by two or three different carriers, a single generic footnote applying to all cities that states ''Service operated by Mesaba Aviation or Simmons Airlines,'' is not acceptable, since the reader has no way to determine the name of the carrier that is operating the service in the individual markets.

Finally, where a carrier serves a point both by code-share and directly, Northwest assumed that the carrier may state that some of the flights are operated by another carrier. Northwest is correct as long as the name of the transporting carrier is provided.

New Proposals

Commenters offered several new proposals as follows:

1. Notification Beyond the Reservation and Ticketing Process

IAPA suggested that in addition to the Department's proposal, notification of code-sharing arrangements should also be required at airport check-in (whether at the ticket counter or at the gate), during boarding and announcements at the gate, and on board aircraft. According to IAPA, these ''last chance'' announcements will inform the passengers of the actual operator of the flight and allow them to forego the flight if they do not want to fly on the transporting carrier.

2. Notice of Aircraft Type

AAA, IAPA, ASAP, and Frontier suggested requiring notice of aircraft type. IAPA, ASAP, and Frontier asserted that this information is important to passengers who want to avoid certain types of aircraft. IAPA suggested that the notification should commence at the time of reservation and that aircraft type should be listed at least on the itinerary, but also on the ticket if possible. AAA suggested that if equipment is a passenger concern, then perhaps the aircraft type should be identified in every itinerary, not just those involving code-sharing arrangements. United stated that the suggestion is beyond the scope of this proceeding and noted that this information is available in schedules and CRS displays to those passengers who want the information.

3. Treatment of Frequent Flyer Miles

AAA suggested requiring notice when and if frequent flyer miles are affected adversely by a code-sharing arrangement.

4. Airport Signs

British Airways, Qantas, and USAir complained that some airport operators cause passenger confusion by denying some carriers adequate signs for their code-sharing flights in the terminal building. They suggested that the Department consider requiring airports to let airlines post signs to direct passengers to the right terminal, counters, or gates. Qantas argued that it is just as important from a passenger viewpoint to find the right check-in counter and gate at the correct terminal for a code-shared service as it is to be informed of the name of the carrier operating that service. USAir acknowledged that the scope of the NPRM did not encompass new rules applicable to airports, but it requested that the Department address this issue in the final rulemaking decision, even if merely in an advisory manner, arguing that this could obviate more direct regulatory action. The City of Philadelphia opposed the airport sign suggestion on the grounds that adequate notice of code-shared flights is not the responsibility of airports but of airlines. In addition, the City of Philadelphia contended that the proposal is outside the scope of this proceeding and that the Department should go no further than making an advisory reference to airport signs in its final rulemaking decision.

5. Refunds

IAPA, ASAP, and Mr. Pevsner suggested that refunds should be available to consumers who object to the code-sharing or wet-lease arrangements. IAPA stated that this rule would create an incentive for airlines to ensure that passengers are fully informed as to the transporting carrier before they arrive at the airport. Continental and System One opposed such a rule, because it would render non-refundability provisions meaningless for any code-shared flight, and because adoption of the rules proposed should assure early notice to passengers.

Decision

The Department finds all of these proposals outside the scope of this proceeding. In addition, we believe that our new disclosure requirements will assure that consumers receive notice sufficiently ahead of time to make refunds and notification beyond the reservation and ticketing process unnecessary. However, our decision not to incorporate a refund provision now does not mean that carriers are free to apply refund penalties to passengers who are not given notice of code-shared service before purchasing transportation and who choose to cancel when they do discover the actual operator of their flight. Depending on the circumstances, refusal to provide refunds in such a situation could be a violation of the contract of carriage or an unfair or deceptive practice within the meaning of 49 U.S.C. 41712 (previously § 411 of the Federal Aviation Act). We encourage airports to permit carriers to post signs for their code-sharing flights to prevent passenger confusion.

Effective Date

The NPRM proposed that the final rule be effective 60 days after publication. Several commenters requested more time. USAir stated that it needed one year for the wet-lease requirement, six months for the written notice requirement, and six months to a year's time to update its PACER reservation system to accommodate the SNPRM proposal on corporate names. SwissAir stated that it needs 90 days, and Lan Chile stated that it needs three months. United stated that it could comply within 60 days assuming the Department does not adopt substantive changes in its notification requirement beyond those contained in the proposal. Delta stated that if the Department requires carriers to issue a written statement when itineraries are not issued or requires changes in the ticket format, it would need a six-month effective date. In the alternative, Delta suggested that the Department make the rule effective within 60 days with respect to issues unrelated to the written notice requirement and defer the issue of written notice pending additional input from the industry.

Decision

The final rule will be effective 120 days after publication. Some of the commenters made it clear that a 60 days would not be sufficient for compliance. However, the commenters did not provide enough detail to justify allowing any more time than what we shall provide here.

Regulatory Analyses and Notices

The Department has determined that this action is not an economically significant regulatory action under Executive Order 12866 and it has not been reviewed by the Office of Management and Budget. It also is significant under the Department's Regulatory Policies and Procedures because of congressional and public interest. This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment. The Department has placed a regulatory evaluation that examines the estimated costs and impacts of the rule in the docket.

Summary of Regulatory Analysis

Based upon a detailed regulatory analysis, the Department has determined that this rule will result in increased costs. However, the Department has also decided that the enhanced notification benefits of the rule justify the increased costs.

With regard to cost, the Department finds that this rule will result in increased implementation costs as well as increased operating costs for U.S. airlines, foreign airlines, computer reservations systems (CRSs), and travel agents doing business in the United States. The implementation costs will mainly affect the airlines and CRSs by requiring changes to computer systems for the electronic notification. The Department has estimated that these implementation costs could range from $432,000 to $2.3 million.

However, the Department has determined that these implementation costs are not prohibitive since they are one-time, nonrecurring costs that will result in benefit for a large number of travelers in the future.

The Department has also found that this rule will result in increased operating costs for the airlines, travel agents and air travelers. Most of the increased operating costs are attributable to an increase in the amount of ''talk time'' and telephone connection time necessary for airline ticket agents and travel agents to provide the proper disclosure to prospective air travelers. At the same time, air travelers incur a cost through the loss of productive time for the time spent in listening to the notification. Using assumptions of 15 seconds of additional ''talk time'' per telephone call, an average of 2.1 phone calls per ticket, and an estimate of 48.6 million tickets involved in code-sharing arrangements in 1997, the Department has estimated that travel agents and airline ticket agents will expend an additional 339,995 hours and 84,999 hours, respectively, to meet the requirements of this rule. Adding the cost of additional telephone line connection time, the annual increase in operating costs amounted to $12 million for the travel agent industry and $3.4 million for the airline industry. For airline passengers, the annual increase in costs associated with the loss of productive time is estimated at $11.8 million.

While the Department would prefer not to take actions which have the potential to increase the cost of travel or result in a loss of productive time, it believes these amounts are minimal and not prohibitive when considered on a per ticket basis—an average increase of approximately $.56 per ticket. At the same time, the Department has found that it is difficult to quantify the benefits of this rule. The Department recognizes that code-sharing arrangements and the number of code-sharing trips are likely to increase in the future. It also recognizes that the cost for fully informing prospective travelers will impact different segments of the travel industry and the public to varying degrees. However, the Department has determined that such arrangements are increasing and becoming more complex especially in international operations at the same time that other marketing strategies are being developed. This fact emphasizes the paramount importance that the traveling public must be fully informed. This benefit clearly outweighs the cost increases and the Department further believes that these costs will decrease in the future as consumers and frequent travelers adjust and as new, less-costly, channels of distribution become available (such as the Internet).

In analyzing the impact of this final rule, the Department considered several alternatives to this final rule. While most of the alternatives involved less enhanced notification both oral and written, one alternative considered the more costly requirement of written notification on the ticket coupon. The Department has decided that the level of enhanced notification as contained in the final rule provides the best net public benefits. A more limited approach would have provided only a partial response to consumers' needs while still increasing costs. On the other hand, the Department has rejected the alternative of requiring the written notification on the ticket coupon. In effect, this costly disclosure would represent a third level of consumer notification that is not warranted at this time.

Small Business Impact

The Department has evaluated the effects of this rule on small entities. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Although many ticket agents and some air carriers are small entities, the Department believes that the costs of notification will not be burdensome on these two groups. We believe that travel agents already have an incentive to provide this information to their customers and many have found a low-cost means of providing it.

Year 2000 Problem

In an effort to ensure that our regulations do not interfere or delay solutions for the Year 2000 Problem (Y2K), the Department has decided that, in preparing proposed and final rules that mandate business process changes and require modifications to computer systems between now and July 1, 2000, the Department will discuss those rules specifically with reference to Y2K requirements and determine whether the implementation of those rules should be delayed to a time after July 1, 2000.

Since the Department does not have detailed knowledge about the Y2K status of the systems that will need to be changed as a result of this rule, we attempted to gauge the effect based on a review of statements from Annual Reports, 10–K and 10–Q Statements filed with the Securities and Exchange Commission, news reports, press releases, and other documents. We researched this issue with regard to four computer reservations systems, the nine largest airlines, one smaller airline, and five organizations closely associated with airline computerized systems and databases. While this information did not reflect detailed technical assessments, it allowed us to establish a broad baseline against which to judge the issuance of our rule.

Our analysis has shown a widespread effort involved in the Y2K program for air transportation. In general, most of the companies we examined have stated that they expect to be Y2K-compliant in a timely manner. However, most also reflect caution by noting that there are no guarantees or assurances that all systems will be ready and that their

operations could be adversely affected. In response to this possibility, many have established contingency plans that will allow continued operations.

Because of the amount of progress these companies have already made, the Department has determined that it is in the public interest to issue this rule now and not delay its implementation to a time after July 1, 2000. The number and type of marketing practices that include code-sharing arrangements, change-of-gauge services, marketing alliances and other marketing agreements, especially among multiple carriers and involving international operations have grown substantially. These agreements are likewise expected to continue to grow in the future. At the same time, they have increased in complexity as well. For these reasons, the Department has determined that it is now essential to issue this disclosure rule so that prospective travelers have as clear and complete information as possible prior to buying air transportation as well as during the journey.

Federalism

The Department has analyzed this rule under the principles and criteria contained in Executive Order 12612 (''Federalism'') and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Paperwork Reduction Act

This rule contains information collection requirements that are being submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995. In the Notice of Proposed Rulemaking (NPRM) and the Supplemental Notice of Proposed Rulemaking (SNPRM) that preceded this rule, the Department stated that the proposed rule did not contain information collection requirements that required approval by OMB under the then current Paperwork Reduction Act. However, the requirements under the Paperwork Reduction Act of 1995 consider third party notifications as data collections and thus subject to the regulations. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. This final rule is therefore being submitted to the Office of Management and Budget for review. The Department has determined an estimate of the burden hours associated with this rule and is requesting comments on its estimate.

Those potentially affected by this rule include 192 U.S. air carriers, 205 foreign air carriers, five computer reservations systems and approximately 33,500 travel agents doing business in the United States. With respect to the traveling public, we estimate that 102 million phone calls will be affected by this rule. The annual reporting burden hours for this data collection is estimated at 424,994 hours for all travel agents and airline ticket agents and 424,994 for air travelers based on 15 seconds per phone call and an average of 2.1 phone calls per trip.

Comments are invited on: (a) Whether this collection of information (third party notification) is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 the respondents, including through the use of automated techniques or other forms of information technology. Comments should be sent to Jack Schmidt, Office of Aviation and International Economics (X–10), Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St. SW, Washington, DC 20590, (202) 366–5420 or (202) 366–7638 (FAX)

List of Subjects

14 CFR Part 257

Air carriers, Consumer protection, Foreign air carriers, Reporting and recordkeeping requirements.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

For the reasons set forth in the preamble, the Department of Transportation amends 14 CFR chapter II, subchapters A and F, as follows:

1. Part 257 is added to read as follows:

PART 257—DISCLOSURE OF CODE-SHARING ARRANGEMENTS AND LONG-TERM WET LEASES

Sec.
257.1 Purpose.
257.2 Applicability.
257.3 Definitions.
257.4 Unfair and deceptive practice.
257.5 Notice requirement.

Authority: 49 U.S.C. 40113(a) and 41712.

§ 257.1 Purpose.

The purpose of this part is to ensure that ticket agents doing business in the United States, air carriers, and foreign air carriers tell consumers clearly when the air transportation they are buying or considering buying involves a code-sharing arrangement or a long-term wet lease, and that they disclose to consumers the transporting carrier's identity.

§ 257.2 Applicability.

This part applies to the following:

(a) Direct air carriers and foreign air carriers that participate in code-sharing arrangements or long-term wet leases involving scheduled passenger air transportation; and

(b) Ticket agents doing business in the United States that sell scheduled passenger air transportation services involving code-sharing arrangements or long-term wet leases.

§ 257. 3 Definitions.

As used in this part:

(a) *Air transportation* means foreign air transportation or interstate air transportation as defined in 49 U.S.C. 40102 (a)(23) and (25) respectively.

(b) *Carrier* means any air carrier or foreign air carrier as defined in 49 U.S.C. 40102(2) or 49 U.S.C. 40102(21), respectively, that is engaged directly in scheduled passenger air transportation, including by wet lease.

(c) *Code-sharing arrangement* means an arrangement whereby a carrier's designator code is used to identify a flight operated by another carrier.

(d) *Designator code* means the airline designations originally allotted and administered pursuant to Agreements CAB 24606 and 26056.

(e) *Long-term wet lease* means a lease by which the lessor provides both an aircraft and crew dedicated to a particular route(s), and which either:

(1) Lasts more than 60 days; or

(2) Is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

(f) *Ticket agent* has the meaning ascribed to it in 49 U.S.C. 40102(40).

(g) *Transporting carrier* means the carrier that is operating the aircraft in a code-sharing arrangement or long-term wet lease.

§ 257.4 Unfair and deceptive practice.

The holding out or sale of scheduled passenger air transportation involving a code-sharing arrangement or long-term wet lease is prohibited as unfair and deceptive in violation of 49 U.S.C. 41712 unless, in conjunction with such holding out or sale, carriers and ticket agents follow the requirements of this part.

§ 257.5 Notice requirement.

(a) *Notice in schedules.* In written or electronic schedule information provided by carriers in the United States to the public, the Official Airline Guides and comparable publications, and, where applicable, computer reservations systems, carriers involved in code-sharing arrangements or long-term wet leases shall ensure that each flight in scheduled passenger air transportation on which the designator code is not that of the transporting carrier is identified by an asterisk or other easily identifiable mark and that the corporate name of the transporting carrier and any other name under which that service is held out to the public is also disclosed.

(b) *Oral notice to prospective consumers.* In any direct oral communication in the United States with a prospective consumer and in any telephone calls placed from the United States concerning a flight that is part of a code-sharing arrangement or long-term wet lease, a ticket agent doing business in the United States or a carrier shall tell the consumer, before booking transportation, that the transporting carrier is not the carrier whose designator code will appear on the ticket and shall identify the transporting carrier by its corporate name and any other name under which that service is held out to the public.

(c) *Written notice.* Except as specified in paragraph (c)(3) of this section, at the time of purchase, each selling carrier or ticket agent shall provide each consumer of scheduled passenger air transportation sold in the United States that involves a code-sharing arrangement or long-term wet lease with the following notice:

(1) If an itinerary is issued, there shall appear in conjunction with the listing of any flight segment on which the designator code is not that of the transporting carrier a legend that states ''Operated by'' followed by the corporate name of the transporting carrier and any other name in which that service is held out to the public. In the case of single-flight-number service involving a segment or segments on which the designator code is not that of the transporting carrier, the notice shall clearly identify the segment or segments and the transporting carrier by its corporate name and any other name in which that service is held out to the public. The following form of statement will satisfy the requirement of this paragraph (c)(1):

Important Notice: Service between XYZ City and ABC City will be operated by Jane Doe Airlines d/b/a QRS Express.

(2) If no itinerary is issued, the selling carrier or ticket agent shall provide a separate written notice that clearly identifies the transporting carrier by its corporate name and any other name under which that service is held out to the public for any flight segment on which the designator code is not that of the transporting carrier. The following form of notice will satisfy the requirement of this paragraph (c)(2):

Important Notice: Service between XYZ City and ABC City will be operated by Jane Doe Airlines d/b/a QRS Express.

(3) If transportation is purchased far enough in advance of travel to allow for advance delivery of the ticket by mail or otherwise, the written notice required by this part shall be delivered in advance along with the ticket. If time does not allow for advance delivery of the ticket, or in the case of ticketless travel, the written notice required by this part shall be provided no later than the time that they check in at the airport for the first flight in their itinerary.

(4) At the purchaser's request, the notice required by this part may be delivered in person or by telecopier, electronic mail, or any other reliable method of transmitting written material.

(d) *Advertising.* In any printed advertisement published in or mailed to or from the United States for service in a city-pair market that is provided under a code-sharing arrangement or long-term wet lease, the advertisement shall clearly indicate the nature of the service in reasonably sized type and shall identify the transporting carrier[s] by corporate name and by any other name under which that service is held out to the public. In any radio or television advertisement broadcast in the United States for service in a city-pair market that is provided under a code-sharing arrangement or long-term wet lease, the advertisement shall include at least a generic disclosure statement, such as ''Some services are provided by other airlines.''

PART 399—STATEMENTS OF GENERAL POLICY

2. The authority citation for part 399 is revised to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40109, 40113, 40114, 40115, 41010, 41011, 41012, 41101, 41102, 41104, 41105, 41106, 41107, 41108, 41109, 41110, 41111, 41112, 41301, 41302, 41303, 41304, 41305, 41306, 41307, 41308, 41309, 41310, 41501, 41503, 41504, 41506, 41507, 41508, 41509, 41510, 41511, 41701, 41702, 41705, 41706, 41707, 41708, 41709, 41711, 41713, 41712, 41901, 41902, 41903, 41904, 41905, 41906, 41907, 41908, 41909, 42111, 42112, 44909, 46101, 46102.

§ 399.88 [Removed]

3. Section 399.88 is removed.

Issued in Washington, DC on March 8, 1999.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–6138 Filed 3–10–99; 1:23 pm]

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Part III

Department of Transportation

Office of the Secretary

14 CFR Part 258

Disclosure of Change-of-Gauge Services; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 258

[Docket Nos. OST–1995–177, 47546, 45911, 45912, and 45913]

RIN 2105–AC17

Disclosure of Change-of-Gauge Services

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule.

SUMMARY: This rule codifies and augments the Department of Transportation's disclosure rules and policies concerning change-of-gauge services—i.e., services with one flight number that require a change of aircraft—in order to ensure that prospective airline consumers are given pertinent information on the nature of these services. The rule applies to U.S. air carriers, foreign air carriers, and, where appropriate, ticket agents (including travel agents) doing business in the United States. It includes the following requirements: That transporting carriers include notice of required aircraft changes in their written and electronic schedule information provided to the public, to the Official Airline Guide (OAG) and comparable publications, and to computer reservations systems, that consumers be given reasonable and timely oral notice that a service with a single flight number that they are considering booking entails a change of aircraft en route, and that written notice of the aircraft change be provided along with any ticket.

DATES: This regulation is effective July 13, 1999. Comments on the information collection requirements must be received on or before May 14, 1999.

ADDRESSES: Comments should be sent to Jack Schmidt, Office of Aviation and International Economics (X–10), Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366–5420 or (202) 366–7638 (FAX).

FOR FURTHER INFORMATION CONTACT: Betsy L. Wolf, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings (202–366–9349), Office of the General Counsel, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Department issued a Notice of Proposed Rulemaking (NPRM), 60 FR 3778 (January 19, 1995), in which it requested comments and reply comments on a proposed rule requiring various forms of disclosure of change-of-gauge services. Change-of-gauge service is scheduled passenger air transportation for which the operating carrier uses one single flight number even though passengers do not travel in the same aircraft from origin to destination but must change planes at an intermediate stop. Operationally, in addition to one-flight-to-one-flight change-of-gauge services, airlines also schedule change-of-gauge services that involve aircraft changes between multiple flights on one side of the change point and one single flight on the other side. Change-of-gauge services with multiple origins or destinations are called ''Y'' (i.e., two-for-one), ''W'' (i.e., three-for-one), or ''starburst'' (i.e., unrestricted) changes of gauge, depending on the shape of the route patterns. Popularly, they are also called ''funnel flights.'' As with one-for-one change-of-gauge services, the carrier assigns a single flight number for the passenger's entire itinerary even though the passenger changes planes, but in addition, the single flight to or from the change point itself has multiple numbers: one for each segment with which it connects and one for the local market in which it operates.

49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act, authorizes the Department to identify and ban unfair or deceptive practices or unfair methods of competition on the part of air carriers, foreign air carriers, and ticket agents. Under section 41712, the Department has adopted various regulations and policies to prevent unfair or deceptive practices or unfair methods of competition. The Department's current rules governing computer reservations systems (CRSs), adopted in September of 1992, require that CRS displays give notice of any flight that involves a change of aircraft en route. Computer Reservations System (CRS) Regulations, Final Rule, 57 FR 43780, 43835 (September 22, 1992); 14 CFR 255.4(b)(2). In addition, the Department requires as a matter of policy that consumers be given notice of aircraft changes for change-of-gauge flights. See Order 89–1–31 at 5.

In the NPRM, our response to American Airlines, Inc.'s petition in Docket 47546 to ban ''funnel flights,'' we concluded that no type of change-of-gauge service should be banned per se. Nevertheless, we tentatively found that even with our current policy requiring disclosure of aircraft changes, effective disclosure is not always made, resulting not only in bookings that otherwise might not be made but also in confusion and hardship during travel. We tentatively found that the failure to disclose required aircraft changes in scheduled passenger air transportation in a timely manner is an unfair or deceptive practice or an unfair method of competition within the meaning of 49 U.S.C. 41712, and we proposed to require U.S. air carriers, foreign air carriers, and, where applicable, ticket agents (including travel agents) doing business in the United States to make the following disclosures of all change-of-gauge services:

(1) Notice by carriers of required aircraft changes in written and electronic schedule information provided to the public, to the Official Airline Guide and comparable publications, and to computer reservations systems,

(2) In any direct oral communication with a consumer concerning a change-of-gauge service, notice before booking transportation that the service requires a change of aircraft en route, and

(3) A prescribed written notice at the time of sale of such service.

We received comments on the NPRM from four air carriers (American Airlines, Inc., Delta Air Lines, Inc., United Air Lines, Inc., USAirways, Inc.), the Port Authority of New York and New Jersey (Port Authority), the American Society of Travel Agents, Inc. (ASTA), Americans for Sound Aviation Policy (ASAP), two travel agencies (Red Carpet Travel and Fran's Travel), and two individuals (Donald L. Pevsner and E. Sakaria). We received reply comments from two air carriers (American and Continental Airlines, Inc.). Having reviewed all of these documents, we have decided to adopt the proposed rule with some modification and clarification.

Allowing Change-of-Gauge Services

In the NPRM, we declined to ban either single or multiple change-of-gauge services outright. We noted that in general, we have declined to foreclose carriers' marketing and service innovations unless these violate 49 U.S.C. 41712 or otherwise contravene the public interest, and we tentatively found that problems of passenger deception or confusion or distortion of competition arising from ineffective disclosure could and should be addressed by our proposed rule. We noted various public benefits that can flow from change-of-gauge services: a lower likelihood of missed connections, lower fares, increased scope and

frequency of service, increased competition, our ability to review regulated international air fares, and maximum utilization of U.S. carriers' rights under international bilateral agreements.

Several commenters would have us reconsider our decision not to ban any change-of-gauge services. Some would settle for a ban on multiple change-of-gauge services, while others continue to press for a ban on one-for-one changes of gauge as well.

American supports the proposed rule for one-for-one changes of gauge but calls for a ban on multiple changes of gauge except for those specifically approved by the Department on a case-by-case basis. American doubts that connections are any more likely to be held for late-arriving flights in the case of multiple changes of gauge than they are in the case of ordinary online connecting services. In American's view, the Department should limit the use of single flight numbers to connections whose flights are routinely held in cases of delay. The carrier argues that even with effective disclosure of aircraft changes, travelers will still be misled into thinking that their connecting flights will not leave without them. It cites the support of fifteen parties for its original petition to ban multiple change-of-gauge flights in support of its position here.

American contends that the Department's leverage over fares under the Standard Foreign Fare Level (SFFL) is not a substantive reason to allow all multiple change-of-gauge services. It states that the rules allowing us to stop fare increases based on SFFL do not bear as a practical matter on transportation to and from countries with liberal pricing regimes, and it states that in any event, the Department has other means of protecting the public against unreasonable fares. American also believes that our concern that banning multiple change-of-gauge services would sacrifice valuable route rights is largely unfounded, because many bilateral agreements do not grant such rights. As for our concern that banning multiple change-of-gauge services by foreign carriers would breach some of our agreements, American states that foreign carriers dislike these services and that therefore, the United States could readily renegotiate those agreements that allow carriers of both parties to operate them. American does not oppose Departmental approval of change-of-gauge services to satisfy bilateral obligations.

Joining American in supporting a ban on multiple change-of-gauge services are the Port Authority and ASAP. The Port Authority maintains that these services are inherently unfair and deceptive, that they engender panic and helplessness at airports, and that even with the proposed disclosure requirements, consumers will not grasp the nature of their travel. For essentially the same reasons, Red Carpet Travel, Fran's Travel, Mr. Pevsner, and E. Sakaria favor a ban on all change-of-gauge services, not just those involving multiple flights on one side of the change point. On the other side of this issue, Delta, USAirways, and Continental take the position that no change-of-gauge services should be banned.

We affirm our earlier conclusion that change-of-gauge services are not unfair or deceptive practices or unfair methods of competition within the meaning of 49 U.S.C. 41712, provided that the *en route* change of aircraft is disclosed to consumers clearly and effectively before they book transportation. American provides no evidence to support its hypothesis that in the case of multiple change-of-gauge services, connections are not likely to be held. While American correctly observes that we do not exercise our leverage over fares under SFFL in the case of bilateral agreements with countries that have liberal pricing regimes, it would be contrary to the public interest for us to sacrifice this leverage for all bilateral relationships, including those with countries that do not have liberal pricing regimes. Banning change-of-gauge flights would do just that, because our SFFL reviews do not extend to fares for connecting flights with separate flight numbers.

Similarly, the proportion of our bilateral agreements that specifically provide for change-of-gauge services is irrelevant. What matters is that a significant and growing number of these agreements do. Among these are the 32 open-skies agreements we have concluded with aviation partners on four continents, our landmark agreement with Canada that governs our largest foreign aviation market, and many agreements with other significant aviation partners, such as France and Japan. The United States negotiated for the change-of-gauge provisions in these agreements in consultation with U.S. air carriers for the purpose of enabling them to exploit the agreements' new route opportunities as fully as possible. We would be acting contrary to the public interest if we were to sacrifice these negotiated rights unilaterally. American suggests that we could renegotiate those agreements that allow our partners to provide change-of-gauge services, but this would require making further trades to the foreign governments involved. Such retrenchment would again be contrary to the public interest.

E. Sakaria questions the legality of change-of-gauge service in light of a provision in the Warsaw Convention that tickets must show each point of transfer and a provision in carriers' certificates requiring all operations to be conducted in accordance with all applicable treaties. We do not interpret the certificate condition in question as requiring carriers to issue tickets indicating changes of gauge.

The arguments in the comments fail to persuade us that change-of-gauge services should be banned outright. Moreover, the record lacks evidence that this position has broad support in the industry. We do not agree that the disclosures required by our rule will fail to give consumers effective notice of the change of aircraft en route. We do share the concerns of the Port Authority and other commenters that airports may not be posting notices of change-of-gauge services that clearly and effectively direct passengers to their ongoing aircraft. We do urge the carriers offering these services to work with airports where the aircraft changes are made to remedy this problem. In our view, however, this concern does not warrant sacrificing all of the benefits that change-of-gauge service can offer to the traveling public. For these reasons, and owing to the long history and acceptance of the practice (see NPRM, supra, 60 FR at 3778–3779), we will not ban change-of-gauge service.

The Need for a Rule

At the other end of the scale, Delta, USAirways, and Continental take the position that the Department should not adopt any disclosure rule, arguing that they already make effective disclosure of change-of-gauge services, that the disclosure required by the rule would come at a high cost, and that there is not enough evidence that consumers are being deceived, confused, or otherwise harmed to justify this burden on sellers of air transportation. ASTA, too, argues against the rule. Some commenters also oppose individual components of the rule; we address these contentions below.

Delta argues that existing rules and policies requiring notice of aircraft changes in CRSs and disclosure of change-of-gauge services to consumers give the latter adequate protection. Delta states that it fully discloses its change-of-gauge services in CRSs, the OAG, the ABC World Airways Guide, other similar publications, and its own

timetables. An owner of Worldspan, Delta states that this CRS directs travel agents to tell passengers of the aircraft change and where it will occur. Delta also states that passengers on its change-of-gauge services receive a separate boarding pass for each flight segment that involves a different aircraft and contends that these constitute effective written notice of the aircraft change. Delta also argues that apart from existing regulatory requirements, carriers have commercial and competitive incentives to inform consumers fully about the services that they provide. The carrier thus concludes that the rule is unnecessary.

Delta also contends that the Department has not justified the rule with empirical evidence that consumers are being confused or deceived or that they are not being informed of change-of-gauge services in a timely fashion. If anything, Delta argues, the evidence suggests the contrary. The carrier states that of the almost 7,000 consumer complaints that the Department received in 1994, only 30 involved ''direct flight-undisclosed connection'' (a category that Delta believes encompasses other services in addition to changes of gauge), and only 3 of these involved ''unsatisfactory information.'' Delta states that its own records indicate few if any complaints about change-of-gauge services in recent years. Absent evidence, Delta claims, the Department has relied on generalized and unsubstantiated conclusions, which are not valid grounds for imposing a redundant, unnecessary, intrusive, and very costly regulation on the industry, especially in view of carriers' recent record losses.

USAirways, like Delta, contends that the Department has not shown a need for the rule and notes that change-of-gauge service was not identified as a ''Significant Consumer Issue'' in Secretary Peña's letter to carriers of December 20, 1994. Also like Delta, USAirways maintains that consumers already get all of the information they need to make informed decisions about change-of-gauge services. The carrier states that it complies with existing rules and policies by making full disclosure of change-of-gauge services in CRSs, the OAG, and its timetables and by having its agents tell passengers of required aircraft changes before booking change-of-gauge flights. Like Delta, USAirways contends that all carriers have a strong incentive to inform passengers effectively.

Continental states that it already provides adequate notice of its change-of-gauge services. Continental also agrees with Delta and USAirways that other carriers have the incentive to do so as well, that the additional costs of the rule would be a substantial burden for both carriers and travel agents, and that the Department has not justified the rule.

ASTA argues that the rule is not necessary to meet consumers' needs for information and that it will make normal communication with travel agents ''a negative and distasteful experience for the consumer, rife with warnings of disruptions and other difficulties.'' Rather than adopt the entire rule, in ASTA's view, the Department should just require CRS vendors to enhance the systems' disclosure of change-of-gauge services to travel agents and then see if market-based incentives solve the deception problem inherent in these services.

American takes issue in its reply comments with those who oppose the rule. American maintains that the Department is justified in deciding as a matter of policy that sellers of air transportation must expressly inform consumers, before they commit themselves to buying seats on change-of-gauge flights, that they will be changing planes en route. Otherwise, American claims, with a single flight number and single boarding pass, passengers will often make the mistaken assumption that they will not be making a connection. United, for its part, endorses the Department's objectives and agrees with the Department that without effective disclosure, change-of-gauge services can mislead consumers.

We remain of the view that the rule is a necessary complement to change-of-gauge services to assure compliance with 49 U.S.C. 41712. We are not persuaded that our existing policies and regulation result in effective disclosure all of the time, commercial incentives notwithstanding, nor are we persuaded that the costs of compliance with the rule will outweigh the benefits it will bring. As we noted in the NPRM, we currently have a rule that requires notice of en route aircraft changes in CRS displays (14 CFR 255.4(b)(2)) and a requirement as a matter of policy that consumers be given notice of aircraft changes for change-of-gauge flights (see Order 89–1–31 at 5).

The rule, however, does not expressly require travel agents, the sellers of most air transportation, to disclose the aircraft change to consumers. Neither does our policy, as articulated in our orders, expressly apply to travel agents:

> As a preliminary matter, we affirm the legitimacy of holding out change-of-gauge services under single flight numbers, provided that notice is given of the change of aircraft en route * * * (footnote omitted).

Id. While our Enforcement Office could bring an action under 49 U.S.C. 41712 against any seller of air transportation with a pattern of failing to disclose change-of-gauge services effectively, we believe that our adopting a rule with affirmative disclosure requirements will result in broader, more immediate, and more reliable protection both to the traveling public and to airline competition. As American recognizes, the failure to inform consumers of aircraft changes en route is inherently deceptive and should be prohibited whether or not it has precipitated a high volume of complaints.

The most recent evidence available to us indicates, moreover, that change-of-gauge service is not always effectively disclosed. In 1995, the Department's Aviation Consumer Protection Division received 42 complaints about changes of gauge, more than 5 times as many complaints as the 8 we received about code sharing, or the sharing of airline designator codes. In 1996, we received 16 complaints about code sharing and 47 complaints about change-of-gauge services; in 1997, we received 8 complaints about code sharing and 55 complaints about change-of-gauge services; in 1998, we received 7 complaints about code sharing and 47 complaints about change-of-gauge services. When one considers that the relevant set of passengers is not all passengers (several hundred million) but only those on change-of-gauge flights, the 191 complaints that we have received in four years indicate that all is not well. Furthermore, we do not know how many complaints the carriers may have received about change-of-gauge services since the issuance of the NPRM.

For all of these reasons, and because no party submitted any evidence in support of its claim of undue costs, we will adopt the rule with the modifications and clarifications discussed below.

Notice in Schedules

In the NPRM, we proposed to adopt the following requirement for carriers' schedules:

> § 255.5(a) *Notice in Schedules.* Carriers operating change-of-gauge services to, from, or within the United States shall ensure that in the written and electronic schedule information they provide to the public, to the Official Airline Guide and comparable publications, and to computer reservations systems, these services are shown as requiring a change of aircraft.

Delta, USAirways, and Continental object to this requirement. Delta and USAirways state that they already meet

it in its entirety; Continental's reply comments indicate that the carrier meets this requirement for everything except its own printed schedules. In addition to agreeing with Delta and USAirways that the requirement is redundant and unnecessary, Continental claims that it is costly in terms of customer service and administrative expenses.

United does not object to this requirement even though it will have to change its city timetables by adding an annotation to indicate change-of-gauge flights. The carrier states that it is already meeting the requirement's other components. Not only does United endorse this requirement, but it would have the Department go further and require an additional notice of aircraft changes for multiple change-of-gauge services. United reasons that without such a notice, at the airport where they change planes, passengers might not know to look for a flight with several different numbers. United contends that additional notice of multiple change-of-gauge services in written and electronic schedules will help sellers of air transportation provide both written and oral notice that is more responsive to consumers' needs than the notice required by the rule. (We address United's views on these requirements below.) United also claims that carriers do not always have control over the displays of flight information at airports and asks that we make clear in our final rule that this requirement does not apply to airport displays.

ASTA asks us to require CRS vendors to enhance their disclosure of change-of-gauge services to travel agents. American endorses the requirement and observes that none of the carriers that filed comments is claiming that disclosure of aircraft changes in schedules is unnecessary, burdensome, or unduly expensive.

We will adopt the requirement. We will modify the proposed language to make clear that the rule applies to carriers that hold out change-of-gauge service even if they do not actually operate it themselves, such as in the case of code-sharing. No commenter questions the benefit of disclosing aircraft changes in written and electronic schedules. The carriers who filed comments all comply with at least most of the requirement's components already, so their unsubstantiated claims of undue cost fail to persuade us. Continental provides no estimate or other support for its assertion that including notice of aircraft changes in its printed schedule will mean great expense in the areas of customer service and administration. United is correct in assuming that this requirement does not apply to those airport displays over which carriers do not have control.

We will not adopt the additional requirement suggested by United. From the consumer's perspective, there is no real functional difference between one-for-one and multiple changes of gauge. We have no evidence that flight listings at airports are more likely to be accurate and complete in the case of one-for-one changes of gauge than in the case of multiple changes of gauge, especially now that code-sharing has become so common in international travel. Contrary to United's assumption, we think that having different indicators for one-for-one and multiple change-of-gauge services is more likely to confuse passengers than having one universal indicator to alert them to the need to change aircraft en route. If, after the rule's implementation, experience indicates otherwise, we can always revisit this issue in a later rulemaking. In the meantime, we encourage carriers to take whatever additional steps they can to make sure that travel agents as well as consumers understand the nature of their services.

Oral Notice

In the NPRM, we proposed to adopt the following oral notice requirement for change-of-gauge services:

§ 258.5(b) *Oral Notice to Prospective Consumers.* In any direct oral communication with a consumer in the United States concerning a change-of-gauge service, any carrier or ticket agent doing business in the United States shall tell the consumer before booking scheduled passenger air transportation to, from, or within the United States that the service requires a change of aircraft en route.

This requirement drew opposition from Delta, United, USAirways, ASTA, and Continental and support from American. Delta argues that since air carriers are already required to inform consumers of aircraft changes en route, this requirement constitutes a redundant, unnecessary, overbroad, and highly intrusive regulatory action that will impose significant costs and burdens on the industry. Delta contends that this notice certainly is not necessary for every oral communication between consumer and airline and concludes that if the requirement is adopted, it should be limited to communications taking place before transportation is purchased.

United believes that the Department has significantly understated the added cost to the industry of the oral notice requirement, especially when coupled with the oral notice requirements proposed for code-share flights and insecticide spraying. The carrier estimates that it carries over 500,000 passengers on change-of-gauge services each year and believes that other carriers carry even more, and it suggests that the notice requirement will likely affect some tens of millions of reservations transactions. With the Department's estimate of one to two extra minutes per transaction, the costs to the industry of compliance with this requirement will be high. United anticipates that much of the burden will fall on travel agents, as in the case of the code-share and insecticide-spraying disclosure requirements, and it suggests that this burden may well outweigh the value of the notice to consumers. United also believes that with improved notice of changes of gauge in CRSs and schedules, travel agents will be better equipped to inform consumers about aircraft changes, which will reduce the need for any oral notice requirement.

USAirways states that it already has its sales agents tell consumers of aircraft changes en route before the latter book transportation and argues that all carriers have an incentive to do likewise. It therefore objects to this requirement. ASTA argues that the requirement is unnecessary and that travel agents have an incentive to disclose aircraft changes to consumers provided that the carriers make this information readily available to the agents. Continental, too, opposes this requirement and agrees with the reasoning of Delta, United, and USAirways. In addition, Continental notes that in the NPRM (60 FR, supra, at 3781), the Department found that it was complying with existing disclosure requirements.

American supports the oral notice requirement. The carrier finds inconsistency in the commenters' arguments (1) that the requirement is unnecessary because they already provide oral notice and (2) that the requirement is unduly burdensome and costly. American does suggest that we clarify our intention regarding when the requirement applies; it assumes that we mean for disclosure to be made not during every oral communication but only at some point before the consumer decides to book a change-of-gauge flight.

We will adopt the requirement as proposed and clarify that we do intend for the notice to be given when the seller is giving the consumer schedule information—i.e., before the consumer makes a decision to book a particular flight. No commenter argues that consumers should not be told about any change of aircraft en route before they decide which flight to book, and we believe the public benefit of this

requirement to be axiomatic. The carriers' assertions that compliance will be unduly costly lack evidentiary support. Moreover, these assertions are substantially undercut, if not altogether belied, by several factors. One, the carriers themselves say that they are already making the required disclosure voluntarily. Two, ASTA and the other travel agent commenters do not claim that compliance with this requirement will be unduly costly for travel agents. Three, in our parallel rulemaking on code-sharing (Docket 49702, *Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases, Notice of Proposed Rulemaking,* 59 FR 40836 [August 10, 1994]), with the exception of Qantas Airways Limited, no commenter—air carrier or travel agent—has claimed that a similar oral notice requirement for code-share services will impose an undue financial or administrative burden.

Written Notice

In the NPRM, we proposed to adopt the following written notice requirement:

§ 258.5(c) *Written notice.* At the time of sale in the United States of a change-of-gauge service, the selling carrier or ticket agent shall provide written notice stating the following:

Notice: Change of Aircraft Required

For at least one of your flights, you must change aircraft en route even though your ticket may show only one flight number and have only one flight coupon for that flight. Further, in the case of some travel, one of your flights may not be identified at the airport by the number on your ticket, or it may be identified by other flight numbers in addition to the one on your ticket. At your request, the seller of this ticket will give you details of your change of aircraft, such as where it will occur and what aircraft types are involved.

Delta, USAirways, and Continental object to any written notice requirement. United does not object in principle, and American supports a written notice requirement. All maintain that if such a requirement is adopted, the language should be left to each carrier rather than dictated by the Department. Delta, United, and Continental also question the wisdom of a written notice requirement given the trend toward ticketless travel.

Delta claims that a written notice requirement is redundant in view of the disclosures that carriers already make, and especially in its own case, since it issues passengers a separate boarding pass for each segment that involves a different aircraft. It claims that written disclosure is also unduly burdensome in terms of cost. In addition, Delta contends that the written notice requirement goes contrary to current trends towards reducing paperwork, especially ticketless travel, and that if carriers are required to issue a separate written notice at the airport, ticketing and check-in could be delayed. If we do adopt written notice requirements over its objections, Delta takes the position that we should not specify the language: in Delta's view, the above language is too long and potentially confusing to consumers.

United agrees in principle with a requirement that written notice of aircraft changes en route be provided along with the ticket, but it objects to being required to use the language set forth above. That language refers generically to change-of-gauge flights that could involve either one-for-one or multiple changes of gauge. United does not operate multiple change-of-gauge service, and it strongly objects to being required to use language that suggests otherwise. United also characterizes the language as too long and too complicated to be effective. It proposes that each carrier be permitted to create its own written notice to reflect its own operations and procedures, subject to review by our Enforcement Office, possible enforcement action, and, should it prove necessary, another rulemaking at some later date. United also believes that a standard notice is more likely to be ignored than read.

As for ticketless travel, United questions the need for and utility of any written notice to passengers who do not receive tickets. The carrier states that its ticketless passengers still receive written confirmation of their reservations but that its marketing research has determined that many passengers do not want this. In United's view, the Department should not require a written notice in the case of ticketless travel unless the passenger is receiving written confirmation of his or her reservation.

USAirways strongly objects to the written notice requirement as ineffective, redundant, and costly and to the Department's language as wordy and confusing. USAirways states that many travel agents already give passengers written itineraries and that it does so on request. The carrier recognizes that itineraries, if given, would be more complete if they reminded passengers of aircraft changes en route. It argues, however, that where no itinerary is issued, carriers and agents should not be required to provide a separate written notice simply to remind passengers of changes of gauge after transportation has been purchased, because such a requirement is burdensome and costly. USAirways states that it would have to modify its computer system and add a prompt to have its sales agents get passengers' addresses. This in turn would increase the length of each call. Additional costs would be incurred for printing the notice and mailing it, and changes in travel arrangements would require additional written notice. For last minute travel arrangements, the cost of sending written notice by express service would be even higher. Continental agrees with USAirways' arguments.

American supports a written notice requirement. American disagrees with Delta and USAirways that notice in schedules coupled with oral notice should suffice to inform passengers of aircraft changes en route, contending that few consumers actually look at carriers' schedules when booking transportation and also that the person making a reservation is often not the person traveling. In American's view, the cost of written notice is justified, at least when passengers receive tickets, to ensure that they understand the nature of their flights and can navigate their way through their connections at the intermediate airports. For the many consumers who already get written itineraries from carriers and travel agents, American reasons that the burden of providing written notice is minimal.

American believes that carriers should have the choice of using the Department's language or writing their own notice, subject to the Department's review. The carrier addresses USAirways' concern about the expense of processing itineraries and mailing them to passengers who ordinarily would not get them by suggesting that we amend the beginning of the first sentence of § 258.5(c) to read as follows:

At the time of delivery in the United States of a ticket covering a change-of-gauge service, * * *.

American does acknowledge that this approach would increase the risk of a traveler's not learning of the aircraft change until arriving at the airport and thus having to use a service he or she might not otherwise have chosen. The carrier also sees merit in United's argument that written notice should not be required for passengers who do not receive written confirmation of their reservations. It suggests that perhaps we should require in such cases that sellers document that they have given oral notice.

We will adopt the written notice requirement with minor modifications to correct an inadvertent omission and to account for ticketless travel. We are

not persuaded by any of the unsubstantiated claims of undue burden and cost. In the many cases where consumers already receive itineraries along with their tickets, any increase in sellers' costs should be minimal, as American correctly notes. American is also correct in reasoning that any burden associated with written notice is outweighed by the benefit of the increased likelihood that consumers will understand the nature of their transportation and be able to change from one plane to another without confusion or mishap. Written notice should prove especially beneficial in the many cases where the person booking the transportation is someone other than the traveler.

We will require all sellers of air transportation to use the written disclosure as proposed rather than allow carriers (or other sellers) to substitute their own language. This generic language has three elements: it discloses an aircraft change, it alerts the consumer to the possibility that the number of the ongoing flight might not be listed clearly—or at all—at the intermediate airport, and it directs the consumer to the seller for more information. Because we have no evidence that airport problems are more likely to occur with multiple changes of gauge than one-for-one changes of gauge, we deem it necessary that all three elements appear in all written notices, United's position to the contrary notwithstanding. This being the case, we cannot agree that the language is either too long or too complicated.

If we were to allow sellers of air transportation to use their own language subject to our review, not only would the sellers availing themselves of this option incur the expense of drafting alternate language to express the same three elements, but reviewing and processing individual applications from the potential legions of air carriers, foreign air carriers, and travel agents would strain the Department's resources. Furthermore, allowing the disclosure to exist in many variations would more likely confuse consumers than enlighten them. Requiring all sellers to use the Department's language is thus the most cost-effective and straightforward means of ensuring that consumers receive effective written disclosure.

We will modify this provision in two respects. First, we will rectify an inadvertent omission in the proposed rule by adding language to make clear that the written notice requirement, like the other two, applies to those change-of-gauge services that are to, from, or within the United States. Second, to account for ticketless travel, we will change the proposed rule to require that the written notice be provided (1) to ''ticketed'' passengers, at the time of sale of any ticket that includes a covered change-of-gauge service and (2) to ''ticketless'' passengers, no later than the time when they check in at the airport for the first flight of an itinerary that includes a covered change-of-gauge service. This change reflects our policy on other passenger notices in the case of ticketless travel, which we adopted after issuing this NPRM. See Ticketless Travel: Passenger Notices, 62 FR 19473 (April 22, 1997). Of course, nothing prohibits sellers of air transportation from providing this written notice to ''ticketless'' passengers at an earlier juncture, such as along with any itinerary they send the passenger at the time of sale. We encourage sellers to do whatever they can to give passengers the best possible notice as early as possible.

Year 2000 Problem

In an effort to ensure that our regulations do not interfere or delay solutions for the Year 2000 Problem (Y2K), the Department has decided that, in preparing proposed and final rules that mandate business process changes and require modifications to computer systems between now and July 1, 2000, the Department will discuss those rules specifically with reference to Y2K requirements and determine whether the implementation of those rules should be delayed to a time after July 1, 2000.

Since the Department does not have detailed knowledge about the Y2K status of the systems that will need to be changed as a result of this rule, we attempted to gauge the effect based on a review of statements from Annual Reports, 10–K and 10–Q Statements filed with the Securities and Exchange Commission, news reports, press releases, and other documents. We researched this issue with regard to four computer reservations systems, the nine largest airlines, one smaller airline, and five organizations closely associated with airline computerized systems and databases. While this information did not reflect detailed technical assessments, it allowed us to establish a broad baseline against which to judge the issuance of our rule.

Our analysis has shown a widespread effort involved in the Y2K program for air transportation. In general, most of the companies we examined have stated that they expect to be Y2K-compliant in a timely manner. However, most also reflect caution by noting that there are no guarantees or assurances that all systems will be ready and that their operations could be adversely affected. In response to this possibility, many have established contingency plans that will allow continued operations.

Because of the amount of progress these companies have already made, the Department has determined that it is in the public interest to issue this rule now and not delay its implementation to a time after July 1, 2000. The number and type of marketing practices that include change-of-gauge services, code-sharing arrangements, marketing alliances and other marketing agreements, especially among multiple carriers and involving international operations have grown substantially. These agreements are likewise expected to continue to grow in the future. At the same time, they have increased in complexity as well. For these reasons, the Department has determined that it is now essential to issue this disclosure rule so that prospective travelers have as clear and complete information as possible prior to buying air transportation as well as during the journey.

Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or the Department's Regulatory Policies and Procedures. It has not been reviewed by the Office of Management and Budget. This rule does not impose unfunded mandates or requirements that will have any effect on the quality of the human environment. The Department has placed a regulatory evaluation that examines the estimated costs and effects of the rule in the docket.

The Department has evaluated the effect of this rule on small entities. I certify that this rule will not have a significant economic effect on a substantial number of small entities. Although many ticket agents and some air carriers are small entities, the Department believes that the costs of notification will be minimal. We believe that air carriers and travel agents already have some incentive to provide this information to their customers and that many have found low-cost means of doing so.

The Department has analyzed this rule under the principles and criteria contained in Executive Order 12512 (''Federalism'') and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Paperwork Reduction Act

This rule contains information collection requirements that are being submitted to OMB for approval under

the Paperwork Reduction Act of 1995. The Department has determined an estimate of the burden hours associated with this rule and is hereby requesting comments on its estimate.

This rule contains information collection requirements that are being submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Collection-of-information requirements include reporting, recordkeeping, notification, and other similar requirements. In the Notice of Proposed Rulemaking (NPRM) that preceded this rule, the Department stated that the proposed rule did not contain information collection requirements that required approval by OMB under the then-current Paperwork Reduction Act. However, the requirements under the Paperwork Reduction Act of 1995 consider third party notifications as data collections and thus subject to the regulations. This final rule is therefore being submitted to the Office of Management and Budget for review. At the same time, the Department is hereby inviting public comment upon its estimate of the annual burden hours associated with this rule. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Those potentially affected by this rule include 192 U.S. air carriers, 205 foreign air carriers, and approximately 33,500 travel agents doing business in the United States, as well as the traveling public. The Department has estimated that 24.7 million to 74.1 million phone calls would be affected by this rule. The annual reporting burden hours for this data collection are estimated to range from 102,954 hours to 308,861 hours for all travel agents and airline ticket agents and from 102,954 hours to 308,861 hours for air travelers based on 15 seconds per phone call and an average of 2.1 phone calls per trip.

Comments are invited on: (a) Whether this collection of information (third party notification) is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 the respondents, including through the use of automated techniques or other forms of information technology.

List of Subjects in 14 CFR Part 258

Air carriers, Consumer protection, Foreign air carriers, Reporting and recordkeeping requirements, Ticket agents.

For the reasons set forth in the preamble, the Department amends Title 14, Chapter II, Subchapter A by adding a new Part 258, to read as follows:

PART 258—DISCLOSURE OF CHANGE-OF-GAUGE SERVICES

Sec.
258.1 Purpose.
258.2 Applicability.
258.3 Definitions.
258.4 Unfair and deceptive practice.
258.5 Notice requirement.

Authority: 49 U.S.C. 40113(a) and 41712.

§ 258.1 Purpose.

The purpose of this part is to ensure that consumers are adequately informed before they book air transportation or embark on travel involving change-of-gauge services that these services require a change of aircraft en route.

§ 258.2 Applicability.

This part applies to the following:

(a) Direct air carriers and foreign air carriers that sell or issue tickets in the United States for scheduled passenger air transportation on change-of-gauge services or that operate such transportation; and

(b) Ticket agents doing business in the United States that sell or issue tickets for scheduled passenger air transportation on change-of-gauge services.

§ 258.3 Definitions.

As used in this part:

(a) *Air transportation* has the meaning ascribed to it in 49 U.S.C. 40102(5).

(b) *Carrier* means any air carrier or foreign air carrier as defined in 49 U.S.C. 40102(2) or 49 U.S.C. 40102(21), respectively, that engages directly in scheduled passenger air transportation.

(c) *Change-of-gauge service* means a service that requires a change of aircraft en route but has only a single flight number.

(d) *Ticket agent* has the meaning ascribed to it in 49 U.S.C. 40102(40).

§ 258.4 Unfair and deceptive practice.

The holding out or sale of scheduled passenger air transportation that involves change-of-gauge service is prohibited as an unfair or deceptive practice or an unfair method of competition within the meaning of 49 U.S.C. 41712 unless, in conjunction with such holding out or sale, carriers and ticket agents follow the requirements of this part.

258.5 Notice requirement.

(a) *Notice in schedules.* Carriers holding out or operating change-of-gauge services to, from, or within the United States shall ensure that in the written and electronic schedule information they provide to the public, to the Official Airline Guide and comparable publications, and to computer reservations systems, these services are shown as requiring a change of aircraft.

(b) *Oral notice to prospective consumers.* In any direct oral communication with a consumer in the United States concerning a change-of-gauge service, any carrier or ticket agent doing business in the United States shall tell the consumer before booking scheduled passenger air transportation to, from, or within the United States that the service requires a change of aircraft en route.

(c) *Written notice.* At the time of sale in the United States of transportation that includes a change-of-gauge service to, from, or within the United States, or, if no ticket is issued, no later than the time when the passenger checks in at the airport for the first flight in an itinerary that includes such a service, the selling carrier or ticket agent shall provide the following written notice:

Notice: Change of Aircraft Required

For at least one of your flights, you must change aircraft en route even though your ticket may show only one flight number and have only one flight coupon for that flight. Further, in the case of some travel, one of your flights may not be identified at the airport by the number on your ticket, or it may be identified by other flight numbers in addition to the one on your ticket. At your request, the seller of this ticket will give you details of your change of aircraft, such as where it will occur and what aircraft types are involved.

Issued under authority delegated in 49 CFR 1.56a(h)(2) in Washington, DC on March 5, 1999.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–6137 Filed 3–10–99; 1:23 pm]

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Part IV

Department of Energy

10 CFR Part 708

48 CFR Parts 913, 922, and 970

Criteria and Procedures for DOE Contractor Employee Protection Program; Department of Energy Acquisition Regulations; Interim Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 708

48 CFR Parts 913, 922, and 970

RIN 1901–AA78

Criteria and Procedures for DOE Contractor Employee Protection Program; Department of Energy Acquisition Regulations

AGENCY: Department of Energy.

ACTION: Interim final rule and opportunity for public comment.

SUMMARY: This document provides the text of a revised regulation governing the Department of Energy's (DOE) contractor employee protection program. The program provides procedures to protect employees of DOE contractors who believe they have suffered retaliation for disclosing information concerning danger to health or safety, substantial violations of law, or gross mismanagement; for participating in Congressional proceedings; or for refusing to participate in dangerous activities. This rulemaking also makes conforming changes to procurement regulations to address the expanded scope of the Department's whistleblower protection program.

DATES: It is effective April 14, 1999. Interested persons may submit comments by May 14, 1999.

ADDRESSES: Comments may be mailed to Roger Klurfeld, Assistant Director, or Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0107, telephone number 202–426–1449, FAX 202–426–1415, e-mail: roger.klurfeld@hq.doe.gov, thomas.mann@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, Assistant Director, or Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0107, telephone number 202–426–1449, FAX 202–426–1415, e-mail: roger.klurfeld@hq.doe.gov, thomas.mann@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

In exercising its proprietary responsibilities for the control and management of its nuclear weapon maintenance and environmental cleanup sites, research and development laboratories, test sites, and other Government-owned or -leased facilities, the DOE must take steps to safeguard public and employee health and safety; ensure compliance with applicable laws, rules, and regulations; and prevent fraud, mismanagement, waste, and abuse. To this end, the Secretary of Energy has taken vigorous action to assure that all such DOE facilities are well-managed and efficient, while at the same time operated in a manner that does not expose the workers or the public to needless risks or threats to health and safety. The DOE is endeavoring to involve both Federal and contractor employees in a partnership to aggressively identify problems and seek their resolution. In that regard, employees of DOE contractors are encouraged to come forward with information that they reasonably and in good faith believe evidences unsafe, unlawful, fraudulent, or wasteful practices. Employees providing such information are entitled to protection from consequent retaliation by their employers with respect to compensation, and the terms, conditions, or privileges of employment.

The original rule was published in the **Federal Register** on March 3, 1992 (57 FR 7533). In order to assure workplace conditions at DOE facilities that are harmonious with safety and good management, the rule was intended to improve the procedures for resolving complaints of retaliation by establishing procedures for independent fact-finding and hearing before a Hearing Officer at the affected DOE field installation, followed by an opportunity for review by the Secretary or his designee. These procedures were made available to those contractor employees who alleged health and safety violations, but were not covered by the Department of Labor regulations in 29 CFR part 24. In addition, contractor employees who alleged employment retaliation resulting from the disclosure of information relating to waste, fraud, or mismanagement, or from the participation in proceedings conducted before Congress or pursuant to the rule, or from the refusal to engage in illegal or dangerous activities, could also utilize the procedures regardless of whether they are covered by the health and safety protection procedures of the Department of Labor. This rule was not intended to cover complaints of retaliation stemming from or relating to other types of discrimination by contractors, such as discrimination based on race, color, religion, sex, age, national origin, or other similar basis.

After the rule had been in effect for more than four years, the Department took steps to obtain the views of interested parties on its operation. A Notice of Inquiry was published on October 25, 1996 (61 FR 55230), in which DOE invited members of the public, particularly those persons with experience under the DOE contractor employee protection program (e.g., contractors, complainants and attorneys), to recommend regulatory changes that might help to streamline the process and make it more responsive to the needs of both complainants and contractors. Comments were received from 28 individuals or organizations in response to the Department of Energy's Notice of Inquiry.

The procedures set forth in Part 708 are designed specifically to deal with allegations of retaliation against contractor employees and to provide relief where appropriate. Retaliation against contractor employees may also lead to the imposition of penalties under the Price Anderson Amendments Act of 1988 (Pub. L. 100–49, August 20, 1988), implemented by DOE under 10 CFR part 820 (Part 820). Pursuant to Part 820, to the extent an act of retaliation by a DOE contractor results from an employee's involvement in matters of nuclear safety in connection with a DOE nuclear activity, the retaliation could constitute a violation of a DOE Nuclear Safety Requirement. The retaliation could therefore be subject to the investigatory and adjudicatory procedures of both part 820 and part 708, and could warrant relief to the employee under Part 708 and the imposition of civil penalties on the DOE contractor under part 820. A full discussion of the relationship between this part and 10 CFR part 820 and the procedures that are followed in situations where an alleged act of retaliation falls under both this part and part 820 can be found in **Federal Register** Volume 57, No. 95, Friday, May 15, 1992, at 20796–98.

After considering the comments received in response to the Notice of Inquiry, DOE published a Notice of Proposed Rulemaking (NOPR) in the **Federal Register** on January 5, 1998 (63 FR 733), which suggested substantial revisions to Part 708. DOE received a number of comments on those proposed revisions. In response to the comments on the NOPR, DOE has made extensive procedural changes to part 708. To give the public further opportunity to comment, this regulation is being issued as an interim final rule, effective 30 days after the date of publication in the **Federal Register**. The public will have 60 days after the date of publication to submit comments on the interim final rule.

II. Summary of Changes

Since publishing the NOPR, DOE has rewritten Part 708 in ''plain language'' style, consistent with the ''Memorandum on Plain Language in Government Writing'' which the President issued on June 1, 1998. We have broken down the regulatory sections into more discrete units that are easier to understand. The section titles are in the form of questions to help guide a reader through the procedures in the rule. In addition, we have rearranged the order of some sections. As a result, the section numbers in this interim final rule do not correspond to their precursors in either the original rule or the NOPR.

DOE has modified the employee coverage in §§ 708.2 and 708.3 by eliminating the requirement that to be eligible for protection under this rule, complainants must be employed by contractors performing work on sites that DOE owns or leases. The new language instead covers employees of contractors performing work directly related to activities at DOE-owned or -leased sites, even if the contractor is located, or the work is performed, off-site. An example is an employee involved in the preparation of environmental impact statements related to programs and activities on DOE-owned and -leased sites. Accordingly, we have deleted the definition of ''work performed on-site,'' previously found in § 708.4. We are making conforming changes to the Department of Energy Acquisition Regulations (DEAR) provisions regarding coverage. In addition, DOE has deleted the provision, found in the original 1992 version of § 708.2(a), that the underlying procurement contract contain a clause requiring compliance with all applicable safety and health regulations. This provision is no longer necessary since DOE contracts now require compliance with Part 708 when specifically applicable.

In order to avoid duplicate review of allegations of whistleblower retaliation under various Federal statutes and regulations, the interim final rule in § 708.4 excludes from coverage employee complaints that are submitted for review under Department of Labor regulations found at 29 CFR part 24, ''Procedures for the Handling of Discrimination Under Federal Employee Protection Statutes.'' These would include complaints submitted by DOE contractor employees under section 211(a) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a)). That Act added protection for employees of ''a contractor or subcontractor of the Department of Energy that is indemnified by the Department of Energy under section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order 12344.''

Section 6006 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) (section 6006) afforded additional protections to contractor employees against retaliation for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract). Section 6006 assigns responsibilities to Inspectors General (including the Inspector General for the Department of Energy) to implement these protections. Section 708.4 excludes from coverage employee complaints that are submitted for review to the DOE Office of Inspector General pursuant to section 6006. The regulation implementing section 6006 is found at 48 CFR part 3, Subpart 3.9, ''Whistleblower Protections for Contractor Employees.''

The Office of Contractor Employee Protection, and the position of Director of the Office of Contractor Employee Protection, no longer exist within DOE. We have removed references to the ''Office of Contractor Employee Protection'' and the ''Director of the Office of Contractor Employee Protection'' from the interim final rule. DOE has reassigned the functions previously assigned to the Director of the Office of Contractor Employee Protection to other officials.

Under § 708.17(a) of the interim final rule, the Director of the Office of Employee Concerns or the ''Head of Field Element'' (i.e., the manager of the local DOE office) can dismiss a complaint for lack of jurisdiction or other good cause. An employee may appeal a dismissal at this initial stage to the Director of the Office of Hearings and Appeals (OHA) under § 708.18(a). In addition, the OHA Director will consider appeals of Hearing Officer decisions. The OHA Director's appeal decision, either on jurisdiction or on the merits of an individual case, will be the final agency action, except when a ''petition for Secretarial review'' is filed under § 708.19 (jurisdiction) or § 708.35 (appeal on the merits). The Secretary will reverse or revise a decision by the OHA Director only under extraordinary circumstances.

DOE has amended the language now contained in §§ 708.5(a)(1) and 708.5(a)(3) to afford protection for disclosures of ''substantial'' violations of laws, rules or regulations and ''gross'' mismanagement, instead of ''violations of laws, rules or regulations'' and ''mismanagement.''

Section 708.5(a) of the interim final rule expands coverage of disclosures to include those made to other government officials, such as those from other Federal or state agencies who have responsibility for oversight of activities on DOE-owned or -leased sites.

Section 708.5(a) of the interim final rule further defines the nature of the disclosure, requiring that the employee's disclosure involves information he or she ''reasonably and in good faith believes'' is true. The previous rule in § 708.5(a)(1) only required that the complainant ''in good faith believes'' the information he or she disclosed. The ''reasonableness'' criterion is consistent with the Whistleblower Protection Act of 1989, Pub. L. No. 101–12, 103 Stat. 16 (1989) (codified at scattered sections of 5 U.S.C.), and many state statutes which afford protection to both public and private sector employees against retaliation for whistleblowing activities.

The standard adopted in §§ 708.5 through 708.7 is analogous to that adopted for the rights of employees to stop work in the face of health and safety concerns in the Department of Labor regulations under the Occupational Safety and Health Act (the OSH Act). Thus, 29 CFR 1977.12(b)(2) provides that an employee who, ''with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition,'' is protected against discrimination based on that conduct where ''the employee's apprehension of death or injury [is] of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury * * *'' and where there is insufficient time or opportunity either to seek effective redress from the employer or to notify the Occupational Safety and Health Administration of the danger. See Section 11(c) of the OSH Act.

Similarly, under Part 708 an employee's refusal to participate in an activity, policy, or practice is protected where ''[a] reasonable person, under the circumstances that confronted the employee, would in good faith conclude there is a substantial risk of a serious accident, injury, or impairment of health or safety resulting from participation in the activity, policy, or practice * * *.'' Section 708.6(a). Moreover, under § 708.7 the employee must have asked the contractor to

correct the problem, and the contractor must have refused to do so. In addition, for the refusal to participate to constitute a protected refusal under Part 708, the employee must have notified a DOE official, a Member of Congress, or a government official with responsibility over such matters within thirty days after the refusal to participate.

We further recognize that employees who stop work may be considered to have engaged in an unprotected work stoppage for which the employer is free to take action under the Labor Management Relations Act (LMRA) unless they do so ''in good faith because of abnormally dangerous conditions * * *'' See LMRA, Section 502. We did not receive any comments suggesting that there has been a conflict with Section 502 of the LMRA. However, we would be interested in any comments directed to actual concerns in this regard.

Section 708.14 of the interim final rule increases the time limit for filing a complaint from 60 to 90 days. The time limit for filing a complaint will still be tolled while a complainant is seeking remedial action through internal contractor procedures. DOE still requires the exhaustion of internal grievance procedures, but the interim final rule permits individuals to file a complaint under Part 708 if they have not received a response on a grievance relating to the complaint within 150 days of filing of the grievance. The program will no longer permit an employee to bypass an internal grievance procedure on the grounds that it is ''ineffectual,'' and we have deleted the provision formerly found in § 708.6(c)(2) from the corresponding provision, § 708.13, of the interim final rule. The reason for this change is to encourage the use of internal grievance procedures to resolve allegations of retaliation at the earliest stage possible.

Under § 708.15(a), as long as the complainant is pursuing final and binding grievance-arbitration processes, a complaint under this regulation will be dismissed for lack of jurisdiction. After exhausting such procedures, an individual is free to file a complaint under Part 708 to resolve any remaining issues under § 708.5. Such a complaint may be dismissed for good cause, however, as provided in § 708.17 (for example, if the issues in the complaint have been substantially resolved or the employer has made a formal offer to provide a remedy that DOE considers to be equivalent to what would be provided as a remedy under this regulation). This approach respects the labor-management relationship that applies to many DOE contractor employees, and is consistent with the deference given to final and binding arbitration decisions issued under collective bargaining agreements.

Section 708.16(a) provides that within 15 days of receiving a complaint, the EC Director or the Head of Field Element will give the respondent contractor a copy of the complaint and advise the contractor that it has ten business days after receipt of the complaint to submit comments to the appropriate DOE office. Section 708.16(b) has been added to require that notice and an opportunity for comment also be provided to labor organizations on complaints filed by employees they represent.

Under § 708.18, the OHA Director is responsible for deciding initial appeals of dismissals of complaints on jurisdictional grounds. Under § 708.8(c) of the original rule, the Deputy Secretary, as the delegee of the Secretary, routinely made these decisions. In practice, however, that system has proved to be inefficient, and DOE believes the OHA Director will be better able to process jurisdictional appeals on an expedited basis. The OHA Director's decision on a jurisdictional appeal is the final agency decision unless a party files a petition for Secretarial review within 30 days under § 708.19. The Secretary will reverse or revise a decision by the OHA Director only under extraordinary circumstances.

Section 708.21 encourages informal resolution of complaints, and language has been added to recommend the use of mediation to settle disputes. We have deleted the provision in § 708.8(b) of the original rule that ''the Head of the Field Element or designee shall enter into a settlement agreement which terminates the complaint.'' That provision is unnecessary, since the only parties to a settlement under part 708 would be the contractor and its employee.

If the parties cannot resolve a complaint by informal means such as mediation, a complainant has two options for referral to the OHA under § 708.21: a hearing without an investigation, or an investigation followed by a hearing. This departs from the procedure under the previous rule, which provided that all complaints that were accepted and that had not been resolved informally were investigated before the parties had the right to request a hearing.

If a complainant requests an investigation followed by a hearing, the OHA Director will appoint an investigator under § 708.22. The OHA investigator will investigate the complaint under § 708.22, and issue a report of investigation under § 708.23 within 60 days. The OHA Director may extend the deadline for completion of an investigation only once by up to 30 days under § 708.23(a).

If the OHA convenes a hearing, under § 708.26(a) it will take place within 90 days after receipt of the complaint, or issuance of the report of investigation, whichever is later. This represents a change from § 708.9(b) in the original rule, which required the hearing to take place within 60 days. As a practical matter, the 60 day deadline did not always give the parties sufficient preparation time, and it routinely had to be extended. Under § 708.24, the parties can agree to cancel a hearing, in which case the Hearing Officer will issue the initial agency decision based on the existing record.

The hearing procedures are contained in §§ 708.25 through 708.28. DOE has added language in §§ 708.28(b)(1) and 708.28(b)(2) authorizing the Hearing Officer, at the request of a party, to provide for reasonable discovery by the parties. Discovery is a process used to enable a party to learn about the other party's evidence before a hearing takes place. Discovery eliminates the element of surprise from a hearing, and it can facilitate the settlement of disputes. It can take the form of ''oral depositions,'' where a representative of one party asks questions of a witness for the other party. The deposition is recorded and transcribed by a court reporter. Discovery can also take the form of written ''interrogatories,'' where one party gives written questions to a witness for the other party, who answers them in writing. Additionally, one party may make a ''request for production of documents'' of the other party. A party may also request permission to enter and inspect the property and facilities of the other party. Finally, ''requests for admissions'' is another form of written discovery by which one party asks the other party to admit certain facts.

The burdens of proof for the complainant and for the contractor are set out in a separate section, § 708.29, for emphasis. An employee can also argue that the claimed legitimate reason for taking action against the employee was a pretext for retaliation. The Hearing Officer will issue an initial agency decision under § 708.30 (if a hearing is held) or § 708.31 (if no hearing is held). The legal standard in § 708.29 applies to all cases, whether or not a hearing is held. The interim final rule extends the time for issuing the initial agency decision from 30 to 60 days after the cancellation of the hearing, receipt of the transcript, or

receipt of the post-hearing submissions, whichever occurs later.

Appeals of cases will now go to the OHA Director for his review rather than directly to the Secretary or his designee. Any party may appeal an initial agency decision from an OHA Hearing Officer to the OHA Director under § 708.32, and procedures for considering an appeal are set out in § 708.33. Under § 708.34, the OHA Director will be responsible for issuing the decision on an appeal within 60 days after he closes the record. A party aggrieved by a Hearing Officer decision has not exhausted its administrative remedies until it files an appeal with the OHA Director and the OHA Director issues a decision granting or denying the appeal. The OHA Director's decision on an appeal is the final agency decision unless a party files a petition for Secretarial review within 30 days under § 708.35. The Secretary will reverse or revise a decision by the OHA Director only under extraordinary circumstances. The types of relief that DOE may order now appear in § 708.36.

The right to petition for Secretarial review has been retained to emphasize DOE's strong, ongoing commitment to whistleblower protection. DOE anticipates that petitions for Secretarial review will be relatively rare under this interim final rule, and that the appeal decisions issued by the OHA Director, either on jurisdiction or on the merits of an individual case, will be the final agency action in most cases. This is consistent with the Department of Labor's procedures. In 1996, the Department of Labor amended its whistleblower procedures to eliminate final appellate review by the Secretary, and created an Administrative Appeals Board analogous to the OHA Director responsible for handling them. 61 FR 19978. The Department of Labor's new system was set up to cure inefficiencies and reduce delays in issuing final agency decisions. DOE has decided to transfer appeals from the Secretary to the OHA Director with the same goals in mind. These changes from the process described in the NOPR will expedite the final resolution of whistleblower complaints by DOE.

The extant OHA management structure ensures that the different functions for which OHA will now be responsible under part 708 will be performed by different staff members. The OHA has used a similar separation of functions in other programs for over 25 years, and it has worked successfully to ensure the fair and equitable treatment of initial and appellate submissions by independent decision-makers.

We have added a new section (§ 708.8) to the interim final rule to explicitly state that the revised procedures shall apply in any complaint proceeding pending at the informal resolution stage, the investigative stage or the hearing stage on the effective date of this rule. Appeals currently pending before the Secretary's designee, the Deputy Secretary, will be decided by the Deputy Secretary (rather than be transferred to the OHA Director). It is well established in the law that an agency may apply new procedural rules in pending proceedings as long as their application does not impair the rights of, or otherwise cause injury or prejudice to, a party. See, e.g., *Landgraf* v. *USI Film Products*, 511 U.S. 244, 275 (1994); *Lindh* v. *Murphy*, 117 S.Ct. 2059, 2063–64 (1997); *Natural Resources Defense Council, Inc.* v. *NRC*, 680 F.2d 810, 817 n.17 (D.C. Cir. 1982) (citing *Pacific Molasses Co.* v. *FTC*, 356 F.2d 386 (5th Cir. 1966)). DOE will apply the revised procedures to pending cases consistent with the case law.

Finally, this rulemaking also makes conforming changes to the Department of Energy Acquisition Regulations (DEAR) required by expansion of the scope of the whistleblower protection program to cover work done on behalf of DOE directly related to activities at DOE-owned or -leased sites.

III. Summary and Discussion of Public Comments Received Pursuant to the January 5, 1998 Notice of Proposed Rulemaking

DOE received comments from three individuals, two contractors and one public interest group in response to the Department of Energy's Notice of Proposed Rulemaking (NOPR), published in the **Federal Register** on January 5, 1998.

Comment: One commenter recommended that disclosures should have some factual basis, and not just be evaluated on whether they were made in good faith. The commenter also recommended that the complainant be required to provide evidence that the action taken against the employee was retaliatory, including a showing that the disclosure ''would likely provoke censure'' by the contractor.

Response: We believe that the change to the rule in § 708.5(a) accomplishes the first objective of the commenter. Section 708.5(a) now requires that the employee's disclosure involve information he or she ''reasonably and in good faith believes'' is true. This ''reasonableness'' criterion is consistent with the federal Whistleblower Protection Act of 1989, many state statutes, and administrative and judicial decisions.

Section 708.29 of the interim final rule requires that the complainant show, by a preponderance of the evidence, that there was a protected disclosure that was a contributing factor in the alleged retaliation against the complainant. This usually entails proving that the person taking the retaliation had actual or imputed knowledge of the protected activity. A reasonable inference can be drawn from the circumstances that the protected activity was a consideration in taking the alleged retaliation. We therefore believe the interim final rule includes the second element sought by the commenter. Alternatively, the employee can demonstrate that the contractor's asserted legitimate reason was a pretext for retaliation for the protected conduct.

Comment: One commenter suggested that the DOE pay for the legal costs of indigent whistleblowers and provide counsel for such whistleblowers during a mediation phase or when the whistleblower has to deal face to face with contractors who are represented by counsel.

Response: The procedures established under this rule are intended to be informal and designed to facilitate prompt resolution. Providing attorneys would undermine that objective. Moreover, DOE has no evidence that unavailability of legal counsel has impeded whistleblowers in pursuing their complaints. Legal services may be available through local bar associations, from public interest groups that represent whistleblowers or from attorneys who represent clients in these types of cases on a contingent fee basis. Finally, complainants who prevail may receive attorney fees and costs as part of the remedy provided, and settlement agreements between the parties may also include attorney fees for a complainant. These mechanisms should ensure that counsel can be obtained where warranted by the complexity of the issues.

Comment: A commenter requested that the rule include additional information regarding the definition of off-site subcontractors that are covered by the rule. The commenter raised a question about the possible coverage of employees of outside law firms that handle a contractor's litigation or engineering firms that design on-site facilities.

Response: We do not believe that a more precise definition is possible that would avoid questions such as those the commenter raised. In the NOPR, and the language being adopted today in § 708.2, ''contractor'' is defined as

a seller of goods or services who is a party to

(1) A management and operating contract or other type of contract with DOE to perform work directly related to DOE-owned or -leased facilities, or

(2) A subcontract under a contract of the type described in paragraph (1) of this definition, but only with respect to work related to activities at DOE-owned or -leased facilities.

Further, § 708.2 of the rule defines ''employee'' as

a person employed by a contractor, and any person previously employed by a contractor if that person's complaint alleges that employment was terminated for conduct described in § 708.5 of this subpart.

It is conceivable that the employees the commenter cited as examples could be the targets of retaliation by a contractor for activities protected by part 708. As described by the commenter, the work being performed may directly relate to activities on DOE sites. There have been decisions under part 708 in which DOE found contractors in violation of this part for pressuring subcontractors to take actions against employees who have engaged in protected activities. Analysis of similar allegations would have to consider jurisdictional issues including the nature of the relationship among the DOE contractor, the complainant and the complainant's employer, the nature of the protected activity by the complainant, and the status of the complainant as an ''employee'' under this part.

Comment: The commenter also questioned the provision allowing a complainant to bypass the investigative phase and submit the complaint directly to the Office of Hearings and Appeals. The commenter stated it was particularly concerned that this process would not afford an employer the opportunity to avoid cases involving ''trivial'' matters; it would not allow an employer to provide evidence that a complaint does not warrant a hearing; and there would be cost savings by requiring an investigation, thereby reducing the number of trivial matters receiving administrative review. The commenter has also recommended that DOE provide employers with the entire complaint, and not merely ''a statement of the issues raised in the complaint'' as proposed in § 708.6.

Response: Under § 708.9(a) of the original rule, either party had a right to request a hearing after the issuance of a report of investigation. The interim final rule changes this procedure in two ways. First, under § 708.21(a) an investigation will no longer be required, but will only occur if requested by the complainant. Second, under § 708.24, all parties can agree to cancel a hearing.

The interim final rule provides, in § 708.16(a), that upon receipt of a complaint, DOE will give the contractor a copy of the complaint and advise the firm that it may submit information to rebut the allegations in the complaint within ten days after receiving the complaint. This process is similar to that followed by the Department of Labor, in 29 CFR part 24, for processing whistleblower complaints filed under the Energy Reorganization Act. We believe this process provides a more equitable opportunity for all parties to address the issues that have been raised.

The interim final rule also contains the requirement that disclosures be made ''reasonably and in good faith.'' The new language in § 708.5(a) includes protections for disclosures of ''substantial'' violations of laws, rule or regulations and ''gross'' mismanagement. These more stringent criteria will also avoid cases involving what the commenter referred to as ''trivial'' matters.

The interim final rule requires complainants to use established grievance-arbitration procedures before filing a Part 708 complaint. To the extent that employers have internal mechanisms to deal with issues raised by employees, they will have a full opportunity to learn the nature of the allegations, to respond to those allegations, and to resolve the dispute internally before the filing of a complaint under Part 708. The interim final rule also stresses the availability of informal resolution, including mediation. This process has proven highly successful for clarifying issues raised in a complaint to facilitate the resolution of disputes by the parties themselves. We hope that parties will make maximum use of this phase of part 708.

Comment: The commenter also recommended that DOE dismiss a case if the Deputy Inspector General for Inspections makes a determination not to pursue an investigation of the complaint.

Response: In the interim final rule, we have changed the provision in the NOPR that drew this comment. The OHA is now responsible for all steps in processing a complaint, once DOE accepts jurisdiction, except when a party requests Secretarial review. Under § 708.21 of the interim final rule, the complainant alone will have the option to forego an investigation, and proceed directly to the hearing stage. We therefore decline to adopt the commenter's suggestion.

Comment: A commenter indicated agreement with several of the proposed changes, including the change in the time limit for filing a complaint; the right of a complainant to request a hearing 240 days after referral of a complaint to the Deputy Inspector General for Inspections; the ability of the Hearing Officer to provide for reasonable discovery; the issuance of a decision within 60 days of the close of a hearing; and the inclusion of off-site employees in the definition of employees covered by the rule. The commenter also recommended that DOE should make jurisdictional decisions within 30 to 45 days of the filing of a complaint, and grant punitive and emotional damages as additional remedies to successful complainants.

Response: Section 708.17(a) of the interim final rule provides 15 days as the period for resolving jurisdictional issues. Such decisions may require the Head of Field Element or the Director of the Office of Employee Concerns to obtain additional information from a complainant or a contractor, and the 15-day time period is a target, rather than an absolute requirement. In any event, DOE will expedite determinations of jurisdiction as much as possible. The streamlined OHA process under the interim final rule will obviate any need for the proposed right to request a hearing after a complaint has been pending before the DOE for 240 days.

With respect to the request for punitive or emotional damages, this issue was also raised by another commenter. That commenter pointed out that ''other statutory schemes,'' including 29 CFR part 24, which the Department of Labor administers, provide compensatory damages beyond the restitutionary remedies afforded under this part. We consider this issue below.

Comment: A commenter recommended the elimination of the provision of the proposed rule that would preclude an employee from filing under part 708 if the complaint could be filed under other statutory mechanisms, including under 29 CFR part 24 or 48 CFR part 3, Subpart 3.9. The commenter noted that the amendments to the Energy Reorganization Act of 1992, codified at 42 U.S.C. 5851(h), state:

> This section may not be construed to expand, diminish, or otherwise affect any rights otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee.

Response: The interim final rule provides that an employee is not prohibited from filing a complaint under this part merely because relief could have been sought under 29 CFR part 24 or 48 CFR part 3, Subpart 3.9. The interim final rule, in section 708.15(a), does continue the policy contained in the original rule that DOE will dismiss a complaint under this part if the complainant, with respect to the same facts, is pursuing a remedy available under State or other applicable law.

We take note of the language in the amendments to the Energy Reorganization Act of 1992 cited by the commenter, and conclude that the statutory language, enacted after the publication and effective date of the original part 708, should be given effect by not precluding the use of this part by employees who can file under 29 CFR part 24. This part provides an alternative to 29 CFR part 24 for DOE contractor employees to seek redress for retaliation. However, as discussed below, section 708.15(a) of the interim final rule is generally intended to avoid consideration on the merits of cases that were first filed in another forum.

The Inspector General, under 48 CFR part 3, Subpart 3.9, is required to conduct an initial inquiry of a complaint. However, the Inspector General may determine that the complaint is frivolous or for other reasons does not merit further investigation. Therefore, although an employee may file a complaint under that rule, the employee's complaint may not be fully investigated. As such, 48 CFR part 3, Subpart 3.9 would not constitute an avenue for redress for an employee if the complaint is not investigated fully and it should not preclude the subsequent filing of a complaint under part 708 if the Inspector General, after conducting an initial inquiry, declines to take further action on the matter.

With a choice of remedies available, DOE wishes to avoid the situation where an employee could simultaneously pursue the same whistleblower complaint in more than one forum. Under section 708.4(c) of the interim final rule, an employee who elects to pursue a remedy under 29 CFR part 24 (Department of Labor), or 48 CFR part 3, Subpart 3.9 (Inspector General), is generally precluded from later using Part 708. However, section 708.15(a) recognizes two equitable exceptions to this general rule: (1) when the prior complaint under 29 CFR part 24 is dismissed for lack of jurisdiction by the Department of Labor or (2) when the Inspector General, after conducting an initial inquiry, declines to take further action on the matter under 48 CFR part 3, Subpart 3.9. In either instance, the employee is no longer barred from filing a complaint under part 708.

Comment: The commenter also recommended that Hearing Officers not only be given ''the authority to provide for reasonable discovery,'' but be required to provide discovery. The commenter cites one case processed under this part in which there was a dispute over the extent of discovery made available.

Response: We do not believe that requiring discovery is consistent with the necessary authority of a Hearing Officer. To require discovery would eliminate the exercise of discretion as to its necessity. We recognize that some cases will require reasonable discovery in order to develop key factual issues presented in the complaint. This may be particularly true in those cases in which the complainant has exercised the option under § 708.21(a)(1) to proceed directly to the hearing stage without an investigation. Nevertheless, we believe that the Hearing Officer must determine the necessity and appropriate scope of discovery on a case-by-case basis, as has been the practice to date. As provided in § 708.28(b)(1), the Hearing Officer may order discovery at the request of a party, based on a showing that the requested discovery is designed to produce evidence regarding a matter, not privileged, that is relevant to the subject matter of the complaint. The citation of a single instance in which there was a disagreement over the granting of a motion for discovery does not, in our opinion, warrant the change recommended. (The dispute was resolved in that case, and the Hearing Officer eventually granted the discovery request.)

Comment: The commenter also recommended that the definition of retaliation should also include the abuse of the security clearance process against an employee, and permit DOE to investigate and remedy alleged personnel security abuses under part 708. The commenter stated that the regulations governing the eligibility for security clearances (10 CFR part 710) do not include remedies for adverse consequences employees may suffer because of the misuse of the clearance process beyond the eligibility determination itself.

Response: The definition of retaliation in this part includes ''intimidation, threats, restraint, coercion or similar action taken by a contractor against an employee with respect to employment (e.g., discharge, demotion, or other negative action with respect to the employee's compensation, terms, conditions or privileges of employment) in retaliation for the employee's disclosure of information, participation in proceedings, or refusal to participate in activities * * *.'' It is possible that retaliation as so defined could include actions by the contractor that cause the questioning, suspension, or termination of a security clearance.

The commenter is correct that the regulations governing the eligibility for security clearances at part 710 do not include remedies for adverse consequences employees may suffer because of the misuse of the clearance process beyond the eligibility determination itself. With respect to the eligibility determination, § 710.4 clearly states that the procedures shall not be used for an improper purpose, including any attempt to coerce, restrain, threaten, intimidate or retaliate against individuals for exercising their rights under statute, regulation, or DOE directive. In addition, Part 710 provides considerable due process protections for any individual that is the subject of an access eligibility determination.

Because the Department relies solely on part 710 in determining eligibility for security clearances and part 710 includes protections designed to guard against abuse of that process, there is no review available under part 708 procedures for the ultimate determination on eligibility for a clearance. Thus, if DOE sustains a negative security determination made under part 710, there is no remedy under part 708 even if the security clearance review was initiated as part of an act of retaliation. With respect to consequences beyond the eligibility determination, part 708 may apply.

Comment: This commenter, and one other commenter, recommended that we expand the available remedies to include compensatory damages, including damages for mental anguish, pain and suffering, and emotional distress resulting from a contractor's wrongful actions.

Response: The restitutionary remedies authorized under § 708.36 are intended to correct unwarranted employment actions. The goal of this regulation is simply to restore employees to the position they would have occupied but for the retaliation. Part 708 exists to provide an alternative to filing a lawsuit in which a broad range of compensatory relief may be available, but it is not intended to suspend that option or duplicate the remedies that may be available in litigation. Before choosing a forum for seeking redress of an unwarranted employment action,

contractor employees should compare part 708 with other available remedies.

Comment: The commenter also recommended that part 708 cover DOE employees. In support of the recommendation, the commenter questioned the effectiveness of protections under the Whistleblower Protection Act of 1989 and also cited the case of *Jenkins* v. *U.S. Environmental Protection Agency,* 92–CAA–06, May 18, 1988, a case in which a Federal employee was granted protection against retaliation for protected whistleblowing under the Clean Air Act.

Response: Dissatisfaction with the provisions of the Whistleblower Protection Act of 1989 or its implementation is a matter for legislative consideration; it is not an issue within the scope of this rulemaking. Department of Labor procedures under 29 CFR part 24 provide an additional statutory forum for Federal employees who seek whistleblower protection. We do not believe that these statutory protections for Federal employees need to be supplemented by an additional DOE regulatory process.

Comment: One series of comments expressed various concerns about the interrelationship between the draft revision of part 708 and the scheme of labor-management relations contemplated by the Labor Management Relations Act (LMRA), e.g.,

- That the proposed rule would provide a mechanism for bypassing the collectively bargained grievance-arbitration process and the labor organizations which are the exclusive representatives of the employees in the bargaining unit for the purposes of collective bargaining with the contractors by allowing the Department and the employers to deal directly with employees under part 708 regarding terms and conditions of their employment in violation of the LMRA, and
- That the proposed rule would obviate the need to pursue disputes related to such matters before the National Labor Relations Board or the Federal district courts under sections 301 and 302 of the LMRA.

Thus, the commenter stated, ''the current proposed regulation could act to exclude the legal representative of duly established union agents from any reprisal claim, and would diminish the contractual right for employers and unions to work together to negotiate a fair and reasonable settlement of disputes in the workplace* * * .''

Response: We have carefully reviewed the issues raised by the commenter. The original version of part 708 that has been in effect since April 2, 1992, does not exclude bargaining unit members, including those covered by collective bargaining agreements, from coverage and we believe that determination to be clearly correct. DOE has unique responsibilities under the Atomic Energy Act to ensure the safety of its operations. Allowing members of bargaining units employed by DOE contractors to bring to DOE's attention in part 708 proceedings instances of retaliation for raising safety and similar issues may provide DOE information vital to its capacity to carry out its responsibilities, notwithstanding that such complaints may also relate to terms and conditions of employment which are mandatory subjects for collective bargaining.

Nonetheless, in light of the comments, DOE has added a provision to this interim final rule, new § 708.4(e), to specifically exclude from the coverage of part 708 complaints based on terms and conditions of employment within the meaning of the National Labor Relations Act if the complaint does not involve conduct protected under § 708.5. In addition, DOE addresses the commenters' concern about the potential for bypassing a complainant's collective bargaining representative by including a new provision, § 708.16(b), requiring notice of a complaint and a comment opportunity for any union representing a complainant who is part of a bargaining unit for collective bargaining purposes. Before filing a complaint under part 708, the employee is also required by § 708.12(d) of the interim final rule to exhaust all applicable grievance-arbitration procedures that have been established by agreement of the parties. After exhausting such procedures, the represented employee is free to file a complaint under part 708 to resolve any issues related to alleged retaliation for conduct protected under § 708.5. Such a complaint may be dismissed for good cause, however, as provided in § 708.17 if, for example, the issues in the complaint have been substantially resolved or the employer has made a formal offer to provide a remedy that DOE considers to be equivalent to what could be provided as a remedy under this regulation.

We believe that this regulation, as modified, better reflects the original regulatory intent of providing procedures for processing complaints by employees of DOE contractors alleging retaliation by their employers for covered disclosure of information; participation in Congressional proceedings; or for refusal to participate in dangerous activities while not interfering in matters reserved to the exclusive province of the National Labor Relations Board and the federal district courts in cases brought pursuant to sections 301 and 302 of the LMRA.

We are particularly interested in comments addressing the impact of these changes.

Comment: The commenter also recommended that, in light of the Supreme Court having granted certiorari in *Wright* v. *Universal Maritime Serv. Corp.,* DOE withdraw the draft rule until such time as the Supreme Court issues its ruling. In *Wright,* the Court of Appeals for the Fourth Circuit held that the provisions of a collective bargaining agreement, including binding arbitration, are enforceable prior to the employee seeking statutorily provided rights.

Response: Since the submission of this comment, the Supreme Court has issued its decision in *Wright. See* __U.S.__ (No. 97–889, Nov. 16, 1998). In addition to reviewing that decision, we have further clarified the procedures established in part 708 to require exhaustion of contractual grievance-arbitration procedures. As modified, we believe that we have adequately resolved the concerns expressed by the commenter.

IV. Implementation and Enforcement

None of the comments received addressed the implementation and enforcement measures formerly contained in § 708.12(b), which now appear in § 708.38. However, this is an issue that has received comment in relation to litigation of whistleblower matters. Most complainants with actions reaching the implementation stage at § 708.38 have received the awards ordered by the Department without incident or problem, although a small percentage of cases have encountered difficulties. In situations where difficulties have arisen, the DOE has successfully worked with, and is continuing to work with, the complainant and relevant contractor to achieve a resolution. The DOE has found that each of these situations is unique and no single approach or solution can be used. For this reason, DOE has determined that no single approach to ensuring implementation of an ordered remedy is appropriate for promulgation in a rulemaking.

Furthermore, the streamlined process presented in this rulemaking will avoid problems that arose due to lengthy processing time. Thus, DOE will continue to use its existing measures as described in § 708.38.

The DOE did consider two alternative mechanisms for enforcement of its

decisions. The Department considered providing for assignment of contract funds by a contractor for the benefit of a successful complainant, and it considered providing for a third party beneficiary right in its contracts to successful complainants. The Department seeks comment on the mechanisms it considered, suggestions as to other mechanisms it might consider, and on its decision to maintain its current approach.

V. Public Hearing Determination

The Department concluded that the proposed rule would not involve a substantial issue of fact or law and that the proposed rule would not have a substantial impact on the nation's economy or a large number of individuals or businesses. No public comments were received requesting public hearings and none of the comments received indicated the need for such hearings. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department did not hold a public hearing on the rule.

VI. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the interim final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have a significant economic impact on substantial numbers of small entities. The contracts and employees to which this rulemaking apply are for the most part covered by the original DOE Contractor Employee Protection Program, which prohibited discrimination against employees who engage in protected activities relating to the disclosure of certain types of information or for refusing to engage in unsafe or illegal practices. Most of the changes are procedural in nature aimed at streamlining the process, and the nature of available remedies has not changed. The emphasis on the use of early resolution through Alternative Dispute Resolution, primarily mediation, may in fact lessen adverse economic impacts. Similarly, where violations are found, the expected shortening of the processing time for complaints may result in remedies (e.g., back pay) that are less costly to contractors than under the original rule. Accordingly, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No additional information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with administrative procedures regarding retaliation protection for employees of DOE contractors and subcontractors, and therefore, is covered under the Categorical Exclusion in paragraph A6 to Subpart D, 10 CFR Part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will only affect employee-contractor relations with respect to the operation of the DOE Contractor Employee Protection Program. States that contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct impact on the institutional interests or traditional functions of the States.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to timely input to potentially affected small governments

before establishing any requirements that might significantly or uniquely affect small governments. The rule published today does not contain any federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the interim final rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

10 CFR Part 708

Administrative practice and procedure, Energy, Fraud, Government contracts, Occupational Safety and Health, Whistleblowing.

48 CFR Parts 913, 922 and 970

Government procurement.

Issued in Washington, on March 3, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter III of title 10 and Chapter 9 of title 48 of the Code of Federal Regulations are amended as set forth below:

1. 10 CFR Part 708 is revised to read as follows:

PART 708—DOE CONTRACTOR EMPLOYEE PROTECTION PROGRAM

Subpart A—General Provisions

Sec.
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Authority: 42 U.S.C. 2201(b), 2201(c), 2201(i), and 2201(p); 42 U.S.C. 5814 and 5815; 42 U.S.C. 7251, 7254, 7255, and 7256; and 5 U.S.C. Appendix 3.

Subpart A—General Provisions

§ 708.1 What is the purpose of this part?

This part provides procedures for processing complaints by employees of DOE contractors alleging retaliation by their employers for disclosure of information concerning danger to public or worker health or safety, substantial violations of law, or gross mismanagement; for participation in Congressional proceedings; or for refusal to participate in dangerous activities.

§ 708.2 What are the definitions of terms used in this part?

For purposes of this part:

Contractor means a seller of goods or services who is a party to:

(1) A management and operating contract or other type of contract with DOE to perform work directly related to activities at DOE-owned or -leased facilities, or

(2) A subcontract under a contract of the type described in paragraph (1) of this definition, but only with respect to work related to activities at DOE-owned or -leased facilities.

Day means a calendar day.

Discovery means a process used to enable the parties to learn about each other's evidence before a hearing takes place, including oral depositions, written interrogatories, requests for admissions, inspection of property and requests for production of documents.

DOE Official means any officer or employee of DOE whose duties include program management or the investigation or enforcement of any law, rule, or regulation relating to Government contractors or the subject matter of a contract.

EC Director means the Director of the Office of Employee Concerns at DOE Headquarters, or any official to whom the Director delegates his or her functions under this part.

Employee means a person employed by a contractor, and any person previously employed by a contractor if that person's complaint alleges that employment was terminated for conduct described in § 708.5 of this subpart.

Field element means a DOE field-based office that is responsible for the management, coordination, and

administration of operations at a DOE facility.

Head of Field Element means the manager or head of a DOE operations office or field office, or any official to whom those individuals delegate their functions under this part.

Hearing Officer means an individual appointed by the OHA Director to conduct a hearing on a complaint filed under this part.

Management and operating contract means an agreement under which DOE contracts for the operation, maintenance, or support of a Government-owned or -leased research, development, special production, or testing establishment that is wholly or principally devoted to one or more of the programs of DOE.

Mediation means an informal, confidential process in which a neutral third person assists the parties in reaching a mutually acceptable resolution of their dispute; the neutral third person does not render a decision.

OHA Director means the Director of the Office of Hearings and Appeals, or any official to whom the Director delegates his or her functions under this part.

Party means an employee, contractor, or other party named in a proceeding under this part.

Retaliation means an action (including intimidation, threats, restraint, coercion or similar action) taken by a contractor against an employee with respect to employment (*e.g.*, discharge, demotion, or other negative action with respect to the employee's compensation, terms, conditions or privileges of employment) as a result of the employee's disclosure of information, participation in proceedings, or refusal to participate in activities described in § 708.5 of this subpart.

You means the employee who files a complaint under this part, or the complainant.

§ 708.3 What employee complaints are covered?

This part applies to a complaint of retaliation filed by an employee of a contractor that performs work on behalf of DOE, directly related to activities at a DOE-owned or -leased site, if the complaint stems from a disclosure, participation, or refusal described in § 708.5.

§ 708.4 What employee complaints are not covered?

If you are an employee of a contractor, you may not file a complaint against your employer under this part if:

(a) The complaint is based on race, color, religion, sex, age, national origin, or other similar basis; or

(b) The complaint involves misconduct that you, acting without direction from your employer, deliberately caused, or in which you knowingly participated; or

(c) Except as provided in § 708.15(a), the complaint is based on the same facts for which you have chosen to pursue a remedy available under:

(1) Department of Labor regulations at 29 CFR part 24, ''Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes;''

(2) Federal Acquisition Regulations, 48 CFR part 3, ''Federal Acquisition Regulation; Whistleblower Protection for Contractor Employees (Ethics);'' or

(3) State or other applicable law, including final and binding grievance-arbitration, as described in § 708.15 of subpart B; or

(d) The complaint is based on the same facts in which you, in the course of a covered disclosure or participation, improperly disclosed Restricted Data, national security information, or any other classified or sensitive information in violation of any Executive Order, statute, or regulation. This part does not override any provision or requirement of any regulation pertaining to Restricted Data, national security information, or any other classified or sensitive information; or

(e) The complaint deals with ''terms and conditions of employment'' within the meaning of the National Labor Relations Act, except as provided in § 708.5.

§ 708.5 What employee conduct is protected from retaliation by an employer?

If you are an employee of a contractor, you may file a complaint against your employer alleging that you have been subject to retaliation for:

(a) Disclosing to a DOE official, a member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site, your employer, or any higher tier contractor, information that you reasonably and in good faith believe reveals—

(1) A substantial violation of a law, rule, or regulation;

(2) A substantial and specific danger to employees or to public health or safety; or

(3) Fraud, gross mismanagement, gross waste of funds, or abuse of authority; or

(b) Participating in a Congressional proceeding or an administrative proceeding conducted under this part; or

(c) Subject to § 708.7 of this subpart, refusing to participate in an activity, policy, or practice if you believe participation would—

(1) Constitute a violation of a federal health or safety law; or

(2) Cause you to have a reasonable fear of serious injury to yourself, other employees, or members of the public.

§ 708.6 What constitutes ''a reasonable fear of serious injury?''

Participation in an activity, policy, or practice may cause an employee to have a reasonable fear of serious injury that justifies a refusal to participate if:

(a) A reasonable person, under the circumstances that confronted the employee, would in good faith conclude there is a substantial risk of a serious accident, injury, or impairment of health or safety resulting from participation in the activity, policy, or practice; or

(b) An employee, because of the nature of his or her employment responsibilities, does not have the training or skills needed to participate safely in the activity or practice.

§ 708.7 What must an employee do before filing a complaint based on retaliation for refusal to participate?

You may file a complaint for retaliation for refusing to participate in an activity, policy, or practice only if:

(a) Before refusing to participate in the activity, policy, or practice, you asked your employer to correct the violation or remove the danger, and your employer refused to take such action; and

(b) By the 30th day after you refused to participate, you reported the violation or dangerous activity, policy, or practice to a DOE official, a member of Congress, another government official with responsibility for the oversight of the conduct of operations at the DOE site, your employer, or any higher tier contractor, and stated your reasons for refusing to participate.

§ 708.8 Does this part apply to pending cases?

The procedures in this part apply prospectively in any complaint proceeding pending on the effective date of this part.

§ 708.9 When is a complaint or other document considered to be ''filed'' under this part?

Under this part, a complaint or other document is considered ''filed'' on the date it is mailed or on the date it is personally delivered to the specified official or office.

Subpart B—Employee Complaint Resolution Process

§ 708.10 Where does an employee file a complaint?

(a) If you were employed by a contractor whose contract is handled by a contracting officer located in DOE Headquarters when the alleged retaliation occurred, you must file two copies of your written complaint with the EC Director.

(b) If you were employed by a contractor at a DOE field facility or site when the alleged retaliation occurred, you must file two copies of your written complaint with the Head of Field Element at the DOE field element with jurisdiction over the contract.

§ 708.11 Will an employee's identity be kept confidential if the employee so requests?

No. The identity of an employee who files a complaint under this part appears on the complaint. A copy of the complaint is provided to the contractor and it becomes a public document.

§ 708.12 What information must an employee include in a complaint?

Your complaint does not need to be in any specific form but must be signed by you and contain the following:

(a) A statement specifically describing

(1) The alleged retaliation taken against you and

(2) The disclosure, participation, or refusal that you believe gave rise to the retaliation;

(b) A statement that you are not currently pursuing a remedy under State or other applicable law, as described in § 708.15 of this subpart;

(c) A statement that all of the facts that you have included in your complaint are true and correct to the best of your knowledge and belief; and

(d) An affirmation, as described in § 708.13 of this subpart, that you have exhausted (completed) all applicable grievance or arbitration procedures.

§ 708.13 What must an employee do to show that all grievance-arbitration procedures have been exhausted?

(a) To show that you have exhausted all applicable grievance-arbitration procedures, you must:

(1) State that all available opportunities for resolution through an applicable grievance-arbitration procedure have been exhausted, and provide the date on which the grievance-arbitration procedure was terminated and the reasons for termination; or

(2) State that you filed a grievance under applicable grievance-arbitration procedures, but more than 150 days have passed and a final decision on it has not been issued, and provide the date that you filed your grievance; or

(3) State that your employer has established no grievance-arbitration procedures.

(b) If you do not provide the information specified in § 708.13(a), your complaint may be dismissed for lack of jurisdiction as provided in § 708.17 of this subpart.

§ 708.14 How much time does an employee have to file a complaint?

(a) You must file your complaint by the 90th day after the date you knew, or reasonably should have known, of the alleged retaliation.

(b) The period for filing a complaint does not include time spent attempting to resolve the dispute through an internal company grievance-arbitration procedure. The time period for filing stops running on the day the internal grievance is filed and begins to run again on the earlier of:

(1) The day after such dispute resolution efforts end; or

(2) 150 days after the internal grievance was filed if a final decision on the grievance has not been issued.

(c) The period for filing a complaint does not include time spent resolving jurisdictional issues related to a complaint you file under State or other applicable law. The time period for filing stops running on the date the complaint under State or other applicable law is filed and begins to run again the day after a final decision on the jurisdictional issues is issued.

(d) If you do not file your complaint during the 90-day period, the Head of Field Element or EC Director (as applicable) will give you an opportunity to show any good reason you may have for not filing within that period, and that official may, in his or her discretion, accept your complaint for processing.

§ 708.15 What happens if an employee files a complaint under this part and also pursues a remedy under State or other law?

(a) You may not file a complaint under this part if, with respect to the same facts, you choose to pursue a remedy under State or other applicable law, including final and binding grievance-arbitration procedures, unless:

(1) Your complaint under State or other applicable law is dismissed for lack of jurisdiction;

(2) Your complaint was filed under 48 CFR part 3, Subpart 3.9 and the Inspector General, after conducting an initial inquiry, determines not to pursue it; or

(3) You have exhausted grievance-arbitration procedures pursuant to § 708.13, and issues related to alleged retaliation for conduct protected under § 708.5 remain.

(b) Pursuing a remedy other than final and binding grievance-arbitration procedures does not prevent you from filing a complaint under this part.

(c) You are considered to have filed a complaint under State or other applicable law if you file a complaint, or other pleading, with respect to the same facts in a proceeding established or mandated by State or other applicable law, whether you file such complaint before, concurrently with, or after you file a complaint under this part.

(d) If you file a complaint under State or other applicable law after filing a complaint under this part, your complaint under this regulation will be dismissed under § 708.17(c)(2).

§ 708.16 Will a contractor or a labor organization that represents an employee be notified of an employee's complaint and be given an opportunity to respond with information?

(a) By the 15th day after receiving your complaint, the Head of Field Element or EC Director (as applicable) will provide your employer a copy of your complaint. Your employer has 10 days from receipt of your complaint to submit any comments it wishes to make regarding the allegations in the complaint.

(b) If you are part of a bargaining unit represented for purposes of collective bargaining by a labor organization, the Head of Field Element or EC Director (as applicable) will provide your representative a copy of your complaint by the 15th day after receiving it. The labor organization will be advised that it has 10 days from the receipt of your complaint to submit any comments it wishes to make regarding the allegations in the complaint.

§ 708.17 When may DOE dismiss a complaint for lack of jurisdiction or other good cause?

(a) The Head of Field Element or EC Director (as applicable) may dismiss your complaint for lack of jurisdiction or for other good cause after receiving your complaint, either on his or her own initiative or at the request of a party named in your complaint. Such decisions are generally issued by the 15th day after the receipt of your employer's comments.

(b) The Head of Field Element or EC Director (as applicable) will notify you by certified mail, return receipt requested, if your complaint is dismissed for lack of jurisdiction or other good cause, and give you specific

reasons for the dismissal, and will notify other parties of the dismissal.

(c) Dismissal for lack of jurisdiction or other good cause is appropriate if:

(1) Your complaint is untimely; or

(2) The facts, as alleged in your complaint, do not present issues for which relief can be granted under this part; or

(3) You filed a complaint under State or other applicable law with respect to the same facts as alleged in a complaint under this part; or

(4) Your complaint is frivolous or without merit on its face; or

(5) The issues presented in your complaint have been rendered moot by subsequent events or substantially resolved; or

(6) Your employer has made a formal offer to provide the remedy that you request in your complaint or a remedy that DOE considers to be equivalent to what could be provided as a remedy under this part.

§ 708.18 How can an employee appeal dismissal of a complaint for lack of jurisdiction or other good cause?

(a) If your complaint is dismissed by the Head of Field Element or EC Director, the administrative process is terminated unless you appeal the dismissal to the OHA Director by the 10th day after you receive the notice of dismissal as evidenced by a receipt for delivery of certified mail.

(b) If you appeal a dismissal to the OHA Director, you must send copies of your appeal to the Head of Field Element or EC Director (as applicable) and all parties. Your appeal must include a copy of the notice of dismissal, and state the reasons why you think the dismissal was erroneous.

(c) The OHA Director will issue a decision on your appeal and notify the parties of the decision by the 30th day after it is received.

(d) The OHA Director's decision, either upholding the dismissal by the Head of Field Element or EC Director or ordering further processing of your complaint, is the final decision on your appeal, unless a party files a petition for Secretarial review by the 30th day after receiving the appeal decision.

§ 708.19 How can a party obtain review by the Secretary of Energy of a decision on appeal of a dismissal?

(a) By the 30th day after receiving a decision on an appeal under § 708.18 from the OHA Director, any party may file a petition for Secretarial review of a dismissal with the Office of Hearings and Appeals.

(b) By the 15th day after filing the petition for Secretarial review, a party must file a statement setting forth the arguments in support of its position. A copy of the statement must be served on the other parties, who may file a response by the 20th day after receipt of the statement. Any response must also be served on the other parties.

(c) All submissions permitted under this section must be filed with the Office of Hearings and Appeals.

(d) After a petition for Secretarial review is filed, the Secretary (or his or her delegee) will issue the final agency decision on jurisdiction over the complaint. The Secretary will reverse or revise an appeal decision by the OHA Director only under extraordinary circumstances. In the event he or she determines that a revision in the appeal decision is appropriate, the Secretary will direct the OHA Director to issue an order either upholding the dismissal by the Head of Field Element or EC Director or ordering further processing of your complaint.

§ 708.20 Will DOE encourage the parties to resolve the complaint informally?

(a) Yes. The Head of Field Element or EC Director (as applicable) may recommend that the parties attempt to resolve the complaint informally, for example, through mediation.

(b) The period for attempting informal resolution of the complaint may not exceed 30 days from the date you filed your complaint, unless the parties agree to extend the time.

(c) The 30-day period permitted for informal resolution of the complaint stops running when a request to dismiss your complaint on jurisdictional grounds is filed with the Head of Field Element or EC Director, and begins to run again on the date the OHA Director returns the complaint to the Head of Field Element or EC Director for further processing.

(d) If the parties resolve the complaint informally, the Head of Field Element or EC Director (as applicable) must be given a copy of the settlement agreement or a written statement from you withdrawing the complaint.

Subpart C—Investigation, Hearing and Decision Process

§ 708.21 What are the employee's options if the complaint cannot be resolved informally?

(a) If the attempt at informal resolution is not successful, the Head of Field Element or EC Director (as applicable) will notify you in writing that you have the following options:

(1) Request that your complaint be referred to the Office of Hearings and Appeals for a hearing without an investigation; or

(2) Request that your complaint be referred to the Office of Hearings and Appeals for an investigation followed by a hearing.

(b) You must notify the Head of Field Element or EC Director (as applicable), in writing, by the 20th day after receiving notice of your options, whether you request referral of your complaint to the Office of Hearings and Appeals for a hearing without an investigation, or an investigation followed by a hearing.

(c) If the Head of Field Element or EC Director does not receive your response to the notice of options by the 20th day after your receipt of that notice, DOE will consider your complaint withdrawn.

(d) If you timely request referral to the Office of Hearings and Appeals, the Head of Field Element or EC Director (as applicable) will forward your complaint to the OHA Director by the 5th day after receipt of your request.

(e) The Head of the Field Element or EC Director (as applicable) will notify all parties that the complaint has been referred to the Office of Hearings and Appeals, and state whether you have requested a hearing without an investigation or requested an investigation followed by a hearing.

§ 708.22 What process does the Office of Hearings and Appeals use to conduct an investigation of the complaint?

(a) If you request a hearing without an investigation, the OHA Director will not initiate an investigation even if another party requests one.

(b) If you request an investigation followed by a hearing, the OHA Director will appoint a person from the Office of Hearings and Appeals to conduct the investigation. The investigator may not participate or advise in the initial or final agency decision on your complaint.

(c) The investigator will determine the appropriate scope of investigation based on the circumstances of the complaint. The investigator may enter and inspect places and records; make copies of records; interview persons alleged to have been involved in retaliation and other employees of the charged contractor who may have relevant information; take sworn statements; and require the production of any documents or other evidence.

(d) A contractor must cooperate fully with the investigator by making employees and all pertinent evidence available upon request.

(e) A person being interviewed in an investigation has the right to be represented by a person of his or her choosing.

(f) Parties to the complaint are not entitled to be present at interviews conducted by an investigator.

(g) If a person other than the complainant requests that his or her identity be kept confidential, the investigator may grant confidentiality, but must advise such person that confidentiality means that the Office of Hearings and Appeals will not identify the person as a source of information to anyone outside the Office of Hearings and Appeals, except as required by statute or other law, or as determined by the OHA Director to be unavoidable.

§ 708.23 How does the Office of Hearings and Appeals issue a report of investigation?

(a) The investigator will complete the investigation and issue a report of investigation by the 60th day after the complaint is received by the Office of Hearings and Appeals, unless the OHA Director, for good cause, extends the investigation for no more than 30 days.

(b) The investigator will provide copies of the report of investigation to the parties. The investigation will not be reopened after the report of investigation is issued.

(c) If the parties informally resolve the complaint (e.g., through mediation) after an investigation is started, you must notify the OHA Director in writing of your decision to withdraw the complaint.

§ 708.24 Will there always be a hearing after a report of investigation is issued?

(a) No. An employee may withdraw a hearing request after the report of investigation is issued. However, the hearing may be canceled only if all parties agree that they do not want a hearing.

(b) If the hearing is canceled, the Hearing Officer will issue an initial agency decision pursuant to § 708.31 of this subpart.

§ 708.25 Who will conduct the hearing?

(a) The OHA Director will appoint a Hearing Officer from the Office of Hearings and Appeals to conduct a hearing.

(b) The Hearing Officer may not be subject to the supervision or direction of the investigator.

§ 708.26 When and where will the hearing be held?

(a) The Hearing Officer will schedule a hearing to be held by the 90th day after receipt of the complaint, or issuance of the report of investigation, whichever is later. Any extension of the hearing date must be approved by the OHA Director.

(b) The Hearing Officer will schedule the hearing for a location near the site where the alleged retaliation occurred or your place of employment, or at another location that is appropriate considering the circumstances of a particular case.

§ 708.27 May the Hearing Officer recommend mediation to the parties?

The Hearing Officer may recommend, but may not require, that the parties attempt to resolve the complaint through mediation or other informal means at any time before issuance of an initial agency decision on the complaint.

§ 708.28 What procedures govern a hearing conducted by the Office of Hearings and Appeals?

(a) In all hearings under this part:

(1) The parties have the right to be represented by a person of their choosing or to proceed without representation. The parties are responsible for producing witnesses in their behalf, including requesting the issuance of subpoenas, if necessary;

(2) Testimony of witnesses is given under oath or affirmation, and witnesses must be advised of the applicability of 18 U.S.C. 1001 and 1621, dealing with the criminal penalties associated with false statements and perjury;

(3) Witnesses are subject to cross-examination;

(4) Formal rules of evidence do not apply, but OHA may use the Federal Rules of Evidence as a guide; and

(5) A court reporter will make a transcript of the hearing.

(b) The Hearing Officer has all powers necessary to regulate the conduct of proceedings:

(1) The Hearing Officer may order discovery at the request of a party, based on a showing that the requested discovery is designed to produce evidence regarding a matter, not privileged, that is relevant to the subject matter of the complaint;

(2) The Hearing Officer may permit parties to obtain discovery by any appropriate method, including deposition upon oral examination or written questions; written interrogatories; production of documents or things; permission to enter upon land or other property for inspection and other purposes; and requests for admission;

(3) The Hearing Officer may issue subpoenas for the appearance of witnesses on behalf of either party, or for the production of specific documents or other physical evidence;

(4) The Hearing Officer may rule on objections to the presentation of evidence; exclude evidence that is immaterial, irrelevant, or unduly repetitious; require the advance submission of documents offered as evidence; dispose of procedural requests; grant extensions of time; determine the format of the hearing; direct that written motions, documents, or briefs be filed with respect to issues raised during the course of the hearing; ask questions of witnesses; direct that documentary evidence be served upon other parties (under protective order if such evidence is deemed confidential); and otherwise regulate the conduct of the hearing;

(5) The Hearing Officer may, at the request of a party or on his or her own initiative, dismiss a claim, defense, or party and make adverse findings upon the failure of a party or the party's representative to comply with a lawful order of the Hearing Officer, or, without good cause, to attend a hearing;

(6) The Hearing Officer, upon request of a party, may allow the parties a reasonable time to file pre-hearing briefs or written statements with respect to material issues of fact or law. Any pre-hearing submission must be limited to the issues specified and filed within the time prescribed by the Hearing Officer.

(7) The parties are entitled to make oral closing arguments, but post-hearing submissions are only permitted by direction of the Hearing Officer.

(8) Parties allowed to file written submissions must serve copies upon the other parties within the time prescribed by the Hearing Officer.

(9) The Hearing Officer is prohibited, beginning with his or her appointment and until a final agency decision is issued, from initiating or otherwise engaging in *ex parte* (private) discussions with any party on the merits of the complaint.

§ 708.29 What must the parties to a complaint prove?

The employee who files a complaint has the burden of establishing by a preponderance of the evidence that he or she made a disclosure, participated in a proceeding, or refused to participate, as described under § 708.5, and that such act was a contributing factor in one or more alleged acts of retaliation against the employee by the contractor. Once the employee has met this burden, the burden shifts to the contractor to prove by clear and convincing evidence that it would have taken the same action without the employee's disclosure, participation, or refusal.

§ 708.30 What process does the Hearing Officer follow to issue an initial agency decision?

(a) The Hearing Officer will issue an initial agency decision on your

complaint by the 60th day after the later of:

(1) The date the Hearing Officer approves the parties' agreement to cancel the hearing;

(2) The date the Hearing Officer receives the transcript of the hearing; or

(3) The date the Hearing Officer receives post-hearing submissions permitted under § 708.28(b)(7) of this subpart.

(b) The Hearing Officer will serve the initial agency decision on all parties.

(c) An initial agency decision issued by the Hearing Officer will contain appropriate findings, conclusions, an order, and the factual basis for each finding, whether or not a hearing has been held on the complaint. In making such findings, the Hearing Officer may rely upon, but is not bound by, the report of investigation.

(d) If the Hearing Officer determines that an act of retaliation has occurred, the initial agency decision will include an order for any form of relief permitted under § 708.36.

(e) If the Hearing Officer determines that an act of retaliation has not occurred, the initial agency decision will state that the complaint is denied.

§ 708.31 If no hearing is conducted, what is the process for issuing an initial agency decision?

(a) If no party wants a hearing after the issuance of a report of investigation, the Hearing Officer will issue an initial agency decision by the 60th day after the hearing is canceled pursuant to § 708.24. The standards in § 708.30, governing the issuance of an initial agency decision, apply whether or not a hearing has been held on the complaint.

(b) The Hearing Officer will serve the initial agency decision on all parties.

§ 708.32 Can a dissatisfied party appeal an initial agency decision?

(a) Yes. By the 15th day after receiving an initial agency decision from the Hearing Officer, any party may file a notice of appeal with the OHA Director requesting review of the initial agency decision.

(b) A party who appeals an initial agency decision (the appellant) must serve a copy of the notice of appeal on all other parties.

(c) A party who receives an initial agency decision by a Hearing Officer has not exhausted its administrative remedies until an appeal has been filed with the OHA Director and a decision granting or denying the appeal has been issued.

§ 708.33 What is the procedure for an appeal?

(a) By the 15th day after filing a notice of appeal under § 708.32, the appellant must file a statement identifying the issues that it wishes the OHA Director to review. A copy of the statement must be served on the other parties, who may file a response by the 20th day after receipt of the statement. Any response must also be served on the other parties.

(b) In considering the appeal, the OHA Director:

(1) May initiate an investigation of any statement contained in the request for review and utilize any relevant facts obtained by such investigation in conducting the review of the initial agency decision;

(2) May solicit and accept submissions from any party that are relevant to the review. The OHA Director may establish appropriate times to allow for such submissions;

(3) May consider any other source of information that will advance the evaluation, provided that all parties are given an opportunity to respond to all third person submissions; and

(4) Will close the record on appeal after receiving the last submission permitted under this section.

§ 708.34 What is the process for issuing an appeal decision?

(a) If there is no appeal of an initial agency decision, and the time for filing an appeal has passed, the initial agency decision becomes the final agency decision.

(b) If there is an appeal of an initial agency decision, the OHA Director will issue an appeal decision based on the record of proceedings by the 60th day after the record is closed.

(1) An appeal decision issued by the OHA Director will contain appropriate findings, conclusions, an order, and the factual basis for each finding, whether or not a hearing has been held on the complaint. In making such findings, the OHA Director may rely upon, but is not bound by, the report of investigation and the initial agency decision.

(2) If the OHA Director determines that an act of retaliation has occurred, the appeal decision will include an order for any form of relief permitted under § 708.36.

(3) If the OHA Director determines that the contractor charged has not committed an act of retaliation, the appeal decision will deny the complaint.

(c) The OHA Director will send an appeal decision to all parties and to the Head of Field Element or EC Director having jurisdiction over the contract under which you were employed when the alleged retaliation occurred.

(d) The appeal decision issued by the OHA Director is the final agency decision unless a party files a petition for Secretarial review by the 30th day after receiving the appeal decision.

§ 708.35 How can a party obtain review by the Secretary of Energy of an appeal decision?

(a) By the 30th day after receiving an appeal decision from the OHA Director, any party may file a petition for Secretarial review with the Office of Hearings and Appeals.

(b) By the 15th day after filing a petition for Secretarial review, the petitioner must file a statement identifying the issues that it wishes the Secretary to consider. A copy of the statement must be served on the other parties, who may file a response by the 20th day after receipt of the statement. Any response must also be served on the other parties.

(c) All submissions permitted under this section must be filed with the Office of Hearings and Appeals.

(d) After a petition for Secretarial review is filed, the Secretary (or his or her delegee) will issue the final agency decision on the complaint. The Secretary will reverse or revise an appeal decision by the OHA Director only under extraordinary circumstances. In the event the Secretary determines that a revision in the appeal decision is appropriate, the Secretary will direct the OHA Director to issue a revised decision which is the final agency action on the complaint.

§ 708.36 What remedies for retaliation may be ordered in initial and final agency decisions?

(a) *General remedies.* If the initial or final agency decision determines that an act of retaliation has occurred, it may order:

(1) Reinstatement;

(2) Transfer preference;

(3) Back pay;

(4) Reimbursement of your reasonable costs and expenses, including attorney and expert-witness fees reasonably incurred to prepare for and participate in proceedings leading to the initial or final agency decision; or

(5) Such other remedies as are deemed necessary to abate the violation and provide you with relief.

(b) *Interim relief.* If an initial agency decision contains a determination that an act of retaliation occurred, the decision may order the contractor to provide you with appropriate interim relief (including reinstatement) pending the outcome of any request for review of the decision by the OHA Director. Such interim relief will not include payment of any money.

§ 708.37 Will an employee whose complaint is denied by a final agency decision be reimbursed for costs and expenses incurred in pursuing the complaint?

No. If your complaint is denied by a final agency decision, you may not be reimbursed for the costs and expenses you incurred in pursuing the complaint.

§ 708.38 How is a final agency decision implemented?

(a) The Head of Field Element having jurisdiction over the contract under which you were employed when the alleged retaliation occurred, or EC Director, will implement a final agency decision by forwarding the decision and order to the contractor, or subcontractor, involved.

(b) A contractor's failure or refusal to comply with a final agency decision and order under this regulation may result in a contracting officer's decision to disallow certain costs or terminate the contract for default. In the event of a contracting officer's decision to disallow costs or terminate a contract for default, the contractor may file a claim under the disputes procedures of the contract.

§ 708.39 Is a decision and order implemented under this regulation considered a claim by the government against a contractor or a decision by the contracting officer under sections 6 and 7 of the Contract Disputes Act?

No. A final agency decision and order issued pursuant to this regulation is not considered a claim by the government against a contractor or ''a decision by the contracting officer'' under sections 6 and 7 of the Contract Disputes Act (41 U.S.C. 605 and 606).

Title 48

PART 913—SIMPLIFIED ACQUISITION PROCEDURES

2–3. The authority citation for Parts 913 and 922 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

§ 913.507 [Removed]

4. Remove section 913.507.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

5. Section 922.7101 is revised to read as follows:

§ 922.7101 Clause.

The contracting officer shall insert the clause at 970.5204–59, Whistleblower Protection for Contractor Employees, in contracts other than management and operating contracts that involve work to be done on behalf of DOE directly related to activities at DOE-owned or -leased sites.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

6. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

7. In section 970.2274–1, remove the last sentence of introductory paragraph (a), and remove paragraphs (a)(1) through (a)(3); revise paragraphs (b) and (c) as set forth below, and revise the reference in paragraph (d) to ''10 CFR 708.12(b)'' to read ''Part 708''.

§ 970.2274–1 General.

* * * * *

(b) Contractors found to have retaliated against an employee in reprisal for such disclosure, participation or refusal are required to provide relief in accordance with decisions issued under 10 CFR part 708.

(c) Part 708 is applicable to employees of contractors, and subcontractors, performing work on behalf of DOE directly related to DOE-owned or -leased facilities.

* * * * *

8. Section 970.5204–59 is revised to read as follows:

§ 970.5204–59 Whistleblower protection for contractor employees.

As prescribed in 970.2274–2, insert the following clause in management and operating contracts. As prescribed in 922.7101, insert the following clause in contracts that are not management and operating contracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

Whistleblower Protection for Contractor Employees (APR 1999)

(a) The contractor shall comply with the requirements of ''DOE Contractor Employee Protection Program'' at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

(b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

[FR Doc. 99–5876 Filed 3–12–99; 8:45 am]

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federal register

Monday
March 15, 1999

Part V

The President

Proclamation 7173—National Older Workers Employment Week, 1999

Federal Register
Vol. 64, No. 49
Monday, March 15, 1999

Presidential Documents

Title 3—

The President

Proclamation 7173 of March 11, 1999

National Older Workers Employment Week, 1999

By the President of the United States of America

A Proclamation

One of our Nation's most valuable but least appreciated assets is its workers aged 55 and older. Older Americans bring to the workplace sound judgment, broad knowledge and experience, proven problem-solving abilities, and a strong work ethic. Despite their often impressive qualifications, however, older men and women who attempt to change jobs or seek new careers frequently encounter difficulties. Some employers mistakenly fear that older workers lack the skills and flexibility to learn new technologies and procedures; others think that they no longer have the energy and motivation to compete in today's fast-paced and stressful work environment; still others are unwilling to pay older workers the salaries they deserve and prefer instead to hire younger, less experienced employees at lower rates. Such employers are short-sighted.

Americans are living longer, healthier, more active lives. In the next century, as our economy continues to expand and the demand for skilled workers continues to grow, older citizens will become an increasingly vital resource. If our Nation is to thrive in the 21st century, we must encourage businesses to recognize the rich potential of older workers, to make the most of their knowledge, skills, and experience, and to retain qualified older employees in the workforce.

We must also remain vigilant in protecting the rights and well-being of older Americans. Laws such as the Age Discrimination Act, the Older Americans Act, and the Age Discrimination in Employment Act protect older workers from age bias and discrimination and help assure their fair treatment in the workplace. In addition, the Department of Labor and the Department of Health and Human Services, through such efforts as the Senior Community Service Employment Program and the programs of the Administration on Aging, assist older workers who give their time and energy to contribute to our Nation's economy.

As we observe this special week, let us remember with appreciation the many invaluable contributions older workers make to our country's progress and prosperity, and let us resolve to give older Americans an equal opportunity to participate in the workplace.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 14 through March 20, 1999, as National Older Workers Employment Week. I urge employers across the Nation to recognize the energy and ability of older workers, and I encourage public officials responsible for job placement, training, and related services to intensify their efforts throughout the year to help older workers find suitable jobs and training.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of March, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

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H.R. 433/P.L. 106–1

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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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Title	Stock Number	Price	Revision Date
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:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–034–00006–1)	39.00	Jan. 1, 1998
7 Parts:			
1–26	(869–034–00007–0)	24.00	Jan. 1, 1998
27–52	(869–034–00008–8)	30.00	Jan. 1, 1998
53–209	(869–034–00009–6)	20.00	Jan. 1, 1998
210–299	(869–034–00010–0)	44.00	Jan. 1, 1998
300–399	(869–034–00011–8)	24.00	Jan. 1, 1998
400–699	(869–034–00012–6)	33.00	Jan. 1, 1998
700–899	(869–034–00013–4)	30.00	Jan. 1, 1998
900–999	(869–034–00014–2)	39.00	Jan. 1, 1998
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
1200–1599	(869–034–00016–9)	34.00	Jan. 1, 1998
1600–1899	(869–034–00017–7)	58.00	Jan. 1, 1998
1900–1939	(869–034–00018–5)	18.00	Jan. 1, 1998
1940–1949	(869–034–00019–3)	33.00	Jan. 1, 1998
1950–1999	(869–034–00020–7)	40.00	Jan. 1, 1998
2000–End	(869–034–00021–5)	24.00	Jan. 1, 1998
8	(869–034–00022–3)	33.00	Jan. 1, 1998
9 Parts:			
1–199	(869–034–00023–1)	40.00	Jan. 1, 1998
200–End	(869–034–00024–0)	33.00	Jan. 1, 1998
10 Parts:			
0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
200–499	(869–034–00027–4)	31.00	Jan. 1, 1998
500–End	(869–034–00028–2)	43.00	Jan. 1, 1998
11	(869–034–00029–1)	19.00	Jan. 1, 1998
12 Parts:			
1–199	(869–034–00030–4)	17.00	Jan. 1, 1998
200–219	(869–034–00031–2)	21.00	Jan. 1, 1998
220–299	(869–034–00032–1)	39.00	Jan. 1, 1998
300–499	(869–034–00033–9)	23.00	Jan. 1, 1998
500–599	(869–034–00034–7)	24.00	Jan. 1, 1998
600–End	(869–034–00035–5)	44.00	Jan. 1, 1998
13	(869–034–00036–3)	23.00	Jan. 1, 1998
14 Parts:			
1–59	(869–034–00037–1)	47.00	Jan. 1, 1998
60–139	(869–034–00038–0)	40.00	Jan. 1, 1998
140–199	(869–034–00039–8)	16.00	Jan. 1, 1998
200–1199	(869–034–00040–1)	29.00	Jan. 1, 1998
1200–End	(869–034–00041–0)	23.00	Jan. 1, 1998
15 Parts:			
0–299	(869–034–00042–8)	22.00	Jan. 1, 1998
300–799	(869–034–00043–6)	33.00	Jan. 1, 1998
800–End	(869–034–00044–4)	23.00	Jan. 1, 1998
16 Parts:			
0–999	(869–034–00045–2)	30.00	Jan. 1, 1998
1000–End	(869–034–00046–1)	33.00	Jan. 1, 1998
17 Parts:			
1–199	(869–034–00048–7)	27.00	Apr. 1, 1998
200–239	(869–034–00049–5)	32.00	Apr. 1, 1998
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
1–399	(869–034–00051–7)	45.00	Apr. 1, 1998
400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
1–140	(869–034–00053–3)	34.00	Apr. 1, 1998
141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
200–End	(869–034–00055–0)	15.00	Apr. 1, 1998
20 Parts:			
1–399	(869–034–00056–8)	29.00	Apr. 1, 1998
400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–034–00060–6)	27.00	Apr. 1, 1998
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
800–1299	(869–034–00066–5)	32.00	Apr. 1, 1998
1300–End	(869–034–00067–3)	12.00	Apr. 1, 1998
22 Parts:			
1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
300–End	(869–034–00069–0)	31.00	Apr. 1, 1998
23	(869–034–00070–3)	25.00	Apr. 1, 1998
24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
500–699	(869–034–00073–8)	17.00	Apr. 1, 1998
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–034–00083–5)	27.00	Apr. 1, 1998
§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

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200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1998
28 Parts:			
0-42	(869–034–00098–3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–034–00101–7)	12.00	July 1, 1998
500–899	(869–034–00102–5)	40.00	July 1, 1998
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–034–00105–0)	27.00	July 1, 1998
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–034–00112–2)	20.00	July 1, 1998
200–End	(869–034–00113–1)	46.00	July 1, 1998
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–034–00115–7)	51.00	July 1, 1998
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	[4] July 1, 1998
700–799	(869–034–00118–1)	26.00	July 1, 1998
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–034–00130–1)	27.00	July 1, 1998
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–034–00132–7)	39.00	July 1, 1998
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–034–00139–4)	53.00	July 1, 1998
61–62	(869–034–00140–8)	18.00	July 1, 1998
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–034–00146–7)	47.00	July 1, 1998
136–149	(869–034–00147–5)	37.00	July 1, 1998
150–189	(869–034–00148–3)	34.00	July 1, 1998
190–259	(869–034–00149–1)	23.00	July 1, 1998
260–265	(869–034–00150–9)	29.00	July 1, 1998
266–299	(869–034–00151–3)	33.00	July 1, 1998
300–399	(869–034–00152–1)	26.00	July 1, 1998
400–424	(869–034–00153–0)	33.00	July 1, 1998
425–699	(869–034–00154–8)	42.00	July 1, 1998
700–789	(869–034–00155–6)	41.00	July 1, 1998
790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00158–1)	37.00	July 1, 1998
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–034–00160–2)	13.00	July 1, 1998
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	18.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	29.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
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100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
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, 1997 to June 30, 1998. The volume issued July 1, 1997, 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.